

ODC-9

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
(COMMERCIAL DIVISION)

APOT/205/2022
with
AP/732/2022
IA No.GA/2/2022

DAMODAR VALLEY CORPORATION
-VERSUS-
M/S. MAA MAIHAR STEEL & ANR.

BEFORE:
The Hon'ble JUSTICE HARISH TANDON
AND
The Hon'ble JUSTICE PRASENJIT BISWAS
Date : 1st December, 2022.

Appearance:
Mr. Anirban Ray, Adv.
Mr. Swarajit Dey, Adv.
Mr. Subhadeep Basak, Adv.
...for the appellant.

Mr. Sutanu Chakrabarti, Adv.
...for the respondent no.2.

The Court : The delinquent litigant is exhausting several avenues to achieve the same goal which cannot but be termed as an abuse of the process. The respondent no.1 was declared as a highest bidder in the e-auction held on 26th April, 2022 by the respondent no.2 herein for and on behalf of the present appeal relating to lifting of the scraps. The said respondent no.1 made a deposit of a pre-bid EMD and took several extensions to pay the instalments. Ultimately, the said sale order was cancelled as the respondent no.1 did not deposit the money within the stipulated time and/or extended from time to time and the deposits were forfeited. The respondent no.1 challenged the termination order by filing a writ

petition before the Jharkhand High Court being WP (c) No.3887 of 2022 and also the decision of the appellant to proceed for a fresh auction.

By an order dated 29.09.2022, the Division Bench of the Jharkhand High Court found that the cancellation and/or termination of the sale order is within the purview of the terms of the agreement and cannot be tainted for the violation of the principles of natural justice. The said High Court noticed the terms incorporated in *Clause L* and also the forum provided therein and dismissed the said application. The order of Jharkhand High Court was challenged before the Supreme Court in SLP(C) No.18249 of 2022. The said Special Leave Petition was dismissed. However, it was observed that since the said respondent has approached the authority mentioned in the said agreement, it is open to the said respondent to pursue his remedies provided thereunder and the authority was directed to take expeditious steps in this regard. What can be gathered from the aforesaid observation that the Chairman was empowered to take decision on the dispute arisen under the said agreement and, therefore, the Apex Court directed the said authority to dispose of the proceeding as expeditiously as possible as the respondent no.1 has already exhausted such remedy provided under the said agreement.

The moment the appellant proceeded to invite fresh bids, the instant proceeding under Section 9 of the Arbitration & Conciliation Act was filed without impleading the appellant being party to the agreement and seeking to achieve the said goal which they sought before the Jharkhand High Court and emerged unsuccessful. Since the appellant was not made a party, though ought to be made

a party in a proceeding under Section 9 of the said Act, the intervention was made through a Counsel and the direction was sought upon the respondent no.1 to serve the copy of the said application.

By the impugned order, the Single Bench noticed the necessity of impleadment of the appellant in the said proceeding and exercised the *suo motu* power and directed the impleadment of the appellant and the copy to be served upon them but further proceeded to pass an interim order staying the e-auction to be held on the said date. Although the Single Bench noticed the factum of approaching the Jharkhand High Court by the respondent no.1 and the Supreme Court but does not appear to have taken into account that the Jharkhand High Court dismissed the said application on merits and did not find that the termination order or steps to invite a fresh bid to be invalid, illegal and in violation of the agreement.

The moment a Court competent enough to take a decision have arrived at a conclusion on the facts of the case, it is improbable and inconceivable that a litigant should be permitted to forum shopping and abuse the process of law. The conduct of the petitioner can also be seen from the fact that the appellant was made a party in a proceeding under Section 9 of the Arbitration & Conciliation Act and/or the writ petition filed before the Jharkhand High Court but was intentionally and purposely omitted from the cause-title in order to secure the order which was once denied. The moment the earlier proceedings before the Jharkhand High Court could not yield a fruitful result in staying the termination order and inviting the fresh bid, we do not find any justification nor we find

sufficient reasons having assigned in the impugned order for passing an interim order staying the e-auction scheduled to be held on the said date. The Court should be circumspect in staying the auction scheduled to be held on a date by an authority unless a strong, prima facie case is made out and the injury that would be caused may become irreversible.

Precisely, on such ground the operation of the impugned order was stayed at the time of an admission of the instant appeal on 21st October, 2022 and the appellant was granted liberty to proceed with the e-auction and to take further steps in terms thereof. The said order was assailed before the Supreme Court and it appears from the order of dismissal of the Special Leave Petition that another opportunity was given to the respondent no.1 to put in the amount within a specified time which was not complied with and, therefore, the conduct of the respondent no.1 is reprehensible.

We, thus, do not find any justification in passing an interim order in the light of the observations made hereinabove. The impugned order is, thus, set aside.

The appeal is hereby allowed.

However, there shall be no order as to costs.

[HARISH TANDON, J.]

[PRASENJIT BISWAS, J.]