ORDER SHEET

OD-2

APOT/46/2022
WITH
EC/176/2021
IA NO:GA/1/2022

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

IN THE MATTER OF:
FAIR DEAL SUPPLIES LIMITED
VS.
R. PIYARELALL IRON AND STEEL PVT. LTD. AND 5 OTHERS
[PROFORMA RESPONDENTS]
....

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : 14th March, 2022

Mr. Joy Saha, Mr. Dhrubo Ghosh, Sr. Advs.,
Mr. Debdut Mukherjee, Ms. Nilanjana Adhya, Mr. Koushik Banerjee,
Ms. Sudipta Paul, Advs...for appellant.

Mr. Ratnanko Banerjee, Mr. Anirban Roy, Sr. Advs.,
Mr. D. N. Sharma, Mr. Ratnesh Rai, Mr. Ankan Rai,
Mr.S. N. Pandey, Ms. Kirti Dadheech, Advs...for respondent.

The Court : This is a judgment debtor's appeal. It arises from arbitral proceedings.

In an application under section 9 of the Arbitration and Conciliation Act, 1996, in 2013 the appellant/judgment debtor was directed to secure the claim of the respondent/award holder. Accordingly, Rs.4,84,55,424/- was secured by them by making a term deposit of that amount with Punjab & Sind Bank, IBD Kolkata branch.

Thereafter, the arbitral proceedings continued and resulted in an award made and published by the arbitral tribunal on 15th December, 2019 in favour of the respondent. The principal amount awarded was Rs.36,54,82,007/-.

In an application under section 36 of the said Act, on 7th December, 2021 this court directed the appellant to deposit the remaining amount of Rs.31,70,26,583/- obtained after deducting the term deposit amount of Rs.4,84,55,424/- from the principal amount of Rs.36,54,82,007/-, together with interest by way of a bank guarantee within four weeks from the date of the order with the learned Registrar, Original Side as a condition precedent to obtaining stay of execution of the award. With those directions the application was disposed of.

On 28th February, 2022, the execution application [EC/176/2021] came up for consideration before the court. The court noted the failure on the part of the appellant to deposit any part of the said amount. It directed the Branch Manager of Punjab & Sind Bank, IBD, Kolkata to encash the said term deposit with it and make over the proceeds to the respondent/award holder.

We are told now that the principal amount of the term deposit has been paid by the bank to the respondent. The interest accrued remains in the account.

The judgment debtor appeals from this order. Mr. Joy Saha, learned senior advocate appearing for the appellant submits that since the amount representing the term deposit was the security furnished by the appellant in 2013 and is continuing as security it should continue to remain as such till the disposal of the application for his client to set aside the award.

In that connection he showed us another order of the court made on 28th February, 2022 fixing the section 34 application [AP/156/2020] for hearing on 16th March, 2022.

In law, the appellant/judgment debtor has got no case whatsoever to resist the impugned order. Section 36 very plainly provides that preferment of a section 34 application does not automatically result in stay of the award or its execution. It has to be obtained separately from the court. Stay of the award or its execution can only be obtained upon securing the awarded sum on the principles laid down for securing the disputed amount in appeal vide Order 41 Rule 5(2) of the Code of Civil Procedure. The appellant/judgment debtor was directed to secure the awarded amount but has failed to do so. That part of the awarded amount is lying as security in the form of a term deposit with Punjab & Sind Bank cannot absolve the judgment debtor of their obligation to secure the whole amount.

This court takes into account the fact that the section 34 application is posted for hearing tomorrow.

Fully conscious of the legal rights of the respondent/award holder but at the same time moulding the reliefs that they are entitled to, equitably, we order that the Punjab & Sind Bank, IBD, Kolkata branch will make a term deposit in the name of the respondent for the interest part of that term deposit lying to the credit of the appellant with the bank. The respondent shall comply with all formalities. This term deposit shall not be for a period exceeding one year at the applicable rate of interest. This term deposit shall not be encashed by the respondent for a period of two months from date. After that period, the respondent shall be free to encash the term deposit, subject to any order that may be passed in this behalf by any court of law.

We make it clear that we do not interfere with any other part of the impugned judgment and order or the execution proceedings save and except to the extent mentioned above.

The appeal and the connected application are disposed of accordingly.

(I. P. MUKERJI, J)

(ANIRUDDHA ROY , J)

pkd.