ORDER OCD–2

APO/41/2023

WITH

AP/221/2022

IA NO: GA/1/2023

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

NATIONAL JUTE MANUFACTURERS CORPORATION LIMITED
VERSUS
SAURABH MULKANIA

BEFORE:

THE HON'BLE JUSTICE HARISH TANDON
THE HON'BLE JUSTICE PRASENJIT BISWAS

[COMMERCIAL DIVISION]

Date : 11th April, 2023.

APPEARANCE:

Mr. Probal Mukherjee, Sr. Adv.
Mr. Aritra Basu, Adv.
Mr. Saptarshi Mukherjee, Adv.
Mr. Debabrata Das, Adv.
Mr. Tirthankar Nandi, Adv.
...... for the appellant

Mr. Anuj Singh, Adv.
Mr. Vishal Sinha, Adv.
...for the respondent

The Court: The instant appeal has been initiated against the orders dated 31st January, 2023 and 15th March, 2023 passed in AP No.221 of 2022 whereby and whereunder an application under Section 36(2) of the Arbitration and Conciliation Act, 1996 was disposed of directing the appellant to deposit 75 per cent of the awarded sum with the Registrar, Original Side of this Court and the balance 25 per cent by way of a bank guarantee before the said authority and modifying the aforesaid order by substituting the word “willing” with the word “directed”. Obviously, the subsequent order dated 15th March, 2023 is passed for correction of a typographical error, yet we find that the time to furnish the bank guarantee as well as deposit of the sum was extended which was intended to be peremptory.

It is inconceivable that the award-debtor would seek a blanket order of stay against the execution of the award simplicitor that he has approached the Court by filing an application under Section 34 of the said Act. There has been a radical change by virtue of an amendment having been brought into the said Act which postulates that mere filing of an application under Section 34 of the said Act does not automatically prevent the award-holder to apply for enforcement of the award. Since the award is regarded as a decree and executable as such, the Court while passing an order of stay shall try to keep a balance between the rights of the parties and put the award-debtor to terms as it deems fit and proper. The moment the Court exercises the discretion and passes a conditional order of stay, it would not be open for the Appellate Court to interfere with such order unless it is manifest that such discretion was exercised arbitrarily and capriciously. The principles akin to Order XLI Rule 5 of the Code of Civil Procedure is to be adhered to at the time of passing an order of stay pending an application under Section 34 of the said Act. The moment the Court has directed deposit of an awarded sum to the extent of 75 per cent with the Registrar, Original Side and the balance by way of bank guarantee, we do not find any infirmity and/or illegality nor the discretion of exercise appears to be unreasonable and/or irrational. We, thus, do not intend to interfere with the impugned order. Further, we find that time to comply with the conditions imposed in the order dated 31st January, 2023 has expired during the pendency of the instant appeal. Though the Single Bench has indicated in the order dated 15th March, 2023 that the time so extended is peremptory in nature, yet we feel that last opportunity must be given to the appellant to comply with the conditions imposed in the order dated 31st January, 2023. The time to put in the cash deposit as well as furnishing the bank guarantee with the Registrar, Original Side is extended by two weeks from date. Such time period is mandatory and peremptory and no further leniency can be shown to the appellant.

With the aforesaid observations, both the appeal and the application are disposed of.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J.)

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