

Money Execution No. 49/2016.

Order No. 14 dt. 07.12.18.

Today is fixed for hearing the petition dated 01.8.18 under Order-21 Rule – 43 of C.P.C. read with 151 of C.P.C. D.hr. files hazira through Ld. Advocate. None present on behalf of the J.drs. Heard Ld. Advocate for the D.hr. Considered the submission of the Ld. Advocate.

The D.hrs is a concern regarding financing vehicle and equipment of hire purchase. D.hr had granted financial assistance to the J.drs for the purchase of procuring a vehicle bearing Registration No. WB-33A/2773 and an agreement of Hire Purchase was executed by and between the D.hr and the J.drs.

The J.drs failed and neglected to perform the obligations as per agreement and the D.hr. terminated the said agreement and referred the dispute to Arbitration by sending a notice u/sec. 21 of the Arbitration and Conciliation Act, 1996. Thereafter, Ld. Arbitral Tribunal had passed award on 29.5.2014 amounting to Rs. 4,59,308/- but the J.drs did not comply the said award. Thereafter, the D.hr. filed the execution application being M.Exe. Case No. 49 of 2016 for realization of the said award.

No application u/sec. 34 of the Arbitration and Conciliation Act, 1996 had been filed by the J.drs within the stipulated time. It has come to the knowledge of the D.hr. that the assets along with other articles have been lying at the house of the J.drs. If no attachment order is passed u/Order 21

Rule 43 of C.P.C. the J.drs. shall try to remove the said assets to undisclosed location to frustrate the execution of the said award and that the D.hr. shall suffer irreparable loss and injury. It is further prayed by the D.hr. that one Receiver Commissioner may be deputed to take the actual possession of the assets of the Jdrs. and to sell the same and to handover the sale proceeds to the Dhr.

Perused the petition under Order 21 Rule 43 of C.P.C. supported by an affidavit.

The award was passed by Arbitrator, Ms. S. RAJENIRAMADASS. I have perused the order of the Ld. Arbitrator. From the order it reveals that J.dr. took loan of Rs. 7,42,000/-/- from the D.hr/Indusind Bank Ltd. at Flat No. 2D, 41, Shakespeare Sarani, Kolkata -17 having its branch office C/o Kusum Apartment, P.O. Inda, Kharagpur, Dist. Paschim Medinipur, Pin – 721305 for purchase of vehicle bearing No. WB-33A/2773 by executing a written agreement between the D.hr. and the J.drs. but the J.drs. failed and neglected to pay the amount of Rs. 4,59,308/- as on 28.5.14 .

Order 21 Rule 43 C.P.C. is concerned with the attachment of movable property, other than agricultural produce, in possession of the judgment debtor. It envisages as, where the property to be attached is movable property other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure and the Attaching Officer shall keep the property in his own custody or in the custody of one of his subordinates and shall be responsible for the due custody thereof. Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the Attaching Officer may sell it at once.

Prior to any relief under Order-21 Rule-43 of C.P.C. is granted, the exact extent of movable property in the possession of the judgment-debtor is required to be ascertained.

Accordingly, Sri Rabindranath Singh, Ld. Advocate is appointed as the Receiver to file a report before this Court within three months from the date of this order stating the list of movable properties possessed by the judgment-debtor for granting an order of attachment.

The judgment-debtors are further restrained from parting with the possession and creating third party interest on the movable property which will be subject matter of attachment possessed by the judgment-debtor until further order.

D.hr is directed to pay Rs. 2000/- (Rupees Two thousand) to the Receiver within 15 days from the date of this order regarding his remuneration.

Inform Sri Rabindranath Singh, Ld. Advocate accordingly.

To 01.3.2019 for report of the Receiver.

Dic. & corr. by me.

District Judge,
Paschim Medinipur

D.J.