

APO/17/2022
With
AP/414/2021
IA NO. GA/1/2022
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

HASANUR JAMAN LASKAR
-VS-
MICKY METALS LIMITED

BEFORE:

The Hon'ble JUSTICE HARISH TANDON

The Hon'ble JUSTICE RABINDRANATH SAMANTA

Date : 25th February, 2022.

Appearance:

*Mr. B. P. Mondal, Adv.
Mr. Saptarshi Kundu, Adv.
...for the appellant*

*Mr. Priyankar Saha, Adv.
Mr. Bhaskar Mukherjee, Adv.
Ms. Debjani Ghosh, Adv.
Mr. Debraj Sahu, Adv.
Ms. Nafisa Yasmin, Adv.
...for the respondent*

The Court : Challenging the order dated 16th December, 2021 passed in AP 414 of 2021 by the Single Bench of this Court, the present appeal has been filed by the judgment-debtor.

Claiming a due on account of unpaid price of goods sold and delivered, the arbitration agreement was activated and the arbitrator was appointed to resolve such dispute. The arbitral proceedings culminated into an award and the award has been put into execution before this Court. Since Section

9 of the Arbitration and Conciliation Act, 1996 is applicable even at the post-award stage, such application was taken out by the decree-holder seeking injunction against the judgment-debtor/appellant from dealing with and/or disposing of and/or alienating and/or transferring and/or encumbering his assets and properties and/or creating any third party rights or interest in respect of the properties mentioned in paragraph 21 of the said application. A further injunction was sought restraining the judgment-debtor/appellant from withdrawing any amount from his bank account beyond the awarded sum, i.e., Rs. 29,81,663/-. From the impugned order it appears that on the prayer of the judgment-debtor/appellant, a direction was passed upon him to pay a sum of Rs.2 lakhs to the decree-holder/respondent without prejudice to their rights and contentions. Despite such direction, deposit could not be made and the Court, thereafter, found that such judgment-holder should not receive any sympathy nor any discretion is exercised in his favour.

An argument is advanced before us that because of the pandemic having struck globally, the appellant could not appear before the arbitrator and the ex parte award is not entertainable. He further submits that an opportunity must be given to him to contest the arbitration proceedings as he has a good defence against the claim of the decree-holder/respondent.

In course of the hearing, it transpires that the execution proceeding as well as an application under Section 9 of the said Act was filed by the decree-holder before this Court. We are further informed that an application

under Section 34 of the said Act has been filed in the City Civil Court at Calcutta. Though the learned advocate appearing for the decree-holder/respondent submits that no notice of the proceeding under Section 34 of the Act has been served upon his client, yet he contends that the said proceeding is not maintainable in view of Section 42 of the Said Act. Be that as it may, the spirit of the language employed in Section 9 is akin to the provisions relating to an injunction. The guiding factor for the injunction is to some extent applicable in Section 9 of the Act. There is no dispute that the decree-holder has been able to make out a prima facie case after passing of an award as the judgment-debtor/appellant is intending to squander the money and the assets with an intent to defraud the bona fide creditor, i.e., the decree-holder. It is a duty of Court to protect the right of a decree-holder who obtained the decree through a whole recognised judicial process of law and it is inconceivable that the judgment-debtor would be set free to deal with the property and make the decree nugatory and/or unenforceable. We must record that the Single Bench was sympathetic and considerate while directing the appellant to deposit a sum of Rs.2 lakhs although the award is passed for nearly Rs.29 lakhs and odd yet no attempt is made on the part of the appellant to deposit the same. We, thus, do not find any illegality or infirmity in the impugned order by which the appellants are restrained from dealing with and/or disposing of and/or alienating and/or transferring and/or encumbering his assets and properties and/or creating any third party rights and interest in respect thereof as mentioned in paragraph 21 of

the application filed under Section 9 of the said Act. We also do not find any infirmity in passing an order of injunction restraining the appellant from withdrawing any amount from his bank account in excess of the awarded sum.

The appeal, thus, fails and is, accordingly, dismissed.

There will be no order as to costs.

(HARISH TANDON, J.)

(RABINDRANATH SAMANTA, J.)