

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12852 of 2014

IN

C.R. 125 of 2012

=====

Kunal Kumar son of Shri Sidheshwar Prasad, resident of M/s Gaya Janata Cold Storage (P) Ltd., Moriya Ghat Gaya, P.O and District Gaya. At present working as Professor at B.I.T. Sindri Dhanbad (Jharkhand).

.... Decree Holder/Applicant/Awardee Petitioner/s

Versus

Alok Kumar son of Shri Sidheshwar Prasad, resident of M/s Gaya Janata cold Storage (P) Ltd. Moriya Ghat, Gaya, P.O & District Gaya. At present working as District Provident Fund Officer, Sasaram (Bihar).

.... Judgment Debtor/Opposite Party.Awardee

=====

Appearance :

For the Petitioner/s : Mr. Bharat, Adv

For the Respondent/s : Mr. Ranjan Kumar Dubey

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 14-09-2016

Heard learned counsel for the petitioner and Mr. S.S.

Dwivedi, learned senior counsel for the respondent.

The petitioner herein filed an execution case for executing the award said to have been given by the arbitrator in arbitration proceeding. The execution case was filed under Section 36 of the Arbitration and Conciliation Act 1996. The executing court however, after hearing the parties has come to the conclusion that the award presented for execution is not an award under the provisions of the said Act and accordingly, has dismissed the execution case as not maintainable in the eye of law with further



observation that the applicant may approach permanent Lok Adalat or Mediation Centre for settlement of the dispute. Instead of approaching the Mediation Centre or permanent Lok Adalat in pursuance to the observations by the executing court, the present application under Article 227 of the Constitution of India has been filed.

Learned counsel for the petitioner has accepted before this Court that the impugned order does not suffer from any illegality as the award on the basis of which the execution case under Section 36 of the Arbitration and Conciliation Act, 1996 has been filed is indeed not an award under the said Act. Learned counsel, however, has reiterated his prayer for referring the matter to the Mediation Centre with emphasis that there is chance of settlement of the dispute between the parties as both the petitioner and the respondent are full brothers and the dispute relates to the purchase of an apartment jointly by them.

Mr. Dwivedi, learned senior counsel appearing for the respondent while supporting the impugned order has further submitted in response to the emphasis by the learned counsel for the petitioner on the settlement of the dispute between the parties that the dispute can be resolved only when the respondent be allowed to sell the apartment in question and thereafter the sale proceeds would be

shared between the petitioner and respondent, in equal share, after accounting, in accordance with law as some amount has been paid to the bank by both the petitioner and the respondent.

Learned counsel for the petitioner has accepted the proposal made by the learned senior counsel for the respondent.

After considering the submissions and perusal of the impugned order this Court is not inclined to interfere with the impugned order as this Court does not find any illegality or irregularity in the same.

The present application is, accordingly, dismissed.

However, the parties shall be at liberty to settle their dispute in accordance with law as per the stand taken by the learned counsel for the parties before this Court.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.11.2016
Transmission Date	N.A.