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IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE

AP-COM/993/2024  
ADITYA BIRLA FINANCE LIMITED  
VS  
M/S S ALI VEGETABLE AND FRUIT AND ORS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : February 19, 2025

Ms. Tutul Das Sinha, Adv.  
Mr. Amar Singh, Adv.  
Mr. Ranjit Singh, Adv.  
Mr. Pranit Biswas, Adv.  
Mr. Ratul Deb Banerjee, Adv.  
Ms. Anuska Ray, Adv. ...for petitioner.

The Court :- This is an application under section 9 of the Arbitration and Conciliation Act, 1996 for various interim measures, including appointment of a Receiver, attachment of immovable property and also for furnishing of security amounting to Rs.30,53,735/-. By an order dated 12.12.2024, this Court had injuncted the respondents from disposing of the property which was mortgaged to the petitioner. The description of the property is set out hereunder:

“ALL THAT piece and parcel of land lying situated at Mouza Sathatia Dag No.806, JL No.82, Khatian No.260/4, P.O. Bhalisha, P.S. Deganga, District North 24 Parganas, Pin Code- 743423.”

Affidavit of service is taken on record. Despite service none appears on behalf of the respondents.

The record reveals that an amount of Rs.30,53,735/- had fallen due in respect of the facility agreement entered into between the petitioner and the respondents.

Despite a loan recall-cum-demand notice dated 5.11.2024, the respondents did not pay any heed to the same.

This Court had injuncted the respondents from encumbering, transferring, alienating or dealing with the mortgaged property. The said mortgaged property is an immovable property which is in the use of the respondents.

The respondents have not appeared before this court despite service. The respondents have also not prayed for any variation or vacation of the order passed on the earlier occasion.

Under such circumstances, balancing the convenience and inconvenience of the parties, this Court deems it fit to make the interim order passed on 12.12.2024 absolute, thereby, restraining the respondents from encumbering, transferring, alienating or dealing with the mortgaged property or changing the nature and character thereof which has already been described hereinabove for a period of three months. Prayer for attachment of the said property by appointing a Receiver is rejected on the ground that the said property being an immovable property, are probably in the use of the respondents.

The petitioner is at liberty to take steps for appointment an Arbitrator in terms of the arbitration clause contained in the facility agreement.

The petitioner shall be entitled to renew all prayers made in this application which have not been allowed by this court, before the learned Arbitrator.

This application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)