

IA No. GA 1 of 2023
APOT No. 41 of 2023
with
EC No. 349 of 2022
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

Kolkata Municipal Corporation
Versus
M/s. Industrial Plants And Waste Treatment Corporation

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 16th February 2023

Appearance:
Mr. Asoke Kr. Banerjee, Sr. Advocate
Ms. Manisha Nath, Advocate
for the appellant

Mr. Pranit Bag, Bar-at-Law
Mr. Soumyadeep Biswas, Advocate
for the respondent

The Court: We formally admit the appeal.

After hearing Mr. Asoke Banerjee, learned senior advocate appearing for the appellant and Mr. Pranit Bag, learned advocate for the respondent we proposed to hear it out dispensing with all formalities.

The impugned order before us has been passed by this court in execution of an arbitral award.

It is common ground that after execution was levied by the award-holder an application to set aside the award under section 34 of the Arbitration & Conciliation Act, 1996 was filed by the appellant/award-debtor in the Court of the learned District Judge at Alipore. An

application under section 36 of the said Act for stay of the award has also subsequently been filed in that Court.

Mr. Bag submits without any contradiction that this section 34 application is much delayed. He submitted it was likely to be dismissed without fail. If that be so, the section 36 application would also be without any force. It was also submitted by Mr. Bag that the section 34 application ought to have been filed in this court as the section 9 application had been heard by this court.

In our opinion, all these issues have to be resolved not in our appellate jurisdiction but in some other jurisdiction.

The learned judge in the impugned order has rightly observed that the section 34 application was hopeless and proceeded to execute the award. It would be sufficient only to record that the execution application had been filed after the required period subsequent to the award and there was no stay thereof.

In our opinion, there is no infirmity in the said order. But, considering the fact that the appellant is a statutory corporation, cannot misappropriate any money belonging to the respondent and to give the remotest of remote chance to the appellant, we will only modify the impugned order by directing that immediately within seven days of communication of this order the appellant will set apart the awarded sum with interest in the subject bank account and intimate the same to the respondent. Similarly, the said sum would also be invested in a short-term fixed deposit in the name of the appellant and to the account of the respondent so that no interest is lost, again upon intimation to the respondent.

The Court of the learned District Judge, Alipore shall on an application to be made by any party by 22nd February 2023 prepone the

date of first consideration of the sections 34 and 36 applications to a date not beyond 2nd March 2023.

The above deposit would continue till 14th March 2023. If by the said date the appellant is unable to obtain any order of vacation or stay of the arbitral award, the impugned order of the learned single judge may be mentioned before his lordship by mentioning or by an application for immediate enforcement. Otherwise, order of the learned civil court would prevail.

The appeal (APOT 122 of 2019) and the application (IA GA 1 of 2023) are disposed of.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose