

14 05.01.
2023
AGM
/RK
B
Ct
07

C.O. 3130 of 2022

**M/s. Buildrite Construction Company
Vs
Howrah Municipal Corporation**

Mr. Debdatta Basu,
Ms. Pampa Dey (Dhabal),

... For the petitioner.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder,

... for the opposite party.

The subject matter of challenge in this case is against an order dated 24th September, 2021 passed in Money Execution Case No.01 of 2009 (M. Ex 15 of 2014) by learned Civil Judge (Senior Division), 1st Court, Howrah, rejecting the petition filed by award holder (decree holder) under Order 21 Rule 11 (2) (j) (iv) CPC.

Admittedly, an award was granted by the arbitrator, which was challenged upon filing an application under Section 34 of the Arbitration Act. Ultimately it was dismissed. Dismissal of the order passed under Section 34 CPC could not be challenged further. The award thereafter was put into the execution. The award is as good as money decree.

The petitioner upon filing the referred application has sought for appointment of a receiver for the execution of the award mentioned therein.

Mr. Debdatta Basu, learned advocate appearing

for the petitioner disputes with the impugned order submitting that a gratuitous advice given by the Court below, requiring the petitioner/award-holder to approach Order 21 Rule 30 of the CPC, for appropriate relief, is not applicable in the instant case, because the provisions incorporated in Order 21 Rule 30 CPC is an alternative remedy available to all other remedies mentioned in Order 21 Rule 11 (2) CPC.

The attention of the Court is drawn to the provisions of Order 21 Rule 11 (2) (j), which may be set out hereinbelow:

“Order 21 Rule (2) (j). The mode in which the assistance of the Court is required, whether-

- (i) by the delivery of any property specifically decreed;*
- (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;*
- (iii) by the arrest and detention in prison of any person;*
- (iv) by the appointment of a receiver;*
- (v) otherwise as the nature of the relief granted may require.”***

One of the mode of the execution of the award in the instant case is relatable to the appointment of receiver as laid down in Order 11 (2) (j) (iv).

Adverting to the provisions mentioned hereinabove, Mr. Basu submits that in the relevant application, the purpose of the appointment of the receiver has been appropriately disclosed so as to

execute the award obtained before a competent authority.

A reference is drawn to Order 21 Rule 30 CPC, which would be profitable here to mention once again as follows :-

“Order 21 Rule 30.

30. Decree for payment of money.- *Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.”*

The conjoint reading of Order 21 Rule 11 (2) (j) and Order 21 Rule 30 CPC leave no doubt that putting an award-debtor to civil detention would be the last resort. Without any controversy the provisions available under Order 21 Rule 30 is an alternative remedy available to some other reliefs disclosed in the statute itself, as available under Order 21 Rule 11 (2) CPC. It is thus left to the discretion of the award-holder as to how the award could be executed for the desired purpose of the award-holder.

Mr. Sandipan Banerjee, learned advocate appearing for the opposite party submits that the award has been sought to be executed against a Public Body and that aspect has not been gone into before by any appropriate body of law.

When the award has been accepted without challenging the same before any superior forum, after the dismissal of an application under Section 34 of the Arbitration Act, the question thus raised by the opposite party is not acceptable one in the eye of law.

No further elaboration is felt necessary, because there is no ambiguity with regard to the provisions available under Order 21 Rule 11 (2) (j) read with Order 21 Rule 30 CPC.

The revisional application is thus disposed of upon setting aside the impugned order with a direction to the learned Court below to hear out the same afresh, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, preferably within a period of four weeks from the date of communication of this order to the learned Court below.

Petitioner is at his liberty to seek for modification of the prayer proposed in accordance with law, so that the award may be executed with utmost expedition.

Both the parties are directed to make communication of this order to the learned court below.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if

applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)