

18.02.2021
Sl. No. 2
srm

C.O. No. 749 of 2020
SMC Global Securities Ltd.
Vs.
Ms. Bharti Roy & Anr.

Mr. Subhasish Sengupta,
Ms. Preetu Chaudhary

...for the Petitioner.

Mr. Ayan Kumar Boral,
Mr. Dipendra Nath Chunder

...for the Opposite Parties.

The petitioner/award holder is aggrieved by an order dated January 17, 2020 passed by the learned Additional District Judge, 10th Court at Alipore, District- 24-Parganas (South) in Arbitration Execution Case No.336 of 2019. By the order impugned, the learned Court below refused to entertain an application filed by the award holder for attachment of the bank account as also the immovable property of the award debtors. The learned Court below was of the opinion that without hearing the award debtors and giving them an opportunity to file a show cause to the aforementioned application, the order could not be passed.

The learned Advocate for the award holder submits that once the application under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the award debtors has been rejected, the learned Executing Court was free to proceed on

the basis of the application filed by the award holder and at least protect the award holder to a limited extent.

Mr. Boral, learned Advocate appearing on behalf of the award debtors, submits that an application for attachment could not have been taken up *ex parte* without service of notice upon the award debtors and the learned Court below did not commit any error by passing the order impugned.

I have heard the rival contentions of the parties. It is a fact that there is no impediment on the part of the learned Executing Court to proceed in accordance with law in view of there being no stay of operation of the award. However, I am also aware that the award debtors should be heard before final disposal of the application filed by the award holder. Yet, as the date has been fixed on May 4, 2021, this Court is conscious of the apprehension of the award holder that the amount awarded by the arbitral award may not be recovered at all, in the event of alienation of the property and the money lying in the bank is not secured.

This Court is of the opinion that the application filed by the award holder should be heard on its own merits and in accordance with law at an earlier date. As the award debtors are already before this Court, no further notice is required to be served upon them. The copy of the revisional application

which has been filed in Court has been served upon them. The application filed before the learned Court below is also a part of the records before this Court. This fact is accepted by the learned Advocate for the award debtors.

The revisional application is disposed of with a direction upon the award debtors to file written objection to the application filed by the award holder within a period of three weeks. An advance copy should be served upon the award holder. The learned Court below shall deal with the application at least on the point of interim protection within three weeks thereafter. The parties are at liberty to approach the learned Court below on the basis of a server copy of the order for preponing the date of hearing of the application.

It is made clear that if the award debtors fail to file written objection/show cause within the period mentioned hereinbefore, the learned Court below shall proceed to hear the application only on the point of an interim protection within the aforementioned period.

This order has been passed without going into the merits of the contentions of the parties and the learned Court below shall proceed on the merits of the case and in accordance with law.

It is expected that till the orders are passed by the learned Court below within the time prescribed by this Court, no alienation of the property being land and building situated at 26, Gangapuri, Post Office Purba Putiary, Police Station-Regent Park, Kolata – 700 093 will be made by the award debtors.

This revisional application is, thus, disposed of. The order impugned is modified as above.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)