

24.03.2023

FMA 783 of 2008

Court : 04
Item : 01
Matter : FMA
Status : DO
Bench ID : 266048
Transcriber: NANDY

Airports Authority of India
Vs.
Noel Media & Advertising Pvt. Limited.

Mr. Deepan Sarkar, Advocate
Mr. Vishal Sinha, Advocate
Mr. Pratik Sharma, Advocate

.....for the Appellant

Pursuant to the order dated 22.02.2023, the notice is published in two newspapers, one in vernacular and other in English and an affidavit of service has been filed. Let the same be kept with the record.

Despite service having effected upon the respondents herein, there is no representation on their behalf.

Challenging the order dated 25.03.2008 passed in Miscellaneous Case No. 336 of 2007 arising out of an application under Section 9 of the Arbitration and Conciliation Act, 1996, the instant appeal was filed. By the impugned order the Court below restrained the appellant/petitioner herein from giving effect to the letters dated 31.10.2007 and 20.11.2007 till the dispute is decided in the arbitral proceeding but if the respondent failed to take any recourse to Section 11 of the said Act for appointment of an Arbitrator by 26.04.2008, the aforesaid order of injunction would automatically be vacated.

While considering an application for stay, this Court on 09.05.2008 directed the appellant to deposit a sum of Rs.26 lakhs in any nationalized Bank in a suitable interest bearing Fixed Deposit Scheme which shall be renewed from time to time till the disposal of the appeal. We have given to understand by the appellant that the Arbitrator was appointed and the arbitral proceeding has culminated into an award in favour of the appellant. The copy of the award has been handed over to us wherefrom it appears that the

appellant was entitled to a sum of Rs.70,00,000/- and the respondent herein is entitled to Rs.44,52,000/-. The Arbitrator after setting off the said amount, made and published an award in favour of the appellant a sum of Rs.25,48,000/- to be paid by the claimant within 45 days from the date of receipt of the award. In default of such payment within the time indicated therein, the amount awarded in favour of the appellant shall carry an interest at the rate of 12% per annum till the date of actual payment.

It is submitted that the challenge to the order passed under Section 9 of the said Act, which is the subject matter of this appeal, has virtually become infructuous as it was operative till the arbitral proceeding is finally decided. It is thus submitted by the learned Advocate for the appellant that the instant appeal has virtually become infructuous upon passing the award and, therefore, his client does not intend to proceed with the same. However, it is indicated that since the award is made in favour of the appellant and the same is put into execution, the amount deposited in terms of the interim order dated 09.05.2008 passed in the instant appeal is required to be returned.

It is no doubt true that the interim order passed in an application under Section 9 of the said Act was made alive till the arbitral proceeding reached to its logical end. The moment the arbitral Tribunal passed an award in favour of the appellant herein, the amount which was directed to be kept in a Fixed Deposit appears to be a surplus as the respondent is not entitled to the aforesaid amount. The respondent challenged the said award in a proceeding under Section 34 of the said Act which according to the appellant resulted into dismissal and no further steps have been taken thereupon.

In view of the aforesaid facts, the instant appeal has

become virtually infructuous as the impugned order elapsed on passing the award and, therefore, we do not find any justification in not acceding to the prayer of the appellant in releasing the said Fixed Deposit.

Accordingly, the appeal being **FMA 783 of 2008** is **dismissed as infructuous**.

The appellant is directed to encash the Fixed Deposit for a sum of Rs.26,00,000/- (Rs .Twenty-Six Lakhs only) together with the accrued interest thereupon and shall be free to utilize the said amount without any reference to the proceeding.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)