

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1634 of 2019

1. The Union of India Through General Manager, East Central Railway, Hajipur, Vaishali.
2. Dy. Chief Engineer (Cons) East Central Railway, Samastipur.

... .. Petitioners

Versus

M/s Land and Port Construction Private Limited A Company registered under the Companies Act 1956 having its registered office at Mohalla Bramhpura Mehadi hasan Road, P.O. MIT and P.S. Bramhpura, District Muzaffarpur, through its Managing Director Naiyar Azam, Son of Safi Ahmad, son of Safi Ahmad, resident of Mehadi Hasan Road, Mohalla Bramhpura, P.O. MIT and P.S. Bramhpura, District Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Priya Ranjan, Advocate
For the Respondent/s	:	Mr. Nand Kishore Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 18-01-2023

Heard the parties.

The contention of the learned counsel for the petitioner is that the Railway has filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as the Act) before the Sub-ordinate Judge, Samastipur and, therefore, there is an automatic stay due to the filing of the application. The second contention of the petitioner is that the execution case is not maintainable at Muzaffarpur which has been filed by the award holder i.e. the respondent.

Learned counsel for the respondent has appeared and he submits that the execution can be filed at any place



where the Railway has property. On this proposition he relied upon the judgments of Supreme Court dated 15.02.2018 and 27.11.2019 passed in the case of **Sundaram Finance Ltd. vs. Abdul Samad and Hindustan Construction Company vs. Union of India** respectively.

He further submits that an application under Section 34 of the Act, can be filed only before the District Judge and not before the Sub-ordinate Judge. For, this he relies upon an order of this Court passed in M.A. No. 272 of 2015.

The Railway has been wrongly advised to file an application before the Sub-ordinate Judge under Section 34 of the Act. It should have been filed before the District Judge concerned and, therefore, filing of the application under Section 34 of the Act, before a Court which has no jurisdiction will not allow them to have stay of the order.

This Court also agrees with the submission of the learned counsel for the respondent that the execution can be filed at any place where the Railways has property and in these circumstances, the execution proceeding is maintainable at Muzaffarpur.

In view of the above, this application is dismissed.

The interim order of stay dated 28.11.2019 is



vacated. The A.D.J.-VII, Muzaffarpur in whose Court the execution proceeding is pending is directed to proceed with the execution on day-to-day basis and execute the award within a month from the date of communication of the order and will not entertain any flimsy application of the Railways.

The ADJ-VII is also directed to send a report to this Court after a month in connection with compliance of the order of this Court.

(Sandeep Kumar, J)

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