

12.08.2022
KC(1)

C.R.C. 13 of 2022
Kanailal Patel and Company
-versus-
Sarita Singh and Ors.
In
F.M.A.T. 94 of 2021

Mr. Rudraman Bhattacharya,
Ms. Suchismita Chatterjee (Ghosh),
Mr. Sidhartha Chatterjee,
Mr. Prasun Ghosh,
Mr. Malay Kumar Seal.....For the petitioner.

Mr. Dhruba Ghosh, Sr. Adv.,
Mr. Meghnad Dutta,
Mr. Arijit Doss Mullick.....For the alleged
contemnors.

In obedience to the Rule issued, the alleged contemnors are present in court. Their presence is recorded. Their further presence is dispensed with for the time being.

In an appeal from refusal of the learned first court to pass an interim order in an application under Section 9 of the Arbitration and Conciliation Act, 1996, on 18th February, 2021 we had, inter alia, made the following directions:

“Upon hearing learned counsel for the parties we direct that upon payment of Rs. 2,00,000/- (Two Lacs) by the appellant/petitioner to the respondents, they shall immediately, within twenty four hours thereof, restore the electricity connection of the appellant/petitioner in all the units. The appellant/ petitioner shall pay the balance Rs. 3,00,000/- (Three Lacs) in two equal monthly instalments of Rs. 1,50,000/- (One Lac

Fifty Thousand) each from the second month following the date of the initial payment.

The appellant/petitioner shall make the payment and the respondents shall receive such payments without prejudice to their rights and contentions in the Section 9 application or in the arbitration proceeding.”

Complying with the said order, without prejudice to their rights and contentions, on 24th February, 2021 the petitioner deposited Rs. 2,00,000/- with the respondents. On 2nd March, 2022 the respondents challenged the order dated 18th February, 2021 before the Supreme Court by filing a special leave petition. On 3rd March, 2021, the petitioner filed an application before this bench alleging contempt of our said order. On 4th March, 2021, being apprised that the Supreme Court had been moved, we directed that the respondents should not take the benefit of Rs. 2,00,000/- deposited with them and directed return of the said money to the petitioner. The respondents accordingly returned the said money. On 31st August, 2021 the special leave petition was disposed of by the Supreme Court without interfering with our order dated 18th February, 2021.

It appears that on 18th December, 2021 the Section 9 application was dismissed. Mr. Bhattacharya, learned advocate for the petitioner said that his client has filed a suit in respect of the cause of action.

An extraordinary situation has arisen in this proceeding.

The appeal from the Section 9 order has been disposed of by this court by the order dated 18th February, 2021. The special leave petition from that order is also disposed of without interference with the said order, as a result of which the said order dated 18th February, 2021 has attained finality.

However, subsequently the main proceeding, i.e. the Section 9 application has been dismissed.

In our opinion when the main proceeding has been dismissed, any interim order made in that proceeding is usually vacated. But in this case the interim order subsists in the appeal which is disposed of with the said interim order becoming final and binding, upon dismissal of the special leave petition.

Perhaps, a further order of a competent court is required to rectify this anomalous situation.

But theoretically our order dated 18th February, 2021 is enforceable after dismissal of the special leave petition.

In this situation, how far the court is going to enforce the said order is a question to be decided.

Mr. Ghosh, learned senior advocate for the alleged contemnors submits that on 8th August, 2022 his clients restored the electricity supply of the petitioner. This is denied by Mr. Bhattacharya.

At this stage, we keep this application for contempt alive for the time being. To close the alleged breach of our said order dated 18th February, 2021 and to prevent aggravation of the alleged contempt, we make the following interim order.

The petitioner shall make payment of Rs. 2,00,000/- (Two Lacs) to the respondents by 18th August, 2022. The instalments payable under the said order dated 18th February, 2021 shall also be paid by the petitioner. Upon payment of Rs. 2,00,000/- the respondents will continue the electricity supply of the petitioner. If the electricity supply has not been restored, the respondents shall restore such supply immediately.

We appoint Ms. Sangeeta Roy, Advocate and member of the Bar Association (mobile phone no. 8450053203) as Special Officer at an initial remuneration of 2000 G.M.s to be shared by the parties equally to visit the premises on 20th August, 2022 and file periodic reports in this court whether there has been compliance with this order.

If Rs. 2,00,000/- or any instalment is not paid, the respondents shall be entitled to forthwith disconnect the electricity supply in the presence of the Special Officer. It was implied from an order dated 18th February, 2021 that the current electricity charges would have to be paid by the petitioner.

This order will not prevent any civil court or forum from passing further interim orders or a decree/award.

The affidavit of compliance-cum-affidavit in opposition filed by the respondents is taken on record.

The petitioner may file their affidavit in reply by 29th August, 2022.

List this contempt application at the next sitting of this bench.

(I.P. MUKERJI, J.)

(MD. NIZAMUDDIN, J.)