

29.09.2022

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

FMAT (ARBAWARD) 46 of 2022
with
CAN 1 of 2022

Tata Capital Financial Services Limited.
Vs.
Sovakar Karak & Anr.

Mr. Avishek Guha, Advocate
Ms. Debarati Das, Advocate
Ms. Akansha Chopra, Advocate

.....for the Appellant

Mr. Tanmoy Mukherjee, Advocate
Mr. Soumik Ganguli, Advocate

.....for the State

The instant appeal arises from an order dated 11.08.2022 passed by the District Judge, Bankura in J. Misc. (Arbitration) No. 01 of 2021 by which an application under Section 151 of the Code of Civil Procedure for release of the vehicle in favour of the respondents was allowed.

There is no dispute that the agreement contains an arbitration clause and, therefore, the jurisdiction of the Civil Court has been ousted. Having conscious of such position, an application was made under Section 9 of the Arbitration and Conciliation Act, 1996 before the District Judge, Bankura and an interim order was passed on 14.09.2021 preventing the appellant to take possession of the vehicle in question.

Admittedly the possession of the said vehicle was taken by the appellant and the same was kept in H.M. Parking Space Dholdanga. Immediately an application was taken out under Section 151 of the Code alleging violation of the said interim order as forcible possession of the vehicle in question is not permitted in law. The application was directed to be served upon the appellant which, in fact, was done and on the date so fixed i.e. July 27, 2022, the appellant appeared before the Court and prayed for

adjournment. The matter was fixed on August 2, 2022. Again, the appellant asked for an adjournment which was eventually allowed and the next date was fixed on 08.08.2022. Since the appellant was taking adjournments without filing the objections, the Court proceeded to hear the matter on the next day i.e. 08.08.2022 and reserved the fate of the said application to be decided by delivering the order. By the impugned order the said application has been allowed.

The learned Advocate for the appellant is very much vocal in his submission that the Court should not allow release of the vehicle which is the only secured asset of the appellant without putting any conditions in the form of securing the defaulted sum or the sum which becomes due on recall of the agreement. It is further submitted that the Court while exercising inherent power should be cautious and must bear in mind the legislative intent that such power should be exercised for securing ends of justice and to prevent the abuse of process of law/Court.

There is no doubt true that the nuances relating to the scope and the power enshrined upon the Court under Section 151 of the Court. We are also not unmindful of the proposition of law that the inherent power should not be exercised by the Court when there is an express provision in the Code for such relief.

Be that as it may, the position is different on the special facts of the instant case. Indubitably, an interim order was passed in a proceeding under Section 9 of the Arbitration and Conciliation Act and despite such order being extended from time to time and operating in the field, the possession of the vehicle was taken.

A plea is sought to be taken by the appellant that the said order was not communicated and, therefore, the act of taking possession cannot be construed as an act in violation of the order of the Court. Even if for the sake of argument, the aforesaid contention is taken to be true it does not absolve the appellant from respecting and/or obeying the order of the Court. The moment it has been brought to the notice and such act is found to have been done on the teeth of such order, it may tantamount to contumacious act, yet the Court cannot be a mute spectator after noticing its order has been violated. It is the duty of the Court to restore the possession as it stood on the date of passing the said order even if the Court finds that the act of the other side in stricto sensu does not come within the purview of the contumacious act. Anything done on the teeth of an order of injunction cannot be regarded as an act permissible in law and, therefore, we do not find that the Court below has committed any error in passing the said order.

In view of the above, the appeal being **FMAT (ARBAWARD) 46 of 2022** and the application being **CAN 1 of 2022** are **disposed of**.

However, it is open to the appellant to take appropriate step as may be advised in the matter before the trial Court or an appropriate forum and if such approach is made, the observations made hereinabove shall not be construed to have any impact thereupon.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

