

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
(Commercial Division)

Present :-

The Hon'ble Justice Moushumi Bhattacharya

IA NO. GA 1 of 2023

In

APO 49 of 2023

Dr. Prafulla Rajaram Hede

Vs

SREI Equipment Finance Limited

For the petitioner : Mr. Asif Hossain, Adv.

Mr. A.K. Rai, Adv.

For the respondent : Mr. Swatarup Banerjee, Adv.

Mr. Abhishek Guha, Adv.

Sk. Sariful Haque, Adv.

Ms. Debarati Das, Adv.

Ms. Akansha Chopra, Adv.

Last Heard on : 27.07.2023

Delivered on : 28.07.2023

Moushumi Bhattacharya, J.

1. The Court: The appeal arises out of an order passed by the learned Arbitrator on 4th February, 2023 in an application filed under Section 17 of the 1996 Act by the respondent. The respondent is the claimant in the arbitration.

2. The appellant is aggrieved by the impugned order by which the learned Receiver was directed to appoint a Government approved/ empanelled Valuer or Surveyor for the purpose of valuation and fixation of a reserved price for the entire Iron Ore Plant including all its accessories. The Receiver was to sell the plant and accessories and keep the sale proceeds in a separate interest bearing account subject to final adjudication in the arbitration.

3. It may be relevant to state that the respondent/ claimant had prayed for the Receiver to invite offers from public for the sale of assets being the plants and machinery in the Receiver's custody and for an order confirming the sale of the said assets in the Section 17 application filed before the learned Arbitrator.

4. Learned counsel appearing for the appellant submits that the order of sale would amount to final relief in the arbitration and further that the issues were framed in the arbitration subsequent to the impugned order. Counsel relies on issue no.6 which states whether the claimant (respondent before the Court) is entitled to sell the assets for recovering the dues.

5. Learned counsel appearing for the respondent (claimant) places the impugned order to submit that the appellant cannot be held to be prejudiced by the impugned order since the sale proceeds was to be kept in a separate account. Counsel also points to orders passed in a Section 9 application filed by the respondent whereby the Receiver was appointed to take actual physical possession of the plants and machinery of the Iron Ore Plant.

6. The brief facts which led to the impugned order dated 4th February, 2023 would appear from the order itself.

7. Seven loan agreements were entered into between the respondent and the appellant before this Court and the Iron Ore Plant along with all accessories and equipment was offered as a collateral for the loan. The restructured loan-cum-hypothecation agreement was thereafter entered into between the parties on 2nd November, 2017 and the appellant came under an obligation to pay Rs.23.40 crores in the manner provided in the restructured loan-cum-hypothecation agreement in the form of monthly instalments. The appellant defaulted on the terms of the agreement dated 2nd November, 2017 and the respondent terminated this agreement thereafter. The respondent claimed a total sum of Rs.32,59,43,060/- and the parties were thereafter referred to arbitration in September, 2020.

8. The respondent filed an application for interim relief under Section 9 of the 1996 Act and this Court passed an order on 18th August, 2021 granting injunction on the appellant from alienating his properties including the land and shares held by the appellant in the companies mentioned in the application and also appointed a Receiver to take physical possession of the assets in question. This order remains unchallenged.

9. A learned Single Judge passed a subsequent order on a second application filed by the respondent for interim relief on 18th July, 2022 recording that parties have consented for appointment of an Arbitrator and

giving liberty to them to make an appropriate application under Section 17 of the Act before the Arbitrator. The respondent filed the application under Section 17 pursuant to such leave. The impugned order arises from the order of the Arbitrator in the respondent's Section 17 application.

10. The order is a crisp and well reasoned order reflecting the views of the learned Arbitrator for granting interim relief to the respondent. The relevant part of the order records that the appellant disputed the total claim of the respondent but did not dispute that the appellant was in default of the payment terms of the restructured agreement dated 2nd November, 2017. The order further records that the appellant failed to indicate a scheme for payment of the respondent's dues and further that the entire plant which was continuing to be in the possession of the learned Receiver was lying idle and its commercial value was depleting on a daily basis.

11. The impugned order further belies the apprehension raised on behalf of the appellant. The appellant's contention is that the impugned order is in the nature of a final order. This, however, is contrary to the direction given by the learned Arbitrator on the Receiver to keep the sale proceeds in a separate interest bearing account and more important, subject to final adjudication in the arbitration. The aforesaid would show that the appellant will not suffer any irreversible prejudice since the sale proceeds were not directed to be made over to the respondent. The ultimate fate of the sale proceeds was also made subject to the final decision in the arbitration.

12. It must also be remembered that the order passed by this Court on 18th August, 2021 records that substantial dues were outstanding from the appellant to the respondent which necessitated an order on the Receiver to take actual physical possession of the assets. These assets have, hence, been in an idle condition from August, 2022 onwards and remain so till today. Hence, the reason given by the learned Arbitrator for sale of assets to prevent further deterioration of their value is completely logical and acceptable.

13. This Court finds no infirmity in the reasons given by the learned Arbitrator for directing the sale of assets and no perversity in the order warranting interference by this Court.

14. GA/1/2023 along with APO/49/2023 is accordingly dismissed. There shall be no order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(MOUSHUMI BHATTACHARYA, J.)

sg.