

I 4.10.2021

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)**

**F.M.A.T. 570 of 2021
With
CAN 1 of 2021**

**M/s. Sethi Constructions
Vs.
Kolkata West International City Private Limited.**

**Mr. Ratnanko Banerjee, Sr. Advocate
Mr. Rudrajit Sarkar
Mr. D. Dinda
Mr. S. Chowdhury
Mr. T. Saha**

... For the Appellant/Petitioner.

**Mr. Anirban Roy
Mr. Debraj Sahu
Mr. Arindam Guha**

... For the Respondent.

As the point involved is very short, we propose to dispose of this appeal and the connected application, dispensing with all formalities.

The learned judge of the court below in passing the impugned judgement and order dated 8th September, 2021 clearly fell into error in not appreciating the ground realities of the situation.

The arbitral award is over Rs. 3 (three) crores in favour of the appellant.

S.D. An application under Section 34 of the Arbitration and Conciliation Act, 1996 is pending, so is an execution application. The court before which the Section 34 application is pending has not till date considered the question of stay of the award. The executing court has not

proceeded because of the Section 34 application.

Section 9 clearly provides that till the award “is enforced” under Section 36 a Section 9 application is maintainable. In this case, steps have been taken to enforce the award but till date it is not enforced. Hence a Section 9 application is maintainable to give protection to an award holder from disposition of the property from which he seeks to realise the award before it is ‘enforced’ in accordance with Section 36.

However, since an application under Section 34 is also pending along with the execution application any protection by the court exercising Section 9 jurisdiction should be limited.

Considering that the award is for about Rs.4 crores and the market value of an area of 1 acre of the property mentioned in schedule ‘A’ of the Section 9 application is about Rupees 3 crores and it is not clear whether all the lands specified in the schedule is unencumbered, we direct that the advocates-on-record for the parties shall jointly identify 2 acres of land from the said schedule out of which at least 1 acre should be unencumbered.

That parcel of land should be described in a minutes of the meeting to be drawn by or between the two learned advocates filed in court by 8th October, 2021 and circulated to the parties.

The respondent is restrained from disposing of or otherwise transferring or dealing with the said parcel of land till 30th November, 2021 or until further orders of the court exercising Section 34 jurisdiction or jurisdiction for execution of the award.

The impugned judgement and order of the learned court below dated 8th September, 2021 is set aside. The application under Section 9 of the said Act before that court is also disposed of.

A copy of this order shall be sent by the Registrar General of this Court to the learned judge, Commercial Court at Rajarhat to update the records of this case regarding the disposal of the Section 9 application.

The present appeal (FMAT 570 OF 2021) and the connected application (CAN 1 of 2021) are also disposed of.

The allegations contained in the Section 9 application as well as in the stay application are deemed not to be admitted.

Liberty to mention for implementation of this order.

(I.P. Mukerji, J.)

(Aniruddha Roy, J.)

