OCD-17

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Commercial Division)

AP-COM/897/2025

KOTAK MAHINDRA BANK
VS
MR SUBHASHISH SARKEL

BEFORE:
The Hon'ble JUSTICE GAURANG KANTH
Date : 3rd December, 2025.

Appearance
Mr. Dhilon Sengupta, Adv.
Mr. Ayan Chakraborty, Adv.
Ms. Sohini Mukherjee, Adv.
...for the petitioner

The Court: The petitioner has filed the present application under Section 9 of the Arbitration and Conciliation Act, 1996, seeking an order restraining the respondent from dealing with, operating or withdrawing any amount from the bank account being no.3401520431 lying with the ICICI Bank, Ballygunge Branch, until execution of the arbitral award dated 13.08.2024.

The case of the petitioner is that the respondent availed a salaried personal loan amount of Rs.17,33,199/- pursuant to a personal loan agreement dated 15.11.2022. The respondent defaulted in repayment, compelling the petitioner to issue a Loan Recall Notice dated 09.05.2024. As the respondent failed and/or neglect to reply to the said Loan Recall Notice to take steps in making payment of the outstanding loan amount, the petitioner was constrained to invoke the arbitration clause. A sole Arbitrator was appointed in terms of the loan agreement.

Despite due service of notice, the respondent chose not to participate in the arbitral proceedings. The learned sole Arbitrator thereafter proceeded *ex parte* and passed a final award dated 13.08.2024.

Learned Counsel for the petitioner submits that during the pendency of the arbitral proceedings, the petitioner had filed an application under Section 17 of the Arbitration and Conciliation Act, 1996, whereupon the learned sole Arbitrator vide order dated 15.07.2024, directed freezing of the account of the respondent to the extent of Rs.14,36,843.32/- and restrained the respondent from withdrawing any amount therefrom. Learned Counsel for the petitioner further states that by the final arbitral award dated 13.08.2024, the learned sole Arbitrator directed the respondent to pay the outstanding sum of Rs.14,36,843.32/- together with simple interest @ of 18% per annum from 04.06.2024 until the date of actual payment, along with a cost of Rs.10,000/-. Learned Counsel for the petitioner submits that till date the award has not been challenged and has thus attained finality. In these circumstances, the petitioner has preferred the present post-award application under Section 9, praying for continuation of the restraint on the respondent's bank account to secure the fruits of the award.

This Court notes that Section 9.1(ii)(b) and (e) empowers the Court to grant post-award interim protection for securing the amount in dispute in arbitration. The law is well settled that – (i) post award but prior to enforcement under Section 36, the Court may grant appropriate protection if the award has attained finality between the parties. (ii) such protection may be granted where there is a reasonable apprehension that the respondent may defeat or delay the execution and (iii) the balance of convenience lies in preserving the awarded amount.

In the present case, the award has been passed on 13.08.2024. The respondent did not participate in the arbitral proceedings despite service. The respondent has also failed to appear before this Court at this stage despite service. Such conduct gives rise to a legitimate apprehension that unless the petitioner is protected, the awarded amount may not be recoverable. Significantly, during the arbitral proceeding, the arbitral tribunal had itself found it necessary to freeze the account of the respondent under Section 17. The said order was based on material consideration indicating that the respondent was not meeting repayment obligations making it necessary for the Tribunal to protect the petitioner.

This Court finds no reason to depart from that assessment, particularly when the respondent has continued to remain evasive even post award. The awarded amount is quantified, undisputed for present purposes and directly traceable to the respondent's default under the admitted loan agreement. The petitioner has demonstrated *prima facie* a strong likelihood of prejudice if the interim protection is not maintained. The balance of convenience lies in favour of the petitioner in securing the decretal amount. Further, the petitioner will suffer irreparable loss if the said amount is dissipated by the respondent.

In view of the same, the relief sought by the petitioner falls within the parameters of Section 9. Further, this Court is of the view that non grant of relief sought would frustrate the award.

In view of the foregoing discussion, this Court is satisfied that the petitioner has made out a strong prima facie case for grant of the interim relief under Section 9 of the Act.

Accordingly, the respondent is, therefore, restrained from dealing with, operating, or withdrawing any amount from the bank Account No.3401520431 maintained with ICICI Bank, Ballygunge Branch to the extent of the awarded sum, until the arbitral award dated 13.08.2024 is executed or until further orders of this Court.

The petitioner shall be entitled to proceed with the execution of the award in accordance with law.

With the aforesaid directions, the present application is disposed of.

(GAURANG KANTH, J.)

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