

09.08.2021
Item No. SL 1
Ct. No. 04
RP

MAT 47 of 2021
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IA No.CAN 1 of 2021
(Via Video Conference)
Sabita Roy
Vs.
Union of India & Ors.

Mr. Srijib Chakraborty

Mr. Arindam Das

Mr. Biswajit Sarkar

Ms. Priyanka Kundu

.... For appellant

Mr. Chandi Charan De, adv. Addl. Government Pleader

Mr. Somnath Mukherjee

.... For State

Mr. Sudipto Majumder, adv. Asst. Solicitor General

Mr. Chakraborty, learned advocate appears on behalf of applicant/appellant and submits, impugned order dated 5th August, 2021 dismissing his client's writ petition needs to be interfered with in appeal. Mr. Dey, learned advocate, Additional Government Pleader appears on behalf of State while Mr. Majumder, learned advocate, Assistant Solicitor General appears on behalf of Union of India.

Before proceeding further, we ascertained that the final order referred to in impugned order is order dated 12th September, 2017 passed by the arbitrator under National Highways Act, 1956. The

arbitrator also held office as Commissioner, Jalpaiguri Division.

Mr. Chakraborty refers to two notices in the application, first dated 11th July, 2018 and second, 18th November, 2019. He points out, in the first notice there is reference to award dated 14th December, 2017 and in the second, reference is to award dated 13th November, 2019. Both these awards relate to same LA Case no.9/2013-14. Impugned order, relied on as award by respondents in the writ petition, is dated 12th September, 2017. It is also in respect of LA Case no.9/2013-14 but predates the two awards referred in said two notices. Furthermore, in award dated 12th September, 2017, his client's name is not mentioned though the notices have been addressed to his client in respect of other awards. Now, by reason of impugned order on award dated 12th September, 2017, which apparently does not apply to his client, she has to seek remedy of setting aside of the same. Arbitration proceeding regarding the other awards were without notice to his client. He prays for restraint order to protect his client's possession.

Mr. Dey submits, award dated 12th September, 2017 exists. Remedy of applicant/appellant, is for her to challenge same under provisions of Arbitration and Conciliation Act, 1996

as provided in the 1956 Act. Mr. Majumder submits, he has just been served copies of the memo and application. He prays for adjournment. On query from Court he submits, he has no instruction regarding possession.

Since parties are before us, we deal with the appeal itself at this stage. It has been listed in a supplementary list under heading 'To Be Mentioned' because of erroneous omission from the main list. There is thus no difficulty for us to proceed to do so.

We are prima facie satisfied that appellant has a grievance before the writ Court. It has not been demonstrated that award dated 12th September, 2017 relates to appellant as well. Notices issued to appellant talk about different awards, both dated later than the award relied upon by the writ Court. There is no finding regarding whether in respect of the two awards, mentioned in the notices, appellant had opportunity to participate in the arbitration proceeding that resulted in them. Since the arbitration in respect of appellant was carried out under provisions of the 1956 Act, the grievance of omission to give notice is also a reason for the writ Court to interfere.

Impugned order is set aside. Respondents are restrained from interfering with possession of applicant till 31st August, 2021, only in event such

possession has not already been taken by respondents. The writ Court will hear the writ petition on merits. Prayer for extension of the limited interim order is to be made before and dealt with by said Court.

The application and appeal are disposed of as above.

(Arindam Sinha, J.)

(Saugata Bhattacharyya, J.)