

IA No. GA 1 of 2021
In
APO No. 17 of 2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
[COMMERCIAL DIVISION]

SRI BIPLOB MANNA & ORS.
VERSUS
PRAHLAD HATI & ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 22nd March, 2021.

(Via Video Conference)

Appearance:
Mr. Srijib Chakraborty, Adv.
Mr. Suryaneel Das, Adv.
For the Appellants/Respondents

Mr. Debmalya Ghosal, Adv.
Mr. Anjan Banerjee, Adv.
Mr. Sourav Paul, Adv.
For the Respondents/Claimants

The Court :- The appellants are aggrieved by an order of the Arbitrator dated January 23, 2021. The appellants are respondents in arbitration proceedings.

The learned Arbitrator passed the impugned order exercising powers under Section 17 of the Arbitration and Conciliation Act, 1996.

The disputes between the parties relate to a partnership.

In the arbitral reference, the arbitrator was approached for an order under Section 17 of the Act of 1996 in respect of an excavator. According to the

appellants, the respondents sold the excavator which is under hire purchase with a financier and the appellants are required to pay the equated monthly instalments in respect of the excavator. The learned Arbitrator arrived at a finding in the impugned order that, the case of the appellants that, the excavator did not form a part of the dissolution agreement is contrary to the case made out by the respondents herein that the excavator is illegally made a part of the deed of dissolution. So far as the excavator is concerned, the learned Arbitrator returned the following finding:

“However, the case of the respondents that the excavator did not form a part of the dissolution agreement is contrary to the case made out by the claimants that the said excavator was illegally made a part of the deed of dissolution. These disputes remain to be adjudicated by the Tribunal. For the time being, the said excavator cannot be lost sight of by the tribunal where the question of dissolution and winding up of the firm is pending. This is also primarily the case made out also in the statement of claim. The respondents have claimed that they have made over money in accordance with the sale agreement to the claimants in cash. This is contrary to even the terms contained in the sale agreement. The deed of sale required the money to be transferred to the account of the claimants which has not been done. The respondents/respondent no.2 was required to take receipt from the claimants towards payments to be made under the sale agreement which have also not been produced. Hence credence at this stage cannot be given to the sale agreement or its performance by the parties.”

In view of such finding, the learned Arbitrator applying the balance of convenience issued directions that, the Receiver will be in symbolic possession of the excavator and that, the excavator will be in the actual

physical possession of the respondents with the respondents being liable to pay the equated monthly instalments.

The impugned order of the learned Arbitrator is well reasoned. No perversity visits the impugned order. Learned Arbitrator exercised his discretion in a particular way. There is no material on record to arrive at a finding that, the discretion exercised is vitiated by perversity.

In such circumstances, I find no merit in this appeal.

APO No. 17 of 2021 along with IA No. GA 1 of 2021 is dismissed without any order as to costs.

(DEBANGSU BASAK, J.)