

CO 1970/2021

Titagarh Logistics Infrastructure Pvt. Ltd.

Vs.

Durgapur Freight Terminal Pvt. Ltd &Ors.

(Through Video Conference)

Mr. SabyasachiChaudhury,
Mr. Sayantan Bose,
Ms. Anyapurba Banerjee,
Ms. Madhurima Das
... for the Petitioner

Mr. RishadMedona,
Mr. Meghajit Mukherjee,
Mr. Rajesh Gupta,
.... for Opposite Party

Assailing orders passed by Ld. Judge Commercial Court, at Alipore, on 25.08.2021, 15.09.2021 and 10.11.2021 in Arbitration Execution Case No. 10 of 2021, this revision has been filed by the award holder.

That there is an ongoing Arbitration Proceeding between the parties and pending final hearing, the petitioner has filed an application under Section 31 (6) of Arbitration and Conciliation Act, 1996 praying for interim award for a sum of Rs. 2,36,00,000/- (Rs. Two Crore Thirty Six Lakh). However, Ld. Arbitral Tribunal after considering such application of the petitioner has been pleased to pass an interim award of Rs. 2,00,00,000 (Two Crore) only along

with GST at the applicable rate and interest at the rate of 18% per annum on the failure of the opposite parties/ Award Debtors to pay such interim award by 28.02.2021.

When award debtors failed to honour the interim award passed the Arbitral Tribunal on 10.02.2021, then invoking the right enshrined in Section 36 of the Arbitration and Conciliation Act, 1996 and under order XXI of Civil Procedure Code, the petitioner has filed an execution case for recovery of awarded sum before Ld. Judge Commercial Court, at Alipore (Executing Court) on 25.08.2021.

The main contention of the counsel for the petitioner is that the petitioner having filed the execution case within two years of passing of the interim award, then as per order XXI rule 22 C.P.C there is no need to serve notice of the execution case on the Opposite Parties/Award Debtors, but Ld. Court below instead of proceeding further with the execution of the award has insisted service of notice of the execution case on the Opposite Parties/Award Debtors in violation of of the provision of Order XXI rule 22 C.P.C. Therefore, he prays for setting aside the impugned orders and for stay of those the impugned orders.

On the contrary Ld. Advocate for the Opposite Parties submits Ld. Court below exercising its discretion and in its wisdom desired to have the notice of the execution served on the Opposite Parties and also keeping in view of the principle of natural justice. Impugned orders have not affected the rights of the petitioners or cause prejudice to its

interest. He submits no revision lies against the impugned orders as those orders have not decided any cause or issue of the parties.

Gone through the orders under challenge and this court does not find the impugned orders have finally disposed of issues between the parties. Rather, the executing court appears to have passed those orders to regulate the procedure for further progress of the execution case and fixed 15.09.2021 for service return and appearance of the Opposite parties as Award Holder/petitioner had filed requisite along with process fee.

Order dated 15.09.2021 shows the court below had merely asked the Award Holder to serve copy of the applications under order XXI rule 11 and under section 36 of Arbitration and Reconciliation Act, 1996 on the Opposite Parties and decided to hear the application under section 36 of the Arbitration Act, on compliance of such order by the Award Holder. Then fixed 10.11.2021 for S/R and appearance Award Debtors.

Order dated 10.11.2021 shows appearance of Award Debtor No. 1 before the Ld. Court below and directed the Award Holders to comply order dated 15.09.2021 and file affidavit of service on 26.11.2021.

Therefore, I do not find the above orders under challenge to constitute the expression “case decided” as stipulated by section 115 C.P.C. as those orders have not adjudicated upon some rights and obligation of the parties in

controversy. Merely because the court below has asked the petitioner/Award Holder to serve copy of execution application and copy of application under section 36 of the Arbitration Act, on the opposite parties, it cannot be said to be a case of exercise of jurisdiction illegally with material irregularity.

For the sake of argument even if it is assumed the orders under challenge are technically incorrect as Ld. Court below directed the petitioner/Award Holder to serve copy of execution application and its another application under section 36 of the Arbitration Act, on the Opposite Parties for execution of interim award within two years of its passing, this court does not find such orders, if allowed to stand would result in miscarriage of justice.

In view of the above discussion this court holds present revisional application is not maintainable.

C.O. 1970 of 2021 is accordingly dismissed and connected application, if any, shall stand disposed of .

In view of the order made above affidavits are not invited. Allegations made shall be deemed be denied.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for be given to the parties upon compliance of the requisite formalities.

(KesangDomaBhutia, J.)