

OCD-7

ORDER SHEET

AP/341/2023

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

MEENA AGARWAL
Versus
SURESH KRIPLANI

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 14th June, 2023.

Appearance:

Mr. S. N. Mitra, Sr. Adv.
Mr. Debabrata Saha Roy, Adv.
Mr. Neil Basu, Adv.
Ms. Kritika Khanna, Adv.
Mr. Upender Singh, Adv.

Mr. Kuldip Mullick, Adv.
Ms. Labanyasree Sinha, Adv.
Mr. Shiven Ray, Adv.
Mr. Joydip Mukherjee, Adv.

The Court: This is an application for stay of an Award dated 10th February, 2020. By the impugned Award of a learned sole Arbitrator, the petitioner's late husband, who was the respondent in the arbitration proceedings, was directed to make a payment of Rs.1.35 crores to the respondent before this Court. The petitioner is the wife of the award-debtor; the award-debtor passed away on 3rd April, 2020.

Learned counsel appearing for the petitioner claims that the petitioner was made aware of the impugned Award only in 2023 which would be evident from a letter written to the Arbitrator on 14th March, 2023. The date of the letter would appear from the Arbitrator's reply dated 1st April, 2023. Counsel submits that the petitioner has filed an application for setting aside of the impugned Award on the basis of the knowledge derived from the execution proceedings.

Learned counsel appearing for the respondent relies on documents to show that the petitioner's husband/award-debtor had knowledge of the impugned Award at the material point of time and further that statutory time period for taking any form of recourse against the impugned Award has started to run and cannot be stopped at least under Section 9 of the Limitation Act, 1963.

It is undisputed that the petitioner's late husband was a party to the arbitration agreement and not the petitioner. The petitioner has come before the Court as the legal heir/representative of the award-debtor. Section 31(5) of the Act requires service of a signed copy of the Award on a party. This would mean a party to the arbitration agreement.

Significantly, the documents placed before the Court do not show, prima facie, that the petitioner's late husband/award-debtor as a party was served with a copy of the impugned Award. Although, the petitioner's late husband is one of the addressees of the letter of the Arbitrator dated 10th February, 2020, there is no document to show that the Award was served on the award-debtor. The evidence or the required pleading for filling up this gap of information is

also absent in the affidavit filed by the award-holder to the execution petition. The petitioner's letter of 14th March, 2023 would also serve as corroboration to the fact of non-service of the impugned Award to the award-debtor. In any event, the material point of service would be from 10th February, 2020 to 3rd April, 2020 before the award-debtor passed away.

Section 36(3) of the 1996 Act gives discretion to the Court to stay the operation of the Award subject to the reasons being recorded for the decision taken by the Court. The above facts persuade this Court to stay the operation of the impugned Award. The condition for the stay shall be the petitioner providing security for the amount which the award-debtor was directed to pay that is Rs.1.35 crores by way of a bank guarantee to be furnished to the Registrar, Original Side within a period of three weeks from date. The bank guarantee should be of a reputed and reliable Bank which is a constituent of the Reserve Bank of India.

AP/341/2023 is disposed of in terms of the above.

(MOUSHUMI BHATTACHARYA, J.)