

08.08.2022  
Ct No.7  
Item.12  
(PA)

**C.O. No. 1241 of 2022**

**Sumita Dutta**

**Vs.**

**The Bengal Freemasons' Trust Association**

Mr. Aniruddha Chatterjee,  
Mr. Saptarshi Kumar Mal,  
Mr. Saptarshi Datta

.... For the petitioner.

Mr. Mainak Bose,  
Mr. R.L. Mitra,  
Ms. Priyanka Dhar

.... For the opposite party.

Impugned order dated 9<sup>th</sup> December, 2021, passed by learned Chief Judge, City Civil Court at Calcutta in Misc. Case No. 2046 of 2018, dismissing the Misc. Case filed by petitioner/award debtor under Section 47 read with Order 21, 151 of Code of Civil Procedure.

Admittedly, petitioner instituted the above Misc. Case praying for a declaration that the arbitral award dated 19<sup>th</sup> April, 2012, was a nullity, unexecutable, and not binding upon the petitioner.

Mr. Chatterjee, appearing for the petitioner/award debtor, upon referring Order 9 Rule 8 C.P.C. submits that the dismissal of the Misc. Case is a product of infraction of law, available under Order 9 Rule 8 C.P.C., as for the non-appearance of the petitioner/award debtor on a stipulated date, the only option left open before the court below was to adhere to Order 9 Rule 8 C.P.C. by making dismissal

of Misc. Case without touching upon the merits of the case.

It is further contended by Mr. Chatterjee that dismissal of the Misc. Case upon considering merits of the case, merely on the ground of non-appearance of the petitioner/award debtor, is absolutely illegal, as such dismissal is in violation of Order 9 Rule 8 C.P.C.

Mr. Chatterjee draws attention of the Court to the 2<sup>nd</sup> paragraph of the impugned order in support of his stand that despite knowledge of the court below, that nobody was there to represent petitioner/award debtor, dismissal of such Misc. Case on merits is without sanction of law.

Taking recourse to Section 141 of C.P.C., Mr. Chatterjee argues that the procedure prescribed in the Code in regard to suit has to be followed so far as other proceedings, arising out of the suit, is concerned, and thus by not making adherence to Order 9 Rule 8 C.P.C., there has been miscarriage of justice.

Per contra, Mr. Mainak Bose appearing for the opposite party/awardee submits that on the stipulated date, fixed by the court below, the petitioner/award debtor, even after filing hazira, preferred to remain away for the reasons best known to the petitioner, and further the petitioner has not responded to the repeated calls made outside the

court room immediately before taking up the matter for passing necessary order.

Mr. Bose further contends that since conduct of the petitioner, as exposed to the case record was not happy, so on the previous date, preceding to the order impugned, there has been an order against the petitioner/judgment debtor requiring him to file show-cause for his non – appearance on the schedule date.

It is, thus, submitted by Mr. Bose that for sudden non-appearance of the petitioner/judgment debtor/awardee, the court below already show-caused the petitioner, which however, could not be answered .

As regards the applicability of Order 9 Rule 8 C.P.C., Mr. Bose argues in reply that when petitioner/award debtor filed his hazira on the schedule date, but for the reasons best known to the petitioner, learned advocate representing petitioner could not be found present in the court, responding to the calls of the court below, the provisions of Order 9 Rule 8 C.P.C. would not be attracted in such circumstances.

Non-appearance of petitioner even after filing hazira is purposive, simply to cause delay to the execution of award.

More so, the court below has subscribed independent reasons mentioning the dismissal of SLP

by Apex Court in this case after complying with the direction passed by this Court as regards expeditious disposal of the pending Misc. Case, and as such the order impugned would remain uninterfered with, Mr. Bose replies.

Fundamentally, the legality of the order impugned is challenged on the score that order impugned is a product of infraction of law, as available under Order 9 Rule 8 C.P.C.

Petitioner has taken the point that the court below ought to have dismissed the Misc. Case for non-appearance of judgment debtor in application of Order 9 Rule 8 C.P.C. without entering into the merits of the case.

Order 9 Rule 8 of C.P.C. comes into play, where the defendant appears and plaintiff does not appear, when the suit is called for hearing, and in that case the court shall make an order that the suit be dismissed. Therefore, non-appearance of the plaintiff, when the suit is called on for hearing is *sine qua non* for the applicability of Order 9 Rule 8 C.P.C. in a case, where defendant is already present upon registering his appearance.

This is a case, wherein petitioner/judgment awardee/debtor has already registered his appearance upon filing hazira on the stipulated date. The filing of hazira, however, could not be responded to by the petitioner/judgment debtor or his legal

representative during the course of repeated calls prior to passing the impugned order. No adjournment was proposed on that date for petitioner/judgment awardee for some undisclosed reasons, nobody represented petitioner/judgment debtor before the court below on the scheduled date even after filing hazira. It suggests that for the reasons best known to petitioner, he or his representative preferred to remain away.

Therefore, it is not a case that there has been complete infraction of law with respect to Order 9 Rule 8 C.P.C., as contended by Mr. Chatterjee.

More so, at the instance of petitioner, PW-1 was examined, and subsequently cross-examined and discharged finally on 6<sup>th</sup> February, 2020. Therefore, petitioner was very much aware of the movement of this Misc. Case even after cross-examination of PW-1 in Misc. Case.

Upon perusal of the impugned order, it appears that the court below has considered all possible aspects within the parameters of law, and as such the impugned order does not call for any interference.

The revisional application stands disposed of.

Urgent certified photostat copy of this order be given to the parties, if applied for, upon compliance with requisite formalities.

**(Subhasis Dasgupta, J.)**