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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/11/2022
With
EC/328/2021
IA No:GA/1/2022

BESCO LTD.
VERSUS
M/S. ANUPAM ENTERPRISES

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice ANIRUDDHA ROY

Date: 25th January 2022

(Via Video Conference)

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Arik Banerjee, Adv.

Mr. Rajib Mullick, Adv.

Mr. Rakesh Sarkar, Adv.

Mr. Rohit Banerjee, Adv.

Mr. Vikash Singh, Adv.

Ms. Sneha Singh, Adv.

The Court:- We admit this appeal against the judgment and order dated 18th January, 2022 passed by a learned single judge of this Court in an execution application, arising out of an arbitral award.

It is preferred by the judgment-debtor. The principal argument made by Mr. Swatarup Banerjee, learned advocate for the appellant, is that a copy of the award was not served upon his client.

It appears from the observations of the learned single judge in the impugned judgment and order that the issue was before the court and that his lordship had considered the submissions on behalf of the parties, relating to it.

After such consideration, a Receiver was appointed with a direction on him to take symbolic possession of the asset of the appellant award-debtor in paragraph 11, serial no.A of the affidavit in support of the tabular statement.

Mr. Banerjee places two documents before us.

First is the letter dated 14th March, 2017 of the arbitral tribunal to the parties enclosing a copy of the award. The said letter was stated to have been sent by speed post. Learned counsel argues that the postal documents have not been provided by the arbitral tribunal to enable his client to know whether at all the award was sent by speed post and if so, when it was so sent.

The second document is an email dated 19th January, 2022 sent by the respondent's advocate to the arbitral tribunal. It is taken on record. By this email learned advocate made an enquiry before the arbitral tribunal as to how the award was served upon Mr. Banerjee's client, after admitting therein that the award had been received by the respondent award-holder.

We notice from the impugned judgment and order that the execution application is made returnable on 14th February, 2022.

It is usual in such proceedings for a defence to be taken that the award was not served upon the award-debtor.

We find that in the execution application, there is an averment that the arbitral award was communicated to both the parties on 14th March, 2017.

At the initial stage, this assertion has to be taken as correct by the court, subject to it being disproved upon exchange of affidavits.

The second stage has not arrived. The application is only returnable on 14th February, 2022.

Considering the evidence before the learned single judge, his lordship taking a prima facie view and passing an order appointing a Receiver only to take symbolic possession of the subject property cannot be faulted, in our opinion.

This is subject to the respondent adducing sufficient evidence to convince the court that the award had actually been served on the appellant judgment-debtor. This issue should be decided by the learned

judge first upon exchange of affidavits, in the execution application. Till then, the impugned judgment and order may continue. But no further order in execution be passed unless this issue is decided.

With the above observations and directions, the appeal and the stay application are disposed of, dispensing with all formalities.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

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