

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.460 OF 2015
IN
NOTICE OF MOTION (L) NO.2903 OF 2014
IN
EXECUTION APPLICATION NO.809 OF 2014
IN
INTERNATIONAL ARBITRAL AWARD DEATED 2ND FEBRUARY 2009
AS DECREED BY ORDER DATED 28TH JANUARY 2014 PASSED BY
HIS LORDSHIP MR. JUSTICE R.D. DHANUKA
IN
ARBITRATION PETITION NO.842 OF 2009

Orient Ship Agency Pvt. Ltd. & Others. .. Appellants
Vs
Mitsui OSK Lines Ltd. (Japan). .. Respondent

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Shri Cherag Balsara along with Ms. Pooja Kshirsagar, Ms. Soumya Brijmohan i/b M/s. Kartikeya & Associates for the Appellants.
Shri Gaurang Mehta along with Shri Parkshit Barpujari i/b Mulla & Mulla & Mulla and Craigie Blunt and Caroe for the Respondent.

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CORAM : A.S. OKA & G.S.KULKARNI, JJ
DATED : 8TH MARCH 2016

PC.

1. Heard learned counsel appearing for the Appellants and the learned counsel appearing for the Respondent. The Appellant are the judgment debtors and the Respondent is the Judgment Creditor. After arguing the Appeal for some time, the learned counsel appearing for the parties agree that the Appeal may be disposed of by remanding the

Notice of Motion to the learned Single Judge with liberty to the parties to adduce evidence. Learned counsel appearing for the Appellants has no objection if the Award Holder/Judgment Creditor withdraws the amount deposited in this Court by the Appellant subject to furnishing security for the entire amount to the satisfaction of the Prothonotary and Senior Master after hearing the Appellant. He submits that a time bound schedule may be fixed for adjudication in terms of Sub-Rule (1) of Rule 58 of Order XXI of the Code of Civil Procedure, 1908. The learned counsel appearing for the Respondents states that if for any reason, the Respondent/Judgment Creditor is unable to withdraw the said amount upon furnishing the security for the entire amount, the same may be invested till disposal of the Notice of Motion.

2. It is submitted by the learned counsel appearing for the Respondent is that what was raised by the Appellant by filing a Notice of Motion (L) No.2903 of 2014 was in substance an objection to the attachment. Therefore, an adjudication will have to be made in terms of Sub-Rule (1) of Rule 58 of Order XXI of the Code of Civil Procedure, 1908.

3. Accordingly, we dispose of the Appeal by passing the following order:

ORDER :

- (a) The impugned order dated 8th April 2015 in the Notice of Motion (L) No.2903 of 2014 is hereby quashed and set aside and the said Notice of Motion is restored to the file of the learned Single Judge;
- (b) It will be open for the Appellants (Award Holders/Judgment Debtors) and the Respondent (Judgment Creditor) to adduce evidence before the learned Single Judge for the purposes of the adjudication under Sub-Rule (1) of Rule 58 of Order XXI of the Code of Civil Procedure, 1908;
- (c) If a request is made by the parties to the learned Single Judge to dispose of the Notice of Motion expeditiously, we are sure that the learned Single Judge will consider the same after taking into consideration of the pendency of the matters assigned to him and pass appropriate order;
- (d) It will be open for the Respondent (Judgment Creditor) to withdraw the entire amount lying deposited in terms of the order passed in this Appeal

subject to furnishing adequate security for the entire amount to the satisfaction of the Prothonotary and Senior Master of this Court;

- (e) Needless to add that the Appellants shall be heard before accepting the security;
- (f) If the amount is not withdrawn as aforesaid by the Respondent within a period of three months from today, the same shall continue to remain deposited in a Fixed Deposit till the disposal of the said Notice of Motion. On disposal of the Notice of Motion, the learned Single Judge will pass consequential orders as regards the amount with interest accrued thereon;
- (g) All contentions on merits of the pending Notice of Motion are kept open;
- (h) The Appeal is partly allowed on above terms;
- (i) Notice of Motion (L) No.1570 of 2015 does not survive and the same disposed of.