

(1993) 04 CAL CK 0004

Calcutta High Court

Case No: Matter of 1993

Reba Paul

APPELLANT

Vs

Radha Krishan Poddar

RESPONDENT

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**Date of Decision:** April 19, 1993**Citation:** (1993) 2 ILR (Cal) 201**Hon'ble Judges:** Ajoy Nath Ray, J**Bench:** Single Bench**Advocate:** J.K. Dasgupta, for Reba Paul, Barin Ghosh and Joy Saha, for financier, for the Appellant;

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### Judgement

Ajoy Nath Ray, J.

The parties are agreed that they would submit their differences to an Arbitrator to be appointed by Court. Supplementary affidavits have been filed to that effect. The dispute between the parties is mainly concerned with the ownership of the vehicle being a diesel taxi bearing registration No. WMT-1384 and what moneys, if any, are payable by Sm. Reba Paul in respect of the said vehicle to the financier.

2. During the pendency of the reference, ordered below, the Petitioner shall continue to pay without prejudice every month an ad hoc sum of Rs. 1,500 to the financier, such payments to be adjusted in the award to be made herein, and a further sum of Rs. 1,500 is to be kept deposited with her own Advocate-on-Record who will act as Receiver without security and without remuneration for holding the said sums without lien or encumbrance until further orders of Court.

3. Mr. Gour Roychowdhury, Barrister, is appointed Arbitrator with summary powers for the purpose of disposing of the disputes that have arisen between the parties and shall make his award stating clearly, amongst other things, as to who is to get possession of the said taxi and upon what terms, if any. The Arbitrator shall also make a money award, in whatsoever's favour might it go, making adjustments therein about the interim ad hoc payments.

4. It is necessary to explain what is meant by vesting an Arbitrator with summary powers. A suit is usually disposed of by examination of witnesses from the box, and formal disclosure, inspection and proof of documents. Sometimes, however, a Court disposes of a suit in a summary manner upon affidavits. No formal evidence is required to be tendered during such summary procedure. It is well-known that Arbitrators have such summary powers to dispose of matters without going through the formal procedure of calling witnesses or having documents proved before them in accordance with the Evidence Act. Such summary power is mentioned as being given to an Arbitrator appointed in an order of Court only out of abundant caution. If parties were to appoint an Arbitrator, such an Arbitrator would automatically have such summary powers and no party could unilaterally rob an Arbitrator of such inherent summary powers possessed by him.

5. The deposits of Rs. 1,500 per month along with interest accrued thereon shall be kept by the learned Receiver reinvested in a proper interest bearing account to be opened by the learned Receiver until disposal of the Reference.

6. The vehicle shall forthwith be unconditionally released to Sm. Reba Paul who undertakes to keep the vehicle in a roadworthy condition and also keep the same properly insured until conclusion of the reference. She shall be entitled to ply the vehicle and use the same in the manner she pleases without disposing of the same provided the monthly instalments are paid and deposited regularly.. In default, the financier shall be at liberty to apply for appointment of a Receiver and taking possession of the vehicle.

7. The learned Arbitrator shall fix his fees per sitting and the same shall be borne equally by the Petitioner and the financier.

8. The learned Arbitrator will make and publish his Award within four months from entering upon the Reference.

9. Shri Swapan Sarkar, the learned Advocate who was appointed Receiver, shall be discharged after the vehicle is handed over to Sm. Reba Paul.

10. The learned Arbitrator would also be free to adopt any formal procedure or to take any particular evidence at his own discretion. He shall also be free to give reasons if he so thinks fit, in the Award, but shall not be so compelled.

11. All parties, the learned Arbitrator, both the learned Receivers, the Motor Vehicle Department, the concerned Police Station in whose custody the vehicle is now lying, and others concerned are to act on a signed copy of this dictated order on the usual undertakings.