

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.629 of 2021

- M/s Vandana Global Limited Through Its Authorised Representative Mr. Ajay Tipte, Company Secretary Of Vandana Global Limited, Having Its Plant Location At Siltara Industrial Area, Phase II, Siltara, Raipur Chhattisgarh. 493 111

---- Petitioner

Versus

- M/s Rally Tech Services Private Limited, Through Its Managing Director And Power Of Attorney Holder, R.S.C. Murthy, 3rd Floor, Sri Srinivasa Towers, Bank Street, Visakhapatnam- 530007, Andhra Pradesh
And Old Address:-
Plot No 85/17, D Block, Authonagar, Visakhapatnam, Andhra Pradesh

---- Respondent

For Petitioner : Mr. Ashish Bernard along with Mr. Ankit
Singhal & Mr. Ashish Mittal, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

17/11/2021

1. Heard.
2. This petition has been brought being aggrieved by the order dated 30.10.2021, passed by the Commercial Court (District Level), Raipur, in Execution Proceeding No.03/2020.
3. The petitioner and the respondent both had entered into an agreement for supply of lower electrode and upper electrode of worth Rs.9,16,85,760/-. As there was a dispute, the respondent made an arbitral reference before the Sole Arbitrator- Mr. Justice Vijay Kumar Shrivastava, Former Judge, High Court of Chhattisgarh, Bilaspur. The Arbitral award was passed on 29.04.2019. The petitioner was

directed to make payment of Rs.76,00,000/- along with interest @ 9% per annum. The petitioner challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 before the Commercial Court (District Level) Raipur. The Arbitration M.J.C. No.21/2019 was decided by the order dated 25.01.2021 and the application under Section 34 of the Act, 1996 was dismissed. The petitioner has preferred Arbitration Appeal under Section 37 of Act, 1996 which is registered as ARBA No.5/2021. The application filed for grant of stay was rejected by the High Court vide order dated 04.08.2021.

4. It is submitted that the respondent has filed Execution Petition before the learned Commercial Court (District Level), Raipur. The petitioner filed an application under order 21 Rule 26 of C.P.C. and Order 21 Rule 29 of C.P.C. praying for stay of execution proceeding until the final disposal of the appeal filed by the petitioner under Section 37 of the Arbitration and Conciliation Act, 1996. Filing of an appeal in particular is continuation of the Civil Suit. The Commercial Court was empowered to grant order of stay in exercise of provision under Order 21 Rule 26 and 29 of C.P.C. The petitioner had offered to furnish security for the whole amount, which has been ordered for payment in the impugned award.
5. It is submitted that the Section 36 of the Act, 1996 empowers the Court to grant stay. Only for the reason that the High Court has refused the grant of stay in the Arbitration Appeal, the application for stay of the execution proceeding has been rejected. The application has been dismissed making observation that the petitioner can approach the High Court praying for stay order under Order 41 Rule 5 of C.P.C. It is submitted that the petitioner cannot file a repeat application before the High Court in the Arbitration Appeal under

Order 21 Rule 29 of C.P.C., Hence, this petition has been filed and prayer has been made to grant stay in the execution proceeding.

6. Respondent is yet to be noticed.
7. Considered on the submissions and perused the documents present on record. The petitioner has preferred Arbitration Appeal No.05/2021 and submitted an application for grant of stay, which has been heard and decided by the order dated 04.08.2021 vide Annexure-P/5. It appears from the order passed that the petitioner had preferred application to stay the effect and operation of the award in the orders passed against him. The order dated 04.08.2021 does not mention regarding any prayer made to stay the execution proceeding.
8. An appeal is definitely continuation of Civil Suit. Section 36(2) & 36(3) of the Act, 1996 provides that the Court has the power to stay the operation of the arbitral award. According to the statements made, it appears that the filing of execution application is a subsequent development, hence, under these circumstances, I am of this opinion that the petitioner should approach the High Court in Arbitration Appeal No.5 of 2021 making prayer for grant of stay in the execution proceeding under Order 21 Rule 26 and 29 of C.P.C. and also under Section 34(2) & 34(3) of the Act, 1996. Therefore, this petition is disposed off. The petitioner is granted liberty to file repeat application praying for stay of execution proceeding before the High Court and ARBA No.05/2021.
9. With these observations, this petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge