

23.06.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.1145 of 2022

Sandipan Chakravortty
Vs.
M/s. Santas Fantasea & ors.

Mr. Aniruddha Chatterjee,
Mr. Saptarsi Mal,
Ms. Amrita Pandey,
Mr. Ghanshyam Pandey
...for the petitioner

Mr. Mainak Bose,
Mr. Dwaipayan Basu Mallick,
Ms. Amrita Mukherjee
...for the opposite parties

The subject-matter of challenge in this revisional application is on two folds, firstly, with regard to the erroneous assessment of quantum of occupational charges, despite an award being passed in this case, in favour of the petitioner, while the second one is for non consideration of the provisions available under Order 41 Rule 3 C.P.C., while granting stay without requiring opposite parties to furnish security of the amount, mentioned in the arbitral award, being the arrears of rent for the period of 24 months from February, 2020 till February, 2022, on or before First February, 2020, in spite of arbitral award directing the opposite parties to deposit Rs.15,12,000/- by such date.

Mr. Chatterjee, learned advocate appearing for the petitioner upon adverting to arbitral award submits that when there has been a direction passed in award requiring the opposite parties to deposit the sum mentioned hereinabove by First February, 2022, which is as good as money decree, the same should have been considered by the court below while granting stay under Order 41 Rule 5 C.P.C. after doing due adherence to the provisions available under Section 41 Rule 3 C.P.C.

Mr. Chatterjee further submits that there is a Restaurant business running over the subject property, against which, there has been order of eviction, as per arbitral award.

The quantum of occupational charges, according to learned advocate for the petitioner, has not been properly assessed, and it is thus contended to have been erroneously assessed.

Reliance is placed by Mr. Chatterjee on a decision reported in **(2005) 1 Supreme Court Cases 705** delivered in the case of ***Atma Ram Properties (P) Ltd. versus Federal Motors (P) Ltd.***, in support of the stand of the petitioner that opposite parties/tenants would liable to duly compensate for use and occupation of the premises at the same rate, at which the landlord would have been able to let out the

premises and earn rent, if the tenant would have vacated the premises.

Admittedly, an application under Section 34 of the Arbitration and Conciliation Act has been filed to challenge the award, and in connection with which the impugned order has been passed.

It is also submitted by Mr. Chatterjee that there would be unnecessary delay caused and loss occasioned to execute the arbitral award by the grant of stay order, and the court below taking into such account ought to have appropriately assessed the quantum of occupational charges.

Per contra, Mr. Mainak Bose, learned advocate appearing for the opposite parties submits that when the award has been sought to be challenged upon resorting to an application before a competent court, the executability of such award is always subject to the decision, to be returned by the court by under Section 34 of Arbitration and Conciliation Act.

Incidentally, Mr. Bose submits that till such time, the opposite parties have been complying with the conditions of stay order by depositing monthly occupational charges as well as the arrears of rent, as already directed to be deposited by the court below.

More so, in the meantime, the opposite parties have also deposited a total sum of Rs.5 Lakh, which requires adjustment, as against the total sum said to

be in arrears of rent, as mentioned in the arbitral award.

It is as such submitted by Mr. Bose that there is hardly any scope of furnishing any security in application of Order 41 Rule 3 C.P.C., when there has already been a default clause put in the arbitral award to the effect that “in default of deposit of sum to the tune of Rs.15,12,000.00/- by first February, 2022, the awardee/petitioner shall be entitled to an enquiry into future mense profit”.

This Mr. Bose has persuaded this Court to believe that without undertaking such enquiry, when there has been a default clause already put therein in the arbitral award, there cannot be any question requiring the opposite parties to furnish security in obedience to the provisions under Order 41 Rule 3 C.P.C. for grant of stay by the court below.

Mr. Bose as regards alleged erroneous assessment of the quantum of occupational charges refers a decision reported in (2019) 8 Supreme Court Cases 112 delivered in the case of ***Pam Developments Private Limited versus State of West Bengal*** that the consideration of provisions available under C.P.C. in Order 41 Rule 3 C.P.C. is not mandatory, while granting stay in a case, wherein arbitral award is under challenge under Section 34 of the Arbitration and Conciliation Act.

It is thus submitted by Mr. Bose that the court is only under obligation to take into consideration, while making order granting stay but it is not in any way taken to be mandatory.

Having considered the submission of both sides, it appears that executability of sum portion of the award is under challenge in this revisional application alleging infraction of the law, as mentioned hereinabove. When the award is under challenge, upon resorting to provisions available under Section 34 of the C.P.C., and when there has already been a default cause put therein to invite execution against defined sum of money, being in arrears of rent, as mentioned in the award, the discretion thus exercised by the court below, while granting stay as against the execution of the award with some conditions, cannot be considered to be a bad exercise upon making infraction of the provisions available under Order 41 Rule 3 C.P.C., but in an appropriate case, the court before granting stay of the arbitral award, may require from the opposite parties security in support of the prayer for stay of execution of the award.

As regards the alleged erroneous assessment of occupational charges, it appears that there is a Restaurant in running condition on subject premises, which is situated in a posh area of Kolkata. Though there has been an order passed by the court below

directing opposite parties to pay Rs.50,000/- per month as occupational charges, but a little enhancement would not, however, cause any prejudice to opposite parties. The quantum of occupational charges is thus modified to Rs.60,000/- (Sixty Thousand) per month with effect from the date of the order, passed by the court below.

The direction passed by the court below as regards the liquidation of arrears of rent is also modified from Rs.10,000/- to Rs.15,000/- with effect from the date of order passed by the court below. The impugned order stands modified to the extent mentioned hereinabove.

Since both the parties have entered their respective appearance in the court below ie., learned Additional District Judge, 13th Court, Alipore, South 24 Parganas, in Misc. Case Arbitration No.1395 of 2022 (subsequently renumbered as Misc. Case Arbitration No.12 of 2022) arising out of arbitral award dated November 30, 2021, is requested to ensure expeditious disposal of referred Misc.Case under Section 34 of the Arbitration and Conciliation Act, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

Such exercise, may be done preferably within three (03) months from the date of communication of this order.

As it is alleged by Mr. Chatterjee that there has been an attempt to tamper upon the property, now under the possession of the petitioner, it is, however assured by Mr. Bose that pending decision of the application under Section 34 of the Arbitration and Conciliation Act, there will be no exercise undertaken by the opposite parties causing prejudice to the rights of the petitioner with regard to the property under the possession of the petitioner, if there be any.

With this observation/direction, both the revisional applications stand disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)