

June 14, 2023
Sl. No.03
Court No.19
s.biswas

CO 3292 of 2022

Downtown Temptations Private Limited
vs.
Jayanti Cinema Private Limited

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Halder

... for the petitioner

The revisional application is directed against an order dated September 20, 2022 passed by the learned Judge, Commercial Court at Rajarhat, North 24 Parganas in Misc.(Arbitration) Execution Case No.06/2021(CC). The learned court below rejected the application filed by the petitioner, challenging the maintainability of the execution case.

Learned advocate for the petitioner/award debtor submitted before the learned executing court that the execution case was non-est in the eye of law as the award was an ex parte award and the appeal therefrom under Section 34 of the Arbitration and Conciliation Act, 1996, was pending before the competent forum.

Further contention was that the property sought to be attached by the application under Order 21 Rule 54 of the Code of Civil Procedure was not in the name of the award debtor and the execution could not proceed by way of an attachment of the said property. It was also urged that the court must verify whether the property which the award holder

prayed for attachment stood in the name of the award debtor or not. The other contention of the award debtor was that, as all the directors of the company were not summoned in the arbitration proceeding, the execution could not proceed.

An award of Rs.62,86,033.50/- along with interest of 18% per annum to be calculated from March 28, 2022 had been passed by the learned arbitrator. The award holder was left with no other alternative but to proceed with the execution. The prayer for attachment of a property is also a remedy available to an award holder under the provisions of law. The learned executing court also observed that the award was binding against the company as a whole and it was not relevant whether all the directors had been summoned or not. Thus, the application was set aside as the court found that the award holders were within their right to proceed with the execution.

Although the award debtors have challenged the order under Section 34 of the Arbitration and Conciliation Act, admittedly no stay has been granted. Moreover, the law is very clear. Stay of the award or stay of the execution proceeding can be allowed only if the amount awarded, is deposited before the court.

Under such circumstances, this court does not find any illegality in the decision of the learned court below, deciding to proceed with the application for attachment under Order 21 Rule 54 of the Code of Civil Procedure. The learned court has also granted liberty to the award debtor to file a written objection to the application. The application has been fixed for hearing by the learned executing court. The stage of the appeal shall not be relevant for the purpose of proceeding with the execution, as there is, admittedly, no stay.

Under such circumstances, the only prayer of Mr. Bhattacharya, which can be accepted by the Court is that the award debtor shall be at liberty to request the learned appeal court to dispose of the application filed under Section 34 of the Arbitration and Conciliation Act expeditiously, preferably within a month from the next date fixed. There is no scope for interference with the order impugned.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of server copy of the order.

(Shampa Sarkar, J.)