

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Krishna Rao

RVWO No. 10 of 2022

with

EC/873/2015

APOT No. 124 of 2021

APOT No. 141 of 2021

IA No. GA/1/2022

SURESH KUMAR JAIN AND ORS.

Vs.

HULASH CHAND JAIN AND ORS.

Appellants

: Mr. Sourav Roy

Mr. Nirmalya Dasgupta

Respondents

: Mr. S. K. Saha

Mr. S. K. Mukherjee

Mr. Surajit Nath Mitra

Heard on : 31.03.2023

Judgment on : 19.06.2023

Subrata Talukdar, J. :- By way of the present review application, being RVW 10 of 2022, the review applicants seek review of the Judgement and Order of this Bench dated 11th February 2022 in GA No. 1 of 2021 and GA No. 2 of 2021 with APOT 4 of 2021 and APOT 141 of 2021

By the said Judgement and Order this Bench was pleased to, inter alia, hold as follows:-

“Having heard the parties and considering the materials placed at this stage, this Court is persuaded to agree with the stand taken by the appellants that the Award is composite and contains reciprocal obligations.

This Court, prima facie, is satisfied that in view of the reciprocal obligations involved in the Award and the fact that the parties were pursuing their execution applications in the Kolkata Court, allowing the respondents to unilaterally resile from the execution proceedings at Kolkata and thereby sending both the parties to pursue a parallel remedy at Jodhpur is a step which may not be legally permissible in the context of the present facts.

In the back drop of the above discussion, there shall be an interim order in terms of prayers (b) and (c) of GA/1/2021 in connection with APOT/124/2021 until further orders. The parties shall file their respective affidavits to GA/1/2021 in connection with APOT/124/2021. In view of the fact that the prayer in GA/1/2021 is for recall of the order of

the Hon'ble Single Bench refusing recall of its first order dated 27th April, 2021, to the mind of this Court affidavits to GA/1/2021 in APOT/141/2021 may not be necessary. Let the matter appear next under the heading 'Application (Assigned)' after four weeks from this date.

Later: - Mr. Dasgupta led by Mr. Ray, learned counsel for the respondents, submits that his clients are ready to pursue their remedy in the Execution Proceedings before the Kolkata Court. In such view of the matter, the order in terms of prayers (b) and (c) (*supra*) are made absolute.

In the light of such submissions the respondents being now interested to pursue their remedy in EC/873/2015 before the Kolkata Court, the orders impugned dated 27th April, 2021 and 26th July, 2021 stand set aside.

APOT/124/2021 along with **IA No: GA/1/2021** and **APOT/141/2021** along with **IA No: GA/1/2021, GA/2/2021** stand thus allowed. Since affidavits are not invited, other allegations are deemed not to be admitted.
”

The review applicants submit that the Hon'ble Division Bench failed to appreciate the principle of law that a decree can be executed in more than one place. Relying on the authority reported in *AIR 1970 SC 1525*, the review applicants submit that simultaneous execution proceedings in more than one place is permitted.

It is submitted that Section 39 of the Code of Civil Procedure also permits simultaneous execution of a decree. It is argued that following the above noted principles, an Arbitral Award can be executed anywhere in the country. Therefore, the review applicants, who are also beneficiaries of a

common Arbitral Award, are entitled to execute the same at Courts in Jodhpur, Rajasthan where the properties are situated.

The review applicants further submit that the purported concession recorded by the Order dated 11th February, 2022 is not actionable in the absence of specific instructions to such effect being conveyed by the clients to their Ld. Advocate. Since the legal right of the review applicants to prefer an execution application in another Court of competent jurisdiction is not taken away, the recording of a concession purportedly made by the Ld. Advocate for the review applicants and recorded by the Order dated 11th February, 2022 requires to be reviewed.

The review applicants rely on the authority of *(2015) 7 SCC 373* to stress the point that while admission of facts are binding, neither the client nor the Court is bound by admission in matters of law or legal conclusions. On the point that there cannot be any estoppel against the law, reliance is placed on the judgements of the Hon'ble Supreme Court reported in *(2019) 10 674 and (2021) 2 SCC 166* in this regard.

Arguing for the respondents, Ld. Senior Counsel submits that no ground for review as prescribed by Order 47 (1) of the Code of Civil Procedure has been made out. It is submitted that the Order of 11th February 2022 is a consent order and the review applicants cannot be permitted to resile from such consent.

It is further submitted that the Arbitral Award in question is a composite Award. The said composite Award contains reciprocal obligations. Such composite Award involving reciprocal obligations cannot be executed in several Courts. In this connection reliance is placed on the report published in *AIR 1956 SC 359*. It is pointed out that the provisions of Section 39 (4) of the Code of Civil Procedure do not apply to reciprocal obligations arising out of a composite Arbitral Award.

Having heard the parties and considering the materials placed, this Court does not find the legal principle which has been *prima facie* upheld by its Order dated 11th February, 2022 worthy of being discarded in review. It is an admitted fact that the Arbitral Award is a composite Award imposing reciprocal obligations on both the review applicants and the respondents/the appellants. Therefore the review applicants have been correctly denied unilateral withdrawal from the execution proceedings pending at Calcutta for the purpose of pursuing a similar remedy at Jodhpur.

Accordingly, this Court upholds its interim order as granted in terms of prayers (b) and (c) of *GA 1 of 2021* arising out of *APOT 124 of 2021* to be valid until further orders. The review applicants stand accordingly restrained from executing the common Arbitral Award before any other Court/forum until further Orders.

Although the submissions advanced by Learned Counsel for the respective parties has been faithfully recorded by this Court in its order dated

11th February, 2022, nevertheless in the light of the above discussion, the following paragraphs of the Order dated 11th February, 2022, stand deleted:

“Later: - Mr. Dasgupta led by Mr. Ray, learned counsel for the respondents, submits that his clients are ready to pursue their remedy in the Execution Proceedings before the Kolkata Court. In such view of the matter, the order in terms of prayers (b) and (c) (*supra*) are made absolute.

In the light of such submissions the respondents being now interested to pursue their remedy in EC/873/2015 before the Kolkata Court, the orders impugned dated 27th April, 2021 and 26th July, 2021 stand set aside.

APOT/124/2021 along with **IA No: GA/1/2021** and **APOT/141/2021** along with **IA No: GA/1/2021, GA/2/2021** stand thus allowed. Since affidavits are not invited, other allegations are deemed not to be admitted. ”

GA 1 of 2021 filed in connection with APOT 124 of 2021 shall now be heard on affidavits as already directed.

RVWO 10 of 2022 stands accordingly **disposed of**.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(KRISHNA RAO,J.)

(SUBRATA TALUKDAR,J.)