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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Ex. P. 25/2016

RAKESH THAKUR & ANR.

..... Petitioners

Through: Mr. Rajeev Saxena and Ms.Nameeta Chauhan, Advocates.

versus

SANDEEP JAIN & ANR.

..... Respondents

Through: Mr. L. C. Rajput, Advocate for Respondents 3 and 4.

AND

34.

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O.M.P. 53/2014

RAKESH THAKUR & ANR.

..... Petitioners

Through: Mr. Rajeev Saxena and Ms.Nameeta Chauhan, Advocates.

versus

SANDEEP JAIN & ANR.

..... Respondents

Through: Mr. L. C. Rajput, Advocate for Respondents 3 and 4.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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26.10.2016

Ex. P. 25/2016 &

IA 22459/2015 in O.M.P. 53/2014

1. The applicant Mr. Mohd. Rafiq seeks more or less the same relief in

Execution Petition No. 25 of 2016 as well as IA No. 22459/2015 in O.M.P. 53/2014.

2. What the Applicant wants is enforcement of the order in his favour passed by this Court on 18th February, 2014 in O.M.P. 53/2014. At this juncture, it should be noted that O.M.P. 53/2014 filed by Rakesh Thakur and Rama Thakur sought to restrain Sandeep Jain and Kailashwati Jain (the Respondents in the said petition) from directing the clients of the partnership firm, M/s. Hari Om Industries, to the personal venture of Respondent Nos. 1 and 2 in the name and style of Gurukripa Industries.

3. The Applicant herein, Mr. Mohd. Rafiq, who was the landlord of the premises from which the partnership operated was not a party to the aforementioned OMP in which the order dated 18th February, 2014 was passed. He nevertheless seeks to enforce the observations/directions in the order dated 18th February, 2014 to the effect that payments were to be made by the Respondents to the licensor and landlord as well. It is contended by Mr Rafiq that since the said order has attained finality and the parties are bound by the said order, there should be no difficulty in Court ordering its enforcement.

4. For the above relief, Mr Rafiq first filed IA No. 22459/2015 in O.M.P. 53/2014, which was a petition under Section 9 of the Act filed by Rakesh Thakur and Rama Thakur. While the said application was pending, Execution Petition No. 25/2016 was filed by Mr Rafiq describing himself as an Applicant.

5. A preliminary objection had been raised to the maintainability of the Execution Petition No. 25/2016 and IA No. 22459/2015 in O.M.P. No. 53 of 2014 by learned counsel for Respondent Nos. 2 and 3 by referring to Section 36 of the Arbitration and Conciliation Act, 1996 ('Act') which reads thus:

“36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.”

6. It is evident on a reading of Section 36 that an execution petition can only be filed in respect of an Award. If there is an order of the Court which either

upholds or modifies the Award, then it could be said that the Award merges with the order of the Court which then becomes the subject matter of enforcement under Section 36 of the Act. The starting point, therefore, for invoking Section 36 of the Act has to be an Award which determines the rights and obligations of the parties.

7. In the present case, the Applicant Mr Rafiq was not party to any arbitration proceedings. The question of his being a party to an Award did not arise. In fact, there has been no Award at all because the order dated 18th February, 2014 passed by this Court was at the stage of Section 9 proceedings i.e., O.M.P. 53/2014 to which, also, Mr Rafiq was not a party. The Court, therefore, fails to appreciate how Mr Rafiq can possibly invoke Section 36 of the Act which is for enforcement of an Award.

8. Learned counsel for Mr Rafiq sought to place reliance on the decisions in *Ajudhia Prasad v. U.P. Government AIR (34) 1947 All. 390* and *Vythilinga Pandarasannadhi v. Board of Control, Thiagarajaswami Devasthanam AIR 1932 Madras 193* to urge that the order dated 18th February, 2014 passed by this Court should be construed to be a decree in favour of Mr Rafiq and it is capable of being enforced in this Court.

9. Under the present roster of this Court, all petitions under the Act are taken up for consideration by this Court. The roster of this Court does not permit, unless specifically marked to it by the Chief Justice or the Judge-in-charge of the Original Side, any petition other than one under the Act. Therefore, the question of treating the present execution petition as one under Order 21 CPC does not arise. The Court also does not have power to transfer this

execution petition to some other Court which may have jurisdiction to consider such a petition.

10. Learned counsel for Respondent Nos. 2 and 3 points out that a separate suit has been filed against the Respondents in the Civil Court seeking reliefs stemming from the order dated 18th February, 2014 passed by the Court. It is, therefore, open to Mr Rafiq to seek whatever remedies are available to him in accordance with law. As far as Execution Petition No. 25/2016 and IA No. 22459/2015 in O.M. P. No. 53/2014 are concerned, the Court is clear that they are not maintainable as such in terms of the Act.

11. Execution Petition No. 25/2016 and IA No. 22459/2015 in O.M. P. No. 53/2014 are, accordingly, dismissed.

OCTOBER 26, 2016
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S. MURALIDHAR, J