

APOT/175/2022
With
EC/176/2021
IA NO: GA/1/2022
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

FAIRDEAL SUPPLIES LIMITED
-VS-
R. PIYARELALL IRON AND STEEL PRIVATE LIMITED AND ORS.

BEFORE:
The Hon'ble JUSTICE HARISH TANDON

The Hon'ble JUSTICE PRASENJIT BISWAS
(COMMERCIAL DIVISION)
Date : 17th November, 2022.

Appearance:
Mr. Jayanta Kr. Mitra, Sr. Adv.
Mr. Joy Saha, Sr. Adv.
Mr. Subhasish Sengupta, Adv.
Ms. Nilanjana Addhya, Adv.
Mr. Debdut Mukherjee, Adv.
Mr. Kaushik Banerjee, Adv.
Ms. Sudipta Paul, Adv.
...for the appellant

Mr. Ratnanko Banerji, Sr. Adv.
Mr. Anirban Ray, Adv.
Mr. Ratnesh Kr. Rai, Adv.
Mr. S. N. Pandey, Adv.
Mr. Ankan Rai, Adv.
Mr. Ashutosh Singh, Adv.
...for the respondents

The Court: The award-debtor challenged an award under Section 34 of the Arbitration and Conciliation Act, 1996, which is pending before the trial Court. By virtue of an amendment having been granted under Section 37 of

the said Act, we find that filing of an application under Section 34 of the Act shall not *ipso facto* render the award inexecutable. The newly inserted provision postulates that an application is to be taken out seeking a stay of operation of the impugned award and the said application shall be disposed of with due regard to the provisions for grant of stay of the money decree under the provisions of the Code of Civil Procedure. Obviously, the very language used therein employs certain provisions of the Code of Civil Procedure to have been incorporated in the proceedings under the aforesaid Act and the conditions enshrined for granting a stay of operation of the money decree under the said Code has its applicability while deciding an application so filed.

Our attention is drawn to the earlier order passed by the trial Court and the Appellate Court on an application for stay of operation of the impugned award wherefrom it appears that the direction was passed upon the award-debtor to deposit a certain amount as specified therein. The order of the Division Bench dated 24th June, 2022 passed in APOT 46 of 2022 quoted by the executing Court would reveal that the direction to set apart the specified amount by the bank shall not be construed as staying execution of the award. Undeniably, the application under Section 34 of the said Act is still pending and in view of the mandate of the Division Bench, the execution proceeding was levied and in fact, proceeded further and the impugned order came to be passed directing the bank to realise the said sum of Rs.1.48

crores along with an interest which were lying in a term deposit in favour of the award-holders within the stipulated time. The award-holder admitted to have received the said amount. The award-debtor is very much vocal on the issue that in the event the application under Section 34 of the said Act is allowed, it would be cumbersome to realise the said amount already passed on to the award-holder and, therefore, the Court ought to have protected the interest of the award-debtor as well. Though the aforesaid submissions appear to be innocuous as the Court may create a balance between the right of the parties and the eventualities or consequences to follow thereupon, yet, the Court cannot ignore the fact that till this time the award is staring at the face of the award-debtor and no conscious decision has been taken either on an application seeking stay of operation of the award or in a proceeding under Section 34 of the said Act. The award is susceptible to be executed as a decree passed by the civil Court under the provisions of the Code of Civil Procedure and, therefore, when an order is passed in an execution proceeding levied for realisation of the amount for being part of the decree (award), we do not find that such order needs any interference by the Appellate Court.

In the event the award-debtor succeeds in an application under Section 34 of the Act, the executing Court shall pass a consequential order which cannot be perceived at the nascent stage of the execution proceeding nor

should be presumed merely on the *ipse dixit* of the submissions made at the Bar.

Our attention is drawn to sub-Section 6 of Section 34 of the Act which provides for disposal of an application under Section 34 of the Act within a specified time. Obviously, the legislative intent is manifest that such proceeding should not be allowed to hover around the docket of the Court and an endeavour shall be made to dispose it of at an earliest. The trial Court is in seisin of the matter and aware of the aforesaid provisions and, therefore, we need not have to make any observations thereupon since we do not find any merit in the instant appeal.

Accordingly, APOT/175/2022 with EC/176/2021 and the connected application being GA/1/2022 are dismissed.

[HARISH TANDON, J.]

[PRASENJIT BISWAS, J.]