

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.335 of 2022

1. The Union of India through the General Manager, E.C. Railway at and P.O. Hajipur, District - Vaishali.
2. The Senior Divisional Engineer- I, East Central Railway, Sonapur, (Saran), Bihar.

... .. Appellant/s

Versus

Rajeev Ranjan S/o Sri Kailash Singh, at L- 1/47, S.K. Puri, P.S. S.K Puri, District, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	M/s Dr. K.N. Singh, Sr. Advocate (ASG) Kumar Priya Ranjan, CGC Ankur Apurv Singh, Advocate
For the Respondent/s	:	M/s Manish Sahay and Anil Kumar Sinha, Advocates

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

Date : 23-08-2022

Heard Dr. K.N.Singh, learned Additional Solicitor General assisted by Mr. Kumar Priya Ranjan, CGC for the appellants and Mr. Manish Sahay, learned counsel for the respondent.

Although the case is listed under the heading ‘Orders on Petition’, with consent of the parties the appeal itself is taken up for disposal.

The instant appeal has been preferred by the appellants under section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the Arbitration Act’) praying therein for setting aside the order dated 10.6.2022 and 21.7.2022 passed in Execution Case no. 135 of 2017 by the



learned Sub Judge I, Patna, whereby the land and building described as Railway Club Building in the premises of Mehendrughat, East Central Railway, Patna (officers guest house) has been directed to be attached.

The facts in brief giving rise to the instant case is that pursuant to the tender notice dated 14.2.2012 issued by the office of the appellants for construction of building for traffic accounts and cash office, East Central Railway Headquarter, Hajipur, on the respondent having participated, was awarded the tender being the sole tenderer. An agreement was entered into between the Railways and the respondent and as per the case of the appellants the date of completion of work was extended in two spells on administrative grounds. During course of execution of work, disputes arose between the parties and as such the respondent on 24.12.2013 requested the Railways to settle the dispute by appointing an arbitrator. Ultimately the respondent filed Request Case no. 29 of 2015 in Patna High Court and by order dated 3.3.2016, a sole arbitrator was appointed. The sole arbitrator after considering the contention of the parties was pleased to pass an award on 18.3.2017 with directions to the Railways to pay a sum of Rs. 52,88,268/- within a period of sixty days along with the interest @ 12% per annum from the date of



award till the date of actual payment.

It is submitted by learned senior counsel appearing for the appellants that since the sole arbitrator did not consider the contentions of the appellants, the award was assailed by the appellants by filing Miscellaneous (Arbitration) Case no. 153 of 2017 before the learned District Judge, Patna, under section 34 of the Arbitration Act. The appeal was admitted on 14.11.2019 and the same was transferred to the Court of learned Sub Judge IV, Patna. On issuance of notice, the respondent appeared on 9.1.2020 and filed his objection. In between the period from February, 2020 to April, 2022, because of the Covid-19 pandemic further hearing in the matter was deferred and the learned Court is vacant till date.

It is further submitted by learned senior counsel appearing for the appellants that in the meantime the respondent filed Execution Case no. 135 of 2017 before the learned Sub Judge I, Patna for enforcement of the award dated 18.3.2017. The appellants appeared in the said case and filed their show cause as also a stay petition on 13.12.2019. On the stay petition being taken up in the Execution Case on 10.6.2022, for reason of non appearance of learned counsel for the Railways, the stay petition dated 13.12.2019 was dismissed as not pressed and



further by order dated 21.7.2022 directions were issued to attach the land and building described as Railway Club Building situated within the premises of Mehendrughat, East Central Railway, Patna. The said building includes the guest house, meeting hall of the appellants Railways apart from the Railway Club.

It is submitted by learned senior counsel for the appellants that the reason for non appearance of learned counsel for the Railways on 10.6.2022 was because of the long gap in between for the reason of the Covid-19 pandemic and the change in the panel of the counsel for the Railways. So far as the stay petition dated 13.12.2019 is concerned, the same was not dismissed on merit. On learning about the passing of the orders dated 10.6.2022 and 21.7.2022, it is submitted that learned counsel for the Railways moved before the learned Sub Judge I, Patna on 25.7.2022 by filing a recall petition, a copy of which is Annexure R/3 to the counter affidavit. He was orally directed to file the same on 26.7.2022. However as the learned Sub Judge I, Patna went on leave on the next date ie 26.7.2022, he moved before learned Sub Judge XIV, Patna who put up the recall petition on 1.8.2022 before the learned Sub Judge I, Patna. It is submitted that so far as the petition for recall is concerned, the



same is still pending consideration and no orders have been passed thereon. Further referring to the petition filed on 11.8.2022 (Annexure R/5) it is submitted that the appellants – judgment debtors undertake to deposit the amount of award dated 18.3.2017 subject to the final outcome of Miscellaneous (Arbitration) Case no. 153 of 2017.

Learned counsel for the respondent appears and submits that he has filed both counter affidavit to the stay petition as also counter affidavit to the main appeal online on 22.8.2022. As the counter affidavits filed are not available on record, the filing of the original counter affidavits are accepted in Court. The same are taken on record.

It is submitted by learned counsel for the respondent that the appellants having preferred an appeal under section 34 of the Arbitration Act, memo of which is Annexure R/1 to the counter affidavit, in any case the instant appeal under section 37 of the Arbitration Act is not maintainable. It is submitted that the date of the award is 18.3.2017 and inspite of more than five years having passed, the respondent has not received the amount due to him along with interest thereon. It is submitted that even otherwise there being no merit in the case of the appellants as their case does not come within any of the



grounds mentioned in section 34 of the Arbitration Act, the order impugned may not be interfered with and the execution case may be directed to proceed to its logical conclusion.

Having heard learned counsel for the parties and taking into consideration the materials on record, it transpires that the instant appeal arises out of the orders passed in the execution case filed for enforcement of the award dated 18.3.2017. In the opinion of the Court, in view of section 37 read with section 9(1)(ii)(b) & (c) of the Arbitration Act, the instant appeal preferred by the appellants is maintainable. Taking into consideration the merits of the case, as per the case of the parties, the appeal under section 34 of the Arbitration Act preferred by the appellants against the award is pending. Further the petition dated 25.7.2022 filed by the appellants-judgment debtors ie Annexure R/3 praying for recall of the order dated 10.6.2022 and for staying the operation of the order dated 21.7.2022 issuing order of attachment is also pending. Thus the instant appeal is disposed of with the following directions:-

(I) The learned Sub Judge I, Patna, in seisin of Execution Case no. 135 of 2017 shall decide the petition dated 25.7.2022 filed by the appellants – judgment debtors under section 151 of the Code of Civil Procedure within a period of



three weeks from today.

(II) In deciding the above petition dated 25.7.2022 the learned Sub Judge I, Patna, shall take into consideration all the materials on record including the petition dated 11.8.2022 (Annexure R/5) of the judgment debtors.

(III) Till final orders deciding the petition dated 25.7.2022 is passed by the learned Sub Judge I, Patna, no coercive steps shall be taken against the appellants-judgment debtors in connection with Execution Case no. 135 of 2017.

(IV) The Court has been informed that Miscellaneous (Arbitration) Case no. 153 of 2017 is pending before the learned Sub Judge I, Patna. The learned Sub Judge I, Patna, shall proceed to decide the Miscellaneous (Arbitration) Case no. 153 of 2017 expeditiously preferably within a period of three months from the date of communication of this order.

The appeal stands disposed of with the above observations and directions.

(Partha Sarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.8.2022
Transmission Date	24.8.2022

