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APO No.1 of 2019
GA No.18 of 2019
In
AP No.831 of 2016

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SREI EQUIPMENT FINANCE LIMITED
Versus
SUSHAMA BHAUSAHEB SATPUTE & ANR.

BEFORE:
The Hon'ble JUSTICE SANJIB BANERJEE
And
The Hon'ble JUSTICE SUVRA GHOSH

Date : February 12, 2019.

Appearance:
Mr. Utpal Bose, Sr. Adv.
Mr. Swatarup Banerjee, Adv.
Mr. Arijit Ghosh, Adv.

Mr. Supratic Roy, Adv.

The Court : The appeal arises out of an order dated January 3, 2019 by which the appellant's application for recalling an order passed on the appellant's petition under Section 9 of the Arbitration and Conciliation Act, 1996 was dismissed. The petition had been dismissed earlier on December 3, 2018 as infructuous and the receiver earlier appointed by the Court in the same proceedings was directed to return the asset taken possession of to the respondents. Such order was passed on the apparent statement on behalf of the appellant that the matter had become infructuous.

A prima facie view was taken in favour of the appellant when this appeal was received. It was then submitted on behalf of the appellant that since under amended Section 9 of the 1996 Act, the Court does not pass a final order on a petition under Section 9 of the Act if an arbitral reference has already been commenced by then, the submission was made that though a receiver had already been appointed, the matter had become infructuous as far as this Court was concerned.

Such submission may have been misunderstood by the arbitration court and the order appointing receiver recalled by directing the receiver to hand back possession of the asset to the respondents; though all that the appellant wanted was for the matter to be disposed of with liberty to the parties to work out their remedies in course of the arbitral reference.

Upon taking a prima facie view in favour of the appellant, the receiver appointed by the arbitration court, who had already made over possession of the asset to the respondents, was requested to obtain possession of such asset once again. The receiver has since taken possession of the asset and is in custody thereof.

There is a long-standing practice in this Court for resolving the disputes in such a matter as the present one by requiring the financier to accept the amount in default together with interest at the rate of 12% per annum for the period of default, irrespective of the rights of the financier under the agreement. The same terms were offered by the financier to the respondent hirers by indicating that as at the date of the receiver taking possession of the asset, on or about March 23, 2018, the amount in default was about Rs.46 lakh. In terms of the long-standing practice in this Court, the financier has also agreed to not charge for interest post-March 23, 2018 till the asset is returned to the hirers; but the appellant financier has also insisted on the entire amount in default together with the interest due at the lesser rate of 12% per annum during the period of default till March 23, 2018 to be paid in one go for the hirers to be entitled to the return of the asset.

Despite the matter being adjourned on several occasions, it does not appear that the hirers are able to make payment of such amount of Rs.46 lakh together with the interest due thereon at the lower rate of interest of 12% per annum. In such view of the matter, the receiver cannot be directed to make over the asset to the respondents herein. The receiver will continue to be in possession of the asset subject to the orders that may be passed by the appropriate arbitral tribunal in accordance with law. Till such time that the receiver is discharged and the vehicle is directed to be made over by the receiver to any appropriate person, the receiver will be paid remuneration at the rate of Rs.2,500/- per calendar month or any part thereof, beginning January, 2019. The receiver will stand discharged upon the receiver being directed by the arbitral tribunal to make over the asset to any appropriate person identified by such tribunal.

Nothing in this order will prevent the respondents from seeking appropriate reliefs in course of the arbitral reference or otherwise in accordance with law.

APO No. 1 of 2019 and GA No. 18 of 2019 are disposed of by modifying the order impugned accordingly.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(SUVRA GHOSH, J.)

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