

IA No. GA 1 of 2022
APOT No. 64 of 2022
with
EC No. 126 of 2021
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
(Commercial Division)

Electrosteel Castings Ltd.
Versus
Union of India & Anr.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice ANIRUDDHA ROY
Date: 13th April 2022

Appearance:
Mr. S. N. Mookherjee, Sr. Advocate &
Ld. Advocate General
Mr. Samrat Sen, Sr. Advocate
Mr. Rajesh Gupta, Advocate
Mr. Paritosh Sinha, Advocate
Ms. Manali Bose, Advocate
Mr. Amitava Mitra, Advocate
Ms. Antara Choudhury, Advocate
for the appellant

Mr. Siddhartha Lahiri, Advocate
Mr. Deepak Kr. Singh, Advocate
for the respondents

The Court: This is an appeal from an order dated 11th March 2022 made by a learned single judge in an application filed in an execution case. It is stated in the impugned order that the interim order as prayed for was refused. It is submitted before us that the interim order that was prayed for was that the awarded sum should be transferred from the account of the Railways with the Reserve Bank of India to the account of the learned Registrar, High Court, Original Side.

At the outset, very vexed questions with regard to maintainability of the appeal were presented before the court.

Mr. Siddhartha Lahiri, learned counsel for the respondents submitted that this is a commercial appeal and that in effect the

appellant was asking for modification of an order passed by this court under section 36 of the Arbitration & Conciliation Act, 1996 which was not appealable. He also submitted that by an order dated 13th December 2021 of the learned single judge there was stay of execution of the award after furnishing of security by the respondents. Hence no further steps in execution could be taken.

Mr. Samrat Sen, learned senior advocate appearing for the appellant made the following submissions.

This appeal arose out of an order in execution proceedings. Once execution was started the provisions of the Civil Procedure Code became predominant and that an appeal lay from the impugned order under clause 15 of the Letters Patent. Thereafter he apprised the court of some essential facts of this case which are narrated below.

On 11th November 2021 in an order in an execution application taken out by the appellant, this court recorded the submission of Mr. Sen to the effect that although the application under sections 34 and 36 of the said Act had been filed by the respondents, no steps had been taken for their prosecution.

After considering this submission the learned single judge passed an order on that day, modified on 24th December 2021 directing Rs.252,85,26,940.49 in the account of the South Eastern Railway with the Reserve Bank of India to be attached.

In the section 36 application taken out by the appellant, on 13th December 2021 this court recorded that the order dated 11th November 2021 secured the claim of the appellant and observed "In view of the aforesaid, no purpose would be served in keeping this application pending. Accordingly GA/1/2021 stands disposed of".

According to Mr. Lahiri, the interpretation that has to be made of this order is that upon the above security having been furnished by the respondents, there was stay of the award or execution thereof.

Mr. Sen argues that neither expressly nor impliedly the award has been stayed. Therefore his client is justified in proceeding with the execution.

If the purport of this order is that execution has been stayed then certainly, in our view, no appeal lies from the impugned order. In that case the impugned order has to be seen as one refusing to modify the terms on which the impugned award has been stayed, under section 36 of the said Act. No appeal lies from such an order under section 13 of the Commercial Courts Act, 2015 read with section 37 of the Arbitration & Conciliation Act, 1996. Moreover, no further steps in execution could have been taken.

However, if the purport of the said order is that the award has not been stayed and execution may proceed there is enough scope of argument that from such an order passed in execution an appeal lies before us under Clause 15 of the Letters Patent.

In this apparently confusing state of affairs we are not minded to go into the question of interpretation of trial court orders. Going by a literary interpretation of the said orders, we find that there is no express stay of the award. Hence prima facie taking the impugned order to have been passed in execution, we hold that the appeal is maintainable under clause 15 of the Letters Patent.

We remand the entire matter back to the learned single judge after setting aside the order dated 11th March 2022 to consider the case of the appellant/petitioner afresh, on interpretation of its earlier orders.

Liberty is also granted to the respondent to seek clarification of the order dated 13th December 2021 in the application under section 36 of the Arbitration & Conciliation Act, 1996 (GA/1/2021).

We request the learned single judge to deal with the application as early as possible as “Motion”.

With the above observations the appeal and the stay application are disposed of.

Since affidavits are not invited, allegations contained in the stay application are deemed not to have been admitted.

(I. P. MUKERJI, J)

(ANIRUDDHA ROY, J.)

R. Bose