

Bpg & Sg..
Sl.No9
May 30,
2022

FMAT (ARBAWARD) 28 of 2022
With
CAN 1 of 2022

Rohit Tyagi
Versus
The Board of Shyama Prasad Mookerjee Port

Mr. Anirban Ray,
Mr. Jayanta Sengupta,
Mr. Nirmal Kumar Chowdhury.
...for the appellant.

Mr. Subhankar Nag,
Mr. Santosh Kumar Ray.
...for the respondent.

Learned counsel for the appellant contends that the Judge, Commercial Court, Alipore acted without jurisdiction and in an inadvertent manner in not granting ad interim injunction to the petitioner within the ambit of Section 9 of the Arbitration and Conciliation Act, 1996.

Learned counsel for the appellant raised several factual disputes, including whether the respondent authorities complied that the clauses of the agreement between the parties itself while purportedly terminating the contract of the petitioner.

It is contended that, despite best efforts, the petitioner could not initiate arbitration proceedings due to no fault on the part of the petitioner. It is further contended that, in the present case, damages cannot be ascertained in view of the fact that the appellant's materials are lying at the site and, in the event those are utilized by a third party to complete the project, the petitioner would not be able to quantify such claim, particularly since no inventory has been held.

Learned counsel for the respondent controverts such submission of learned counsel for the appellant and submits that damages are an adequate alternative remedy in the present case, which obviates the scope of granting any injunction.

In this context, learned counsel places reliance on Section 41 (ha) of the Specific Relief Act, 1963, as amended, for contending that an injunction cannot be granted if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto, being the subject matter of such project. By placing further reliance on item 1, clauses (b) and (c) of the Schedule to the said Act, it is further submitted that since the present project

pertains to works as contemplated in the said provision, the rigour of Section 41 (ha) of the 1963 Act applies in full force.

Learned counsel further contends that the petitioner has not initiated any arbitrary proceeding as yet, which would not enable the petitioner to seek remedy of similar relief, as prayed herein, under Section 17 of the 1996 Act. Having not done so, the petitioner ought not be granted the injunction as prayed for.

Upon hearing learned counsel for the parties and considering the judgment cited by the petitioner, reported at 2022 SCC OnLine SC 336 (*N.G. Projects Limited Vs Vinod Kumar Jain & Ors.*), we are of the considered opinion that no case for interference with the refusal of ad interim injunction by the first forum has been made out.

Even if we take into consideration the scope of Section 41(ha), read with the Schedule, of 1963 Act (as amended), in conjunction with the propositions laid down in paragraphs 19 to 21 in the cited judgment, it is evident, prima facie, that the project-in-question falls within the mischief of Section 41(ha) of the said Act.

Although the ratio in the cited judgment was laid down by the Hon'ble Supreme Court in the context of jurisdiction under Article 226 of the Constitution of India, nonetheless, the provisions of Section 41 of the 1963 Act, as reiterated therein, and the consequential principles apply to the present case as well.

That apart, we are of the prima facie opinion that the relief of the petitioner could lie in damages, which cannot be substituted by grant of injunction, particularly in view of the specific bar as contemplated in the Specific Relief Act, 1963.

It is evident that a detailed factual consideration, on an appreciation of the materials on record, is required for adjudicating the matter on merits, which is beyond the scope of enquiry in a writ petition.

In the present case, in any event, we do not find any patent illegality or irregularity in the order dated May 1, 2022 to invoke the jurisdiction under Section 37 of the 1996 Act, merely to substitute the findings of the first forum since, in the opinion of this court, such alternative view is possible, without there being any contravention of law or procedure on the part of the first forum.

In such view of the matter, we do not find any scope of admitting and/or entertaining the present appeal.

Accordingly, FMAT (ARBAWARD) 28 of 2022 and CAN 1 of 2022 are disposed of by directing the Judge, Commercial Court, Alipore to decide the interlocutory application under Section 9 of the Arbitration and Conciliation Act, 1996 filed by the present petitioner in connection with Misc. Case (Arbitration) No.26 of 2022 before the said Court as expeditiously as possible, positively within four weeks from the next date fixed for taking up such application.

Respondent shall file written objection, if any, to the application under Section 9 of the 1996 Act positively within one week from date. Reply, if any, shall be filed within one week thereafter.

The Judge, Commercial Court, Alipore shall decide the interlocutory application under Section 9 of the Arbitration and Conciliation Act, 1996, as referred to above, positively within four weeks from date without being influenced in any manner by any observation made herein.

It is further clarified that the merits of the matter have not gone into by this Court. All issues are

kept open for being decided independently by the Judge, Commercial Court, Alipore.

There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Ajoy Kumar Mukherjee, J.)