

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

APOT/124/2021
WITH
EC/873/2015
IA NO: GA/1/2021
IN THE MATTER OF :
HULASH CHAND JAIN AND ORS.
VS
SURESH KUMAR JAIN AND ORS.

AND

APOT/141/2021
WITH
EC/873/2015
IA NO: GA/1/2021, GA/2/2021
IN THE MATTER OF :
HULASH CHAND JAIN AND ORS.
VS
SURESH KUMAR JAIN AND ORS.

Before:
The Hon'ble Justice SUBRATA TALUKDAR
And
The Hon'ble Justice KRISHNA RAO
Date: 11th February, 2022
(Via Video Conference)

Appearance:
Mr.S.N.Mitra, Sr. Adv. with
Mr. Reetobroto Mitra, Adv.
Mr. D.N.Sharma, Adv.
Ms. Sananda Mukhopadhyay, Adv.
..... appellants
Mr. Anirban Ray, Adv. with
Mr. Nirmallya Dasgupta, Adv.
... respondents

The Court: Two appeals, analogous in nature, are before this
Court.

The appeal no. APOT/141/2021 is directed against the order of the Hon'ble Single Bench dated 27th April, 2021.

The appeal numbered as APOT/124/2021 is directed against the second order of the Hon'ble Single Judge dated 26th July, 2021.

By the first order dated 27th April, 2021, the Hon'ble Single Bench allowed the application of the respondents to this appeal for deletion of a property located at Jodhpur, Rajasthan from Execution Proceedings in Kolkata, although such property was part of a comprehensive Arbitration Award dated 3rd January, 2013 to which the parties had agreed and participated. The application filed by the present appellants for recall of the order dated 27th April, 2021 was rejected by the Hon'ble Single Bench by its second order dated 26th July, 2021. The Hon'ble Single Bench came to the finding that the appellants were represented before the Court on 27th April, 2021 and, no ground could be made out by the appellants as to why the execution proceedings in Kolkata and Jodhpur cannot proceed simultaneously.

Relying on the authority of ***Budhia Swain & Ors. Vs. Gopinath Deb & Ors. reported in (1999) 4 SCC 396***, the Hon'ble Single Bench was of the view that none of the three conditions requiring a Court to recall its own order were present in the prayer of the present appellants to recall the order dated 27th April, 2021.

Mr. Surojit Nath Mitra, learned Senior Counsel appearing for the appellants, reiterates the position that the Arbitration Award is a composite one. It is a single Award covering properties both at Kolkata

and Jodhpur. The point is particularly underscored by Mr. Mitra that the Award entails fulfillment of reciprocal obligations by the parties. It is pointed out that for execution of the Award, the respondents to this appeal had filed Execution Case being EC/873/2015 whereas the present appellants have filed Execution Case being EC/144/2016.

It is submitted that in EC/144/2016, the appellants had sought execution of the award *qua* both the properties at Kolkata and Jodhpur. In such circumstances, there could arise no question of splitting up the Execution Proceedings between Kolkata and Jodhpur arising out of a Single Award stipulating reciprocal obligations.

Per contra, Mr. Ray learned counsel appearing for the respondents, submits that the Hon'ble Single Bench correctly permitted the respondents, being one of the parties to the Award, not to press their execution application in so far as the Jodhpur properties are concerned within the territorial jurisdiction of the Kolkata Court.

For all factual and legal purposes and having regard to the law pronounced in **(2018) 3 SCC 622**, the respondents, who are seeking execution of the Award, are entitled to pursue their remedy *qua* the immovable property at Jodhpur in a Court at Jodhpur which controls jurisdiction over such property.

Having heard the parties and considering the materials placed at this stage, this Court is persuaded to agree with the stand taken by the appellants that the Award is composite and contains reciprocal obligations.

This Court, *prima facie*, is satisfied that in view of the reciprocal obligations involved in the Award and the fact that the parties were pursuing their execution applications in the Kolkata Court, allowing the respondents to unilaterally resile from the execution proceedings at Kolkata and thereby sending both the parties to pursue a parallel remedy at Jodhpur is a step which may not be legally permissible in the context of the present facts.

In the back drop of the above discussion, there shall be an interim order in terms of prayers (b) and (c) of GA/1/2021 in connection with APOT/124/2021 until further orders.

The parties shall file their respective affidavits to GA/1/2021 in connection with APOT/124/2021.

In view of the fact that the prayer in GA/1/2021 is for recall of the order of the Hon'ble Single Bench refusing recall of its first order dated 27th April, 2021, to the mind of this Court affidavits to GA/1/2021 in APOT/141/2021 may not be necessary.

Let the matter appear next under the heading 'Application (Assigned)' after four weeks from this date.

Later: -

Mr. Dasgupta led by Mr. Ray, learned counsel for the respondents, submits that his clients are ready to pursue their remedy in the Execution Proceedings before the Kolkata Court.

In such view of the matter, the order in terms of prayers (b) and (c) (*supra*) are made absolute.

In the light of such submissions the respondents being now interested to pursue their remedy in EC/873/2015 before the Kolkata Court, the orders impugned dated 27th April, 2021 and 26th July, 2021 stand set aside.

APOT/124/2021 along with **IA No: GA/1/2021** and **APOT/141/2021** along with **IA No: GA/1/2021, GA/2/2021** stand thus **allowed**.

Since affidavits are not invited, other allegations are deemed not to be admitted.

All parties are to act on a server copy of this order.

All parties to act on a signed copy.

(KRISHNA RAO,J.)

(SUBRATA TALUKDAR,J.)

sb/