

Misc. Case No. 4459 of 2025

**Present: Shri Subhrajit Basu [J.O. Code: WB01238]
Judge, Bench-IV, City Civil Court, Calcutta**

**Order No.02
13.05.2025**

On being transferred to this Bench by the Learned Chief Judge, City Civil Court at Calcutta, the instant application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short "the Act, 1996") is fixed today for S.R, A.D and appearance.

No requisite has yet been filed.

No notice of the instant case has yet been issued to the respondent.

The learned advocate for the petitioner is present.

At this stage, the learned advocate of the petitioner moves the instant application under Section 9 for ad-interim order only in terms of prayer (a) thereof which is quoted below:

(a) To appoint a Receiver over and an order directing to attach the Bank account of the Respondent No. 1 having Bank Account No. i) BOI Bank - 432416310000481 - Saving, ii) Postmaster General Chennai City Region - 6516328908 - Saving iii) Postmaster General Chennai City Region - 6446200259 - Saving, iv) SBI Bank - 11273551068 - Saving linked with the PAN Card No. AGCPB2722J till the recovery of the amount.

Perused the application under Section 9 of the Act, 1996 which is supported by an affidavit along with the documents annexed thereto.

Seen the office report which reveals that no caveat has been filed in this case till date.

Heard the learned advocate for the petitioner.

The petitioner is a non-banking financial institution incorporated under the Companies Act, 1956 engaged in the business of providing financial assistance to its customers. According to the petitioner, a Loan -cum- Hypothecation Agreement bearing No. 188102210452120 dated 30.01.2019 was entered into by and between the parties whereby an amount of Rs.4,54,225.99/- was granted in favour of the respondent as loan. It is stated in the application that the respondent nos. 2 and 3 stood as co-borrowers to the said loan, but strangely there is only one respondent in this case. Be that as it may, as per the terms of the loan agreement, the respondent was required to pay the principal amount along with interest by monthly instalments of Rs.11,696/-. However, the number and period of such instalments are not mentioned in the application, but it appears from the Loan Summary Schedule as annexed to the application that the loan in question is a personal loan which was to be repaid by instalments of Rs.11,696/-each starting from 04.05.2019 till 04.04.2024. According to the petitioner, the respondent failed to make payment of the instalments in terms of the loan agreement and the petitioner issued loan recall notice dated 25.02.2025, but it appears from the postal track report that it was not served upon the respondent as the addressee could not be located. According to the petitioner, as on 06.02.2025 the total dues of the respondent to the petitioner was Rs.5,93,170.53/- including penal arrears of Rs.1,28,189/-.

The learned advocate of the petitioner has referred to Clause 4.1 of the loan agreement (wrongly mentioned as Clause 21.11 in the application) which allegedly contains an arbitration clause, but no such clause is found from the loan agreement as annexed to the application. He also referred to the Loan Summary Schedule which mentions the place of arbitration and jurisdiction to be at Kolkata. The learned advocate also relied on the Statements of Account as annexed to the application in support of the petitioner's case. It is stated in the application that the

petitioner apprehends that the respondent is in the process of making third party interest in respect of the vehicle, but strangely, no vehicle is involved in this case.

The learned advocate of the petitioner submitted that in the facts and circumstances of the instant case, the petitioner is entitled an ad-interim order in terms of prayer (a) of the instant application, which has been quoted hereinabove.

It is a settled principle of law that for appointment of Receiver, a person seeking such appointment has to make out a case of waste or damage to the asset in question. A Receiver cannot be appointed merely because it is expedient or convenient to one of the parties to do so or that it will do no harm to do so. Though the appointment of a Receiver is a discretionary exercise of the Court, such discretion is to be based on sound judicial principles. It is also a settled principle of law that for appointment of Receiver, something more than a *prima facie* case is required and there should have been substantive reasons as well as founded fear that the property in question is dissipated or some other irreparable mischief may occur.

However, in this case, upon going through the averments made in the application under Section 9 of the Act, 1996, this Court does not find any basis for an imminent danger regarding preservation or protection of any property to warrant passing an ad-interim order for appointment of Receiver at the ad-interim stage. It is found that the instalments were to be paid from 04.05.2019 till 04.04.2024, but there is no statement in the application as to when the respondent paid the last instalment. There is also no explanation from the petitioner as to why it has come before this Court after such a considerable length of time. Furthermore, it is found that during this long time the petitioner did not take any steps for appointment of an Arbitrator in terms of the arbitration clause. Moreover, the facts of the instant case do not warrant passing an ad-interim order of attachment of bank accounts without hearing the other side. As such, from the averments made in the application under Section 9, this Court finds no justification for passing such an ad-interim order as prayed for without hearing the other side.

Considering these facts and circumstances, the prayer for ad-interim order is refused.

Issue notice upon the respondent directing him to show cause within 15 (fifteen) days from the date of receipt thereof as to why the prayers made in the application under Section 9 of the Arbitration and Conciliation Act, 1996 shall not be allowed.

To **12.06.2025** for S/R, A/D, appearance and hearing of the application under Section 9 of the Arbitration and Conciliation Act, 1996.

The petitioner is directed to take steps to refer the dispute to arbitration forthwith in accordance with law.

Requisites at once.

At my dictation

Judge

Sd/-

**Judge, Bench-IV
City Civil Court, Calcutta**