

OD – 4

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
COMMERCIAL DIVISION

APO 114 OF 2021
WITH
AP/291/2021
IN THE MATTER OF :
SIMPLEX INFRASTRUCTURE LIMITED
VS
BRIDGE TRACK & TOWER PRIVATE LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S.SIVAGNANAM
A N D
THE HON'BLE JUSTICE HARISH TANDON
DATED : NOVEMBER 08, 2021.
[Via Video Conference]

Appearance :
Mr. Joy Saha, Sr. Advocate
Mr. Anirban Ray, Advocate
Mr. Abhishek Banerjee, Advocate
Mr. Snehashis Sen, Advocate
...for appellant
Mr. Priyankar Saha, Advocate
..for petitioner
Mr. Ratnanko Banerji, Sr. Advocate
Mr. Jaydip Kar, Sr. Advocate
...for respondent

The Court :- This appeal is directed against an order dated 4th August, 2020 passed in AP 291 of 2021. The respondent herein filed the said application praying for an order of ad interim injunction restraining the appellant/respondent from disposing of or dealing with, alienating or transferring or encumbering its assets and properties or creating any third party rights in respect thereof. Further prayer has been sought to restrain the appellant/respondent from operating the bank account maintained with the ICICI Bank, Ashokenagar Branch and for other consequential and related reliefs. The learned Single Bench had heard the matter and by the impugned order has not granted the relief sought for in its entirety but has directed that the appellant/respondent be restrained from dealing with or disposing of, or encumbering any of its assets and properties from creating any third party interest in respect of the property for a period of four weeks from the date of the order or until further orders. The appellant was directed to file the affidavit-in-opposition within two weeks from the date of the order and reply, within a week thereafter and the matter was directed to be listed after three weeks.

The learned Senior Counsel appearing for the appellant vehemently contended that the learned Single Bench had committed an error on the question of interpretation of the scope of Section 9 of the Arbitration & Conciliation Act, 1996 and points out that the observation that the parameters to be borne in mind while granting an order of interim

injunction under order 39 Rule 1 CPC would not apply. Further it is submitted that the learned Single Bench had recorded that appellant has not raised any dispute with regard to the supply of goods and specifications thereof and that appellant had not sent reply to the demand notice dated 6th February 2020 and if that be so it would not be correct to state that the appellant cannot raise a defence. Further it is submitted on account of the order passed by the learned Single Bench that the business operation of the appellant has been put to prejudice. That apart the learned Counsel has drawn our attention to the pleadings, more particularly, in paragraph 40 of the application and submits that averments are absolutely vague and does not warrant for granting any interim protection.

We have heard Mr. Ratnanko Banerji, learned Senior Counsel for the respondent on the above submission.

At the outset we need to point out that the order passed by the learned Single Bench is an ad interim order and the observations made by the learned Single Bench are to record as to how the respondent/applicant has made out the prima facie case for granting an ad interim protection. That apart the learned Single Bench has not enjoined the appellant from operating the bank account but has only observed that it shall not dispose of or encumber any of its assets or properties owned by the appellant. That apart the observations contained in the order regarding the quantity and specifications of the goods

supplied and with regard to the quantum of the amount outstanding and payable etc. or all prima facie observations made by the learned Single Bench obviously would not impact the proceedings when the matter is heard finally after the affidavit-in-opposition has been filed by the appellant. Furthermore, the learned Single Bench has not recorded any conclusive finding that the provisions of Order 39 Rule 1 of the CPC would not *ipso facto* apply to an application under Section 9 of the Act. What learned Single Bench has observed that the respondent/petitioner cannot be pinned down to the rigours of every procedural provisions of CPC as already pointed out that these are all observations made by the learned Single Bench to record a prima facie finding to justify the grant of any interim protection in favour of the respondent.

Therefore, we are not inclined to interfere with the impugned order but at the same time we make it clear that the observations and findings recorded by the learned Single Bench are only prima facie finding and would not in any manner prejudice the appellant from raising all contentions in the affidavit-in-opposition and placing all factual and legal submissions before the learned Single Judge. It goes without saying that respondent is also at liberty to canvass the matter at length.

Let affidavit-in-opposition be filed within ten days from today, affidavit-in-reply, if any, within one week thereafter.

However, we request the learned Single Bench to expedite the hearing.

With the above observations the appeal and all connected applications are disposed of.

(T.S. SIVAGNANAM, J.)

(HARISH TANDON, J.)

GH/As.