

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.02.2017

CORAM

THE HONOURABLE MR.JUSTICE S. NAGAMUTHU

AND

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

O.S.A.No.6 of 2014

Marg Limited,

A company registered under the Companies Act
1956 and having registered office at
No.4/318, Rajiv Gandhi Salai,
Chennai 600 041.

Represented by its Managing
Director

...Appellant

Vs

Van Oord Dredging and Marine Contractors BV,
A company registered under the laws of
Netherlands and having its Registered Office
At Water Man Weg 64, 3067, Rotterdam
Represented by its Power of Attorney
Mr.Kesava Rayudu
Mallavarapu

... Respondent

Prayer : Original Side Appeal filed under Order XXXVI Rule 1 of
O.S.Rules read with Clause 15 of Letters Patent read with
Section 37 of Arbitration and Conciliation Act) against the
order dated 23.10.2013 passed by the learned Single Judge in
A.No.3575 of 2013.

For Appellant:

Mr.P.H.Arvinth Pandian

For Mr.K.Rajasekaran

For Respondent:

Mr.P.S.Raman, Senior Counsel

For Mr.P.Giridharan

JUDGMENT

(Judgment of the court was delivered by Dr.Anita Sumanth)

This appeal challenges an order of the learned Single Judge dated 23.10.2013 in O.S.A.No.598 of 2013 passed in terms of section 9 of the Arbitration and Conciliation Act, 1996 (in short, 'the Act'). The order challenged directs the respondent in the Original Application to furnish security to the extent of Rs.61,10,74,680/- within a period of four weeks from the date of order failing which there shall be an order of attachment of the equity shares held by them in Karaikkal Port Private Limited, subject to the encumbrance already created in favour of the banks. The short point urged before us is that the provisions of section 34 read with section 36 of the Act, operate as an automatic and deemed stay of the award and as such the order of the learned Single Judge directing interim measures of protection is contrary to law.

2. Upon a perusal of the provisions of sections 9 as well as 36 of the Act, we are of the view that the reliefs set out thereunder are different and distinct. The provisions of Section 36 of the Act, no doubt, provide for an automatic stay of enforceability of the award as seen below:-

'36. Enforcement.- Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.'

However, Section 9 provides for interim measures of protection and as such, the two provisions operate in different domains. Section 9, as is relevant for the present case, is extracted below;

9. Interim measures, etc. by Court. -
A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is endorsed in accordance with section 36, apply to a court-

...

(ii) for an interim measure of protection in respect of any of the following matters, namely;-

(a) The preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) Securing the amount in dispute in the arbitration;

(c)

(d)

(e) Such other interim measure of protection as may appear to the court to be just and convenient, and the court shall have the same power for making orders as it has for the purpose of, and in relation, any proceedings before it'

In the present case, the petition filed by the respondent in terms of section 9 of the Act, seeks to secure the amount in dispute in the arbitration. The direction issued is for furnishing of security to the extent of Rs.61.10 crore and is in terms of section 9(ii)(b) of the Act for the purpose of providing an interim protection of the subject matter of the arbitration.

3. Mr.Arvind Pandian, Senior Counsel appearing on behalf of Mr.K.Rajasekaran for the appellant would urge us to take note of the judgment of the Supreme Court in the case of National Aluminium Company Ltd. Vs. Presteel and Fabrications Pvt. Ltd and Anr. to the effect that there is an automatic suspension of the execution of the award from the moment an application challenging the said award is filed under section 34 of the Act. He would point out that this judgment has been consistently followed by the Supreme Court as well as other High Courts including this court in the case of R.R. Donnelley Publishing India Private Limited Vs. Canara Traders and Printers Private Limited. We note however that the aforesaid judgments relate only to an appeal in terms of section 34 of the Act and not to interim protection under section 9.

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4. In the present case the application filed was in terms of section 9 of the Act seeking the protection of the amount in dispute in the arbitration. Statute envisages a difference between the protection/preservation/securing of the subject matter of arbitration and the enforcement/execution of the award itself. While section 9 deals with the former and can be invoked before, during or after the making of the arbitral award,

section 36, providing for the suspension of the award would come into play only when an appeal has been filed in terms of section 34 of the Act or the time limit for filing of an appeal has expired. The reliefs set out under section 9 and section 34 r/w 36 thus do not overlap and the scheme of the Act would support such a conclusion. In view of the above discussion, this appeal is dismissed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Msr

To:

1.The Sub Assistant Registrar,
Original Side,
High Court, Madras-104.

+1cc to Mr.P.Giridharan,Advocate sr.10294

O.S.A.No.6 of 2014

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