

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA NO. GA/1/2023
In
RVWO/35/2023

RACHNA JAISWAL AND ANR.
Versus
SREI EQUIPMENT FINANCE LIMITED

AND

EC/212/2022

SREI EQUIPMENT FINANCE LIMITED
Versus
RACHNA JAISWAL AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 14th July, 2023.

Appearance:

Mr. Swatarup Banerjee, Adv.
Ms. Archana Chowdhary, Adv.

Mr. Siddhartha Banerjee, Adv.
Mr. Supratic Roy, Adv.
Mr. Raushan Kr. Roy, Adv.
Ms. Shahina Parveen, Adv.
Mr. Soumajit Majumder, Adv.

The Court: The judgment-debtors have filed an application for review of the order passed by this Court on 9th June, 2023 in Execution Case No.

212/2022. The other prayer is that all further proceedings in the execution case be stayed till disposal of the application for review.

The order under review records that the judgment-debtors have raised a dispute at the stage of the execution proceedings to the effect that the judgment-debtors were not served with a copy of the Award dated 16th March, 2016 and came to know of the Award only from the execution petition. Apart from noting the submissions of learned counsel appearing for the parties, the order further records that the judgment-debtors, for some inexplicable reason, did not apply for setting aside of the Award and did not even take steps to that effect by writing to the Arbitrator for a copy of the Award. The fact of the judgment-debtors not taking any steps for setting aside of the Award despite receiving the execution petition more than one year before the date of the order i.e., 9th June, 2023, was further recorded. The execution petition was hence listed on 16th June, 2023 for examination of the judgment-debtor no.1.

The application accompanied by the memorandum of review was filed on 10th July, 2023.

Learned counsel appearing for the judgment-debtors as well as the award-holder have made their respective submissions.

According to counsel appearing for the judgment-debtors/applicants, the order under review suffers from an error apparent on the face of the record since the order omits to mention that the Arbitrator passed away much before service of the execution petition on the judgment-debtors. The other point is of

the unilateral appointment of the Arbitrator which according to counsel renders the Award a nullity.

The point of unilateral appointment and the consequence of such form the substance of the judgment-debtors' objections to continuation of the execution case. Surprisingly enough, none of these contentions from the subject matter of an independent application filed by the judgment-debtors. All these contentions have now sought to be raised in the application for review of the order dated 9th June, 2023. The reason for not filing a separate and independent application to seek the relief of a declaration of the Award being rendered null and void for the reasons argued, if that option is at all available to the judgment-debtors at this stage of the proceedings, seems to be clear. The judgment-debtors perhaps know fully well that the objection to unilateral appointment of an Arbitrator may not be available to them at the stage of execution of an Award.

The Arbitration and Conciliation Act, 1996 charts out a route for an aggrieved award-debtor both under Sections 34 and 37 (subject to the limited instances) for arguing these points. The judgment-debtors have not availed any of the routes provided under the statute and have raised these objections at the stage of the execution proceedings. The argument with regard to unilateral appointment will at best be considered by the Court at a later stage, if at all, but certainly not at the stage of review of the order dated 9th June, 2023.

The review must be confined to the grounds provided under Order XLVII Rule 1(1) of The Code of Civil Procedure, 1908. Counsel appearing for the

applicants submits that the case would come under the ground of error apparent on the face of the record. The other grounds provided under Order XLVII Rule 1(1) may not be attracted to this case.

The ground of error apparent on the fact of the record must be an error which is stark and obvious to a Court without requiring further enquiry. The error must not be such that the Court is led to a protracted fact-finding mission to locate the error. The Court must, at first blush, be convinced that the order contains a clear and unequivocal error on the face of the order. The omission to record that the Arbitrator passed away long before the service of the execution petition on the judgment-debtors does not fit within a common sense understanding or even the settled position of law with regard to an error apparent on the fact of the record.

First, the fact of the Arbitrator's passing away was pointed out by counsel appearing for the judgment-debtors when the Court had already started dictating the order. Second, the fact of the Arbitrator's passing away before service of the execution case would not even be a material fact since the judgment-debtors failed to seek recourse against the Award under Section 34 even after one year from the date of service of the execution case on the judgment-debtors. Third, there is nothing on record to show that the judgment-debtors were prevented from seeking the statutory remedies available to the judgment-debtors under the 1996 Act by reason of the passing away of the Arbitrator.

Although Order XLVII Rule 1 provides for “any other sufficient reason” for seeking review of an order/judgment, this Court finds no other reason to be sufficient, credible or tenable in the facts brought before the Court.

GA/1/2023 and RVWO/35/2023 are, accordingly, dismissed for the above reasons. There will be no order as to costs.

List EC/212/2022 on 28th July, 2023, as prayed for, for continuing the examination of the judgment-debtor, Hansraj Jaiswal.

The examination of the other judgment-debtors is closed.

The deponent will produce the documents, as undertaken on the last occasion, on the returnable date.

(MOUSHUMI BHATTACHARYA, J.)

sg/R.Bhar