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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.6451 of 2018 (O&M)
Date of Decision:27.09.2018**

Heromotocorp Limited

.....Petitioner

Vs

Brains Logistics Pvt. Ltd.

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. R.S. Suri, Senior Advocate with
Mr. Rohit Aggarwal, Advocate and
Mr. Sorabh Sharma, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred against the order dated 14.09.2018 passed by the Addl. District Judge-cum-Presiding Judge, Special Commercial Court at Gurugram, vide which application for stay of operation of the arbitral award dated 20.05.2018 was dismissed.

[2]. Learned Senior counsel for the petitioner submitted that a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for setting aside of the arbitral award dated 20.05.2018 is pending before the Special Commercial Court, Gurugram for 12.10.2018. In the said petition, prayer for stay of operation of the arbitral award

dated 20.05.2018 has been declined while relying upon proviso to Section 36(3) of the Act by observing that due regard has to be given to the provisions for grant of stay like in a case of money decree.

[3]. Learned Senior counsel on the strength of Order 41 Rule 1(3) and Rule 5 CPC further submitted that the Court can stay the operation of the arbitral award on certain terms and conditions. The word 'shall' appearing under Order 41 Rule 1(3) CPC has to be treated as directory in view of interpretation given by the Hon'ble Apex Court in **M/s Malwa Strips Pvt. Ltd. vs. M/s Jyoti Ltd., 2009(3) R.C.R. (Civil) 211 (SC).**

[4]. Learned Senior counsel further submitted that before amendment done vide Act No.3 of 2016, there was provision for automatic stay in terms of Section 36 of the Act, but by virtue of the aforesaid amendment, separate application is required to be filed and the execution of the award can be stayed subject to certain terms and conditions as may be imposed by the trial Court in order to safeguard the interest of the decree-holder.

[5]. At this stage, learned Senior counsel submitted that the petitioner is ready to furnish bank guarantee for the awarded amount along with interest till date to the satisfaction of the executing Court. The executing Court has fixed 01.10.2018 as

the date for appearance of the judgment-debtor/petitioner.

[6]. Notice of motion.

[7]. At this stage, Mr. Jagjot Singh, Advocate appeared on behalf of the respondent and filed power of attorney. He has been authorized by the Managing Director of the respondent-Company, who is also present in the Court. Power of attorney is taken on record.

[8]. Learned counsel for the respondent has shown his willingness for deciding the present revision petition, by directing the petitioner to furnish bank guarantee for the entire decretal/awarded amount along with interest till date to the satisfaction of the executing Court and the aforesaid arrangement be made till disposal of the petition under Section 34 of the Act by the Special Commercial Court at Gurugram. After decision of the aforesaid petition, the amount deposited under bank guarantee along with interest, be ordered to be released in favour of successful party.

[9]. In view of above, at this stage, without meaning anything on merits of the case, this Court is of *prima facie* view that the aforesaid arrangement would suffice to serve the purpose of securing interests of both the parties. Execution proceedings may take some time in its culmination. The

execution of money decree would require the procedure in terms of Order 21 Rule 66 CPC to be followed. List of properties of the judgment-debtor will have to be submitted and thereafter mode of execution in terms of attachment and sale of property can be resorted to. Even as per said criteria, attachment of account of the judgment-debtor can be made for satisfaction of the decree. In such eventuality the judgment-debtor may ask for release of attached account by offering bank guarantee for the awarded amount.

[10]. The statement made by learned Senior counsel for the petitioner for furnishing bank guarantee would be fully in consonance with the requirement of the execution at a later stage.

[11]. At this stage, on the basis of concurrence shown by learned counsel for the parties, it would be just and appropriate to direct the Special Commercial Court/executing Court to accept the bank guarantee from the petitioner for the awarded amount along with interest till date to its satisfaction and subject to the aforesaid, the execution proceedings be deferred till disposal of the petition under Section 34 of the Act.

[12]. In view of aforesaid observation, this petition is disposed of.

[13]. Nothing expressed hereinabove shall be construed to be an opinion on the merits of the case. The trial Court shall make every endeavour to decide the petition under Section 34 of the Act at the earliest.

September 27, 2018

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No