

07.07.2022

Court : 04
Item : 02
Matter : **FMAT**
Status : **DO**
Transcriber: nandy

FMAT 252 of 2022
with
CAN 1 of 2022

Madhu Bhandari & Anr.
Vs.
Namrata Bhandari & Anr.

Mr. Riahad Medora, Advocate
Mr. Meghajit Mukherjee, Advocate

.....for the Appellants

Mr. Abhrajit Mitra, Senior Advocate
Mr. Shaunak Mitra, Advocate
Mr. Soumabho Ghosh, Advocate
Mr. Biswajit Kumar, Advocate
Mr. Debayan Sen, Advocate
Mr. Rajarshi Ganguly, Advocate
Mr. Arindam Das, Advocate

.....for the Respondents

The parties are litigating over several moveable and immovable properties left by the predecessor and in fact, entered into a consensus that the dispute be resolved through arbitration. The Award is passed by the Arbitrator, which has been challenged by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act') before the competent Court.

Amidst the pendency of the said proceeding, an application seeking stay of the operation of the award under Section 9 of the said Act was taken out by the respondents hereunder being the son and daughter of the appellant no. 1 for injunction restraining the appellant no. 1 from alienating,

encumbering, transferring and/or inducting third party in respect of the properties mentioned in the Award as well as from liquidating or redeeming any assets including amounts lying in Bank Accounts, Inter Corporate Deposits, Shares and/or Mutual Funds and also from collecting any rent from any of the assets or properties mentioned in the Award. Apart from the same further relief was claimed for appointment of Receiver to take physical possession of the assets and properties and also to collect all rents receivable from the immovable properties as well as interest and/or accruals on the fixed deposits, amount deposited in the Bank, Inter Corporate Deposits, Shares and Mutual Funds.

It was alleged in the said application that after the award was made and published by the sole Arbitrator dividing the assets and properties of the predecessor, the appellants are wrongfully continuing to exercise their rights over the properties and assets which has been allotted to the respondents. It is further alleged that apart from deprivation of the respondents to enjoy the benefits of any of the properties, investments or assets under the Award and/or the usufructs thereof, the appellants are wrongfully and illegally dealing with the properties and in fact, have liquidated the investments of a considerable value and purchased the properties in their names from such corpus. It was further alleged that the appellants are letting out

the properties and using the rental incomes therefrom and, therefore, depriving the rights of the respondents which had already been crystalized in the Award.

The appellants have objected to the said application and in their affidavits they have not only taken the ground which impinges upon the validity of the Award but also denied the allegations made therein.

The first and foremost ground which has been taken, pertains to the manner of dividing the moveable and immovable assets and non-consideration of several factors evident from the documents produced before the Arbitrator.

In our opinion, the grounds which have been projected relates to the validity and/or legality of the Award which is a subject matter of consideration of the application under Section 34 of the said Act filed by the appellants. Therefore, we refrain ourselves from making any observation on such issue as it would have some persuasive impact upon the Court below at the time of final disposal of the said application.

There is no quarrel to the proposition that the language employed in Section 9 of the said Act explicitly makes the applicability of the said provisions at post-award stage. There is no deter on

the part of the competent Court to pass an order under Section 9 of the said Act after the Award has already been published by the Arbitrator subject, however, to the other legal parameters required therefor.

The trial Court as an interim measure restrained the appellants from liquidating and redeeming any amount from Bank Accounts, Inter Corporate Deposits, Shares and Mutual Funds as mentioned in the Award in any manner whatsoever and also from collecting rents from the immovable attest. The trial Court further appointed the Advocate Receiver to collect the rents over the assets and properties comprised in the Arbitral Award in order to protect the same until the said application under Section 9 of the said Act is decided.

It is no doubt true that the consideration for an application for injunction and the application for appointment of Receiver are distinct and separate though sometimes it establishes a common thread and blurred the thin distinction. There is no impediment on the part of the Court to treat the application for injunction as an application for appointment of Receiver and vice-versa provided sufficient pleadings are made therein and the circumstances warrant so. Afterall an Award has been published which is the subject matter of challenge in an application under Section 34 of the

said Act. So long the said Award is not set aside or the portion thereof is not stayed by a competent Court it remains binding between the parties and any attempt and/or act which dissipates or diminishes the value or prejudices the rights of the litigating parties, cannot be allowed to be perpetuated and it is the solemn duty of the Court to protect the same pending final adjudication of the lis.

The apprehension of the appellants that by virtue of the impugned order, the Receiver may dispossess the appellants from the settled possession of the properties, does not appear to be logical and legally sustainable for the simple reason that the Receiver cannot dispossesses a person from the settled possession unless expressly and/or specifically ordered by the Court but takes the symbolic possession with an intent to protect and preserve the properties pending final adjudication. Such apprehension can be sufficiently taken care of by making categorical observation that while taking possession of the assets and the properties, the Receiver will take a symbolic possession the immovable properties and will not uproot the parties from their respective possession until the final decision is taken on such application.

With such modification the remaining portion of the order is interfered with and we expect that the trial Court will expedite the hearing of the application

under Section 9 as well as an application under Section 34 of the Act and will see that the same reached to its logical end within two months from the date of communication of this order.

The parties have assured this Court that they would not take unnecessary adjournments unless necessitated by unforeseen and unavoidable circumstances and shall cooperate and assist the learned Judge in securing the disposal within the timeframe indicated hereinabove.

Nothing observed hereinabove, shall have any persuasive effect on the merit of the proceeding which shall be decided independently and in accordance with law.

With these observations, the appeal being **FMAT 252 of 2022** and the application being **CAN 1 of 2022** are **disposed of**.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)

