

**Misc. Case No. 5303 of 2024**

**Present: Jayashree Banerjee, Chief Judge**

Order No. 3 dated 06.11.2024:

This is an application under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award dated 03.09.2024 passed in Arbitration Case No.Arb-21-EFL-24-26.

It is submitted by the Ld. Counsel appearing for the petitioner that he has challenged the Award on the ground that the arbitrator was appointed unilaterally without giving any notice of such appointment to the the petitioner. Ld. Counsel also submitted that pursuant to the Award of the Ld. Arbitrator an application under Section 9 of the Arbitration and Conciliation Act was moved before the Ld. Judge, Bench-XI, City Civil Court, Calcutta where the Ld. Judge, Bench-XI passed an order on 11.07.2024 as follows:

“Ld. Receiver shall not hand over the possession of the machine to the petitioner/financier in Misc. Case No.3350/2024-XI, City Civil Court, Calcutta without the permission of this Court. After taking possession of the suit machine, the same will remain in the custody of the Ld. Receiver until further Orders from this Court.”

It is submitted by the Ld. Counsel for the petitioner that despite such order of the Ld. Court, the Receiver handed over possession of the machine to the financier. Ld. Counsel also submitted that the machine that has been seized by the Receiver and handed over to the financier was the only source of sustenance of the petitioner and therefore has prayed for an order for return of the machine to the petitioner.

During the course of submission it was apprised by the Ld. Counsel appearing for the petitioner that the financier’s office is at Bangalore and the petitioner is a resident of Mysore and the machine is also lying with the financier at Bangalore.

Ld. Counsel for the financier/opposite parties appears and submits that he is not aware of the order that has been passed by the Ld. Judge, Bench-XI or that the Receiver defines such order has handed over the machine seized by him to the financier. Such submissions of the Ld. Counsel appearing for the opposite parties is not really appreciated by this Court and the Court proceeds to pass an order having heard the submissions of the Ld. Counsels appearing for both the parties.

Hence, it is

Ordered

that the Financier shall immediately return the machine to the petitioner namely M/s Innovative Fenestration Solution and others that is within a week from the date of communication of this order, in default, the petitioners are at liberty to seek the assistance of the local Police Station and the local Police Station shall render full

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assistance to the petitioner for recovery of machine from the custody of the Financier Electronica Finance Limited.

The matter shall come up for contested hearing of the Misc. Case No.5303 of 2024 as to why the Award that has been passed by the Ld. Arbitrator dated 03.09.2024 in Arbitration Case No. Arb-21-EFL-24-26 shall not be set aside on the ground that the arbitrator was appointed unilaterally which is depreciated right from the Hon'ble Apex Court to the other Hon'ble High Courts of various States including the Hon'ble Calcutta High Court.

Since the Ld. Counsel for the opposite party is appearing, further notice to the opposite party is not required to be given.

The opposite parties are at liberty to file their written objection, if any and an advance copy is to be served upon the petitioner prior to the date of hearing which has been fixed by this Court on 18.12.2024.

It is made clear that if no advance copy is served upon the petitioner, this Court shall not take note of such written objection filed by the opposite parties.

Let copies of this order counter signed by the Bench Clerk be handed over to the Ld. Counsel for the petitioners as well as the Ld. Counsel for the opposite parties for communication.

To date for hearing of the Misc. Case no.5303 of 2024.

Dictated & corrected by me:

Chief Judge

Chief Judge

City Civil Court, Calcutta.