OCD 5

ORDER SHEET
AP-COM/999/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

ADITYA BIRLA FINANCE LIMITED
VS
M/S. ANKIT HOSSIARY AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 5th March, 2025.

Appearance:
Mrs. Tutul Das Singh, Adv.
Mr. Amar Singh, Adv.
Mr. Ranjit Singh, Adv.
Mr. Pranit Biswas, Adv.
Mr. Ratul Deb Banerjee, Adv.
Ms. Talak Nasrin, Adv.
Ms. Anuska Ray, Adv.
…for the petitioner

Mr. Debdut Mukherjee, Adv.
Mr. Sayak Mitra, Adv.
Mr. Kaushik Banerjee, Adv.
Ms. Rashmita Sen, Adv.
…for the respondents

The Court:

1. This is an application under Section 9 of the Arbitration and Conciliation Act for necessary interim orders to ensure that the claim of the finance company to the tune of Rs.43,15,873.28/- is secured by the respondents in some manner.

2. It is contended by the petitioner that part cause of action arose within the jurisdiction of this Court, inasmuch as, the entire transaction starting from the execution of the documents for sanction of loan, payment thereof and issuance of the loan recall notice, took place within the jurisdiction of this Court at Chowringhee Road.
3. The petitioner has made out an arguable case with regard to the default committed by the respondents in repaying the loan, although the quantum of money as calculated by the petitioner is in dispute. Failure of the respondents to repay the loan is available from the documents annexed to the application. It also appears that as a security for the said loan, the respondents had created mortgage of a property, being all that piece and parcel of land lying situated being Mouza – Gopalpur, J.L No.2, R.S. No.140, Touzi No.2998, comprised in R.S. Dag No.2363(p), under R.S. Khatian No.-1275, Rajarhat Gopalpur Municipality.
4. Mr. Mukherjee, learned Advocate for the respondents contends that in the event the petitioner seeks to enforce the equitable mortgage, this application should not be entertained by this Court. Secondly, appointment of a Receiver over the property and subsequent sale thereof by the Receiver should not be entertained on account of lack of jurisdiction of this Court.
5. It is also submitted by Mr. Mukherjee that, the petitioner has failed to show any urgency in the grant of an order for appointment of a receiver. There is neither any averment or document demonstrating that there is

a chance that the asset will diminish in value. There is nothing on record to hold that in the event an award is passed, the same will be a mere paper decree. The orders prayed for, cannot be passed on the basis of general averments.

6. Having heard learned advocates for the respective parties, this Court finds that the petitioner is seeking to enforce a secured money claim and as a protection to such claim, prays for an injunction, furnishing of security and other reliefs. Although there are prayers for appointment of Receiver, sale by Receiver etc, this Court is not inclined to grant such prayers for the reason that the application under Section 9 cannot be treated as a mechanism for recovery of payment. The property is already mortgaged. A party can seek interim protection, which must be balanced with the effect that such reliefs, if granted, may have.

7. Under such circumstances this Court finds that part of the cause of action took place within the jurisdiction of this Court and as such, an order of injunction is passed over the property mentioned hereinabove, in paragraph 3 of this order. The respondents shall not alienate, encumber or change the nature and character of the property for a period of three months. Within such time, the petitioner shall take steps by invoking the arbitration clause. Further prayer for injunction or any other interim relief shall be made before the learned Arbitrator, if appointed.

8. The prayer for furnishing bank guarantee is not allowed by this Court for the simple reason that the pleadings are insufficient for this Court to hold that the petitioner has been able to demonstrate even, prima facie, that the respondents were trying to siphon off the money from their bank or were taking steps with the oblique motive to deprive the petitioner of the legitimate dues. Injunction on the immovable property, is sufficient protection.
9. Accordingly, AP-COM/999/2024 is disposed of.

(SHAMPA SARKAR, J.)

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