

Court No. - 8

Case :- MATTERS UNDER ARTICLE 227 No. - 5511 of 2023

Petitioner :- Ramesh Kumar Dixit

Respondent :- The Presiding Officer Commercial Court No.2 Lko. And 3 Others

Counsel for Petitioner :- Abhinav Trivedi, Parimal Bhatt

Counsel for Respondent :- A.S.G.I.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the petitioner, Sri Varun Pandey, learned counsel for the respondent nos. 2 to 4 and perused the material available on record.

2. The present writ petition has been filed by the petitioner challenging the order dated 12.10.2023 passed by the Commercial Court No. 2, Lucknow on the Application No. A-12 moved by the petitioner seeking amendment to an application under Section 9 of the Arbitration and Conciliation Act, 1996 (in short the Act) was dismissed.

3. It is common ground in between the parties that in terms of an auction held by the respondents, the petitioner was granted benefit of lifting the scrap on payment of certain amount, which according to the petitioner was duly paid, however, as the goods were not permitted to be lifted, the petitioner filed an application under Section 9 of the Act, which is on record as

Annexure No. 13 to the application, praying for orders as an interim measure pending the appointment of an Arbitrator. The prayer (c) of the applicant as is under:-

"(c) To allow the applicant to lift the Scrap Lot in question from the premises of the Opposite Parties which is located in between BSB-LOT DN Line KM-774/18-774/20/Uttar Pradesh as the entire total sales value has already been paid within the specified time without insisting on payment of Ground rent, which will be subject to the final outcome of Arbitration Proceedings initiated strictly in accordance with law."

4. During the pendency of the said application, the petitioner moved an application seeking amendment in the said application and for adding relief clause in the main application under Section 9 of the Act, the amended relief as sought by the petitioner is quoted in paragraph no. 34 and is as under:-

"d(i)- To direct the Opposite parties to ensure that the Scrap Lot in question identified as Lot A-3 said to have been lifted by the prospective bidder on 18.09.2023 be maintained and preserved in its original condition."

5. Subsequently, the respondents have re-auctioned the goods in question. It is also admitted that no application

for appointment of an Arbitrator under Section 11 of the Act has been moved so far, and only a notice for appointment of an Arbitrator has been given. *Prima facie*, in view of the fact that the goods in question have already been re-auctioned, the petitioner would be entailed to claim damages and can not claim ownership of the goods, which have already been auctioned. The Commercial Court has rightly rejected the application for amendment, which was even otherwise, covered by the relief no. (c) as claimed by the petitioner in his application under Section 9 of the Act as quoted herein above. I do not see any good ground for interference, however, after the final decision is rendered by the Commercial Court, the petitioner would be at liberty to challenge the same by filing an appeal under Section 13 of the Commercial Courts Act.

6. The writ petition is accordingly, ***dismissed***.

Order Date :- 19.10.2023
Arun