

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(COMMERCIAL DIVISION)

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA.

AP/651/2023

DILIP KUMAR CHATTERJEE

Vs

STATE OF WEST BENGAL AND ORS.

For the Petitioner	:	Mr. Sakya Sen, Adv. Mr. Priyankar Saha, Adv. Mr. Hemant Tiwari, Adv.
For the State respondent	:	Mr. Sabyasachi Chowdhury, Adv. Ms. Noelle Banerjee, Adv. Mr. Paritosh Sinha, Ld. AOR Mr. Arindam Mandal, Adv. Mr. Shourya Samanta, Adv.
Last Heard on	:	21.09.2023
Judgment dictated in Court on	:	26.09.2023

Moushumi Bhattacharya, J.

1. The petitioner/award-holder has filed the present Arbitration Petition for permission to withdraw an amount of Rs.3.4 crores upon furnishing a bank guarantee for an equivalent amount. The impugned Award which forms the subject-matter of the Arbitration Petition is of 25th April, 2012 and the awarded amount which the respondent/award-debtor was to pay the petitioner/award-holder was Rs.87,37,617/- plus 18% interest per annum.

2. The quantum which the petitioner seeks to withdraw should be clarified by referring to certain orders passed by Co-ordinate Benches.

3. The first order was passed on 25th March, 2022 in an application for stay of the impugned Award. The learned Single Judge was pleased to stay the Award, *albeit* a conditional stay, subject to the respondent/award-debtor depositing 50% of the awarded amount of Rs.6.8 crores, i.e., Rs.3.4 crores by way of cash security or its equivalent to the satisfaction of the Registrar, Original Side of this Court. It should be clarified that the figure of Rs.6.8 crores mentioned in the order of 25th March, 2022 was arrived at from a calculation of Rs.87.37 lakhs (approx) along with 18% interest per annum.

4. The second judgment and order is of 30th January, 2023 of another Co-ordinate Bench in the application for stay passed on an application made by the award-holder for withdrawal of the amount of Rs.6.8 crores which was

directed to be put in by the award-debtor. The learned Single Judge, however, permitted the award-holder to withdraw Rs.3.4 crores upon furnishing of a bank guarantee to the satisfaction of the Registrar, Original Side of this Court. The award-holder took up the judgment to the Supreme Court by way of a Special Leave Petition, which was dismissed by an order dated 17th March, 2023.

5. The objection of the award-debtor to the present application for withdrawal of Rs.3.4 crores by the award-holder is on three grounds. The first is that the award-holder has not been able to show any event subsequent to the Supreme Court order of 17th March, 2023 or any other event to persuade this Court to allow release of the amount. The second is on the principle of *res judicata*; that the petitioner/award-holder is barred by the said principle after the order of the Supreme Court dismissing the SLP filed by the award-holder. The third ground is that the Co-ordinate Bench in its judgment of 30th January, 2023 was of the view that the award-debtor had disclosed “strong arguable grounds” in its application for setting aside of the Award.

6. The petitioner/award-holder, on the other hand, seeks to rely on a letter written by the Indian Bank to the petitioner on 11th August, 2023 stating that the Bank will be at liberty to enforce its rights against the petitioner, if the petitioner does not pay Rs.3.4 crores before 30th September, 2023. Learned

counsel appearing for the petitioner submits that this letter constitutes an important subsequent event warranting intervention of the Court.

7. Learned counsel appearing for the award-debtor/respondent submits that the letter of the Indian Bank of 11th August, 2023 is identical in scope and purport to an earlier letter of 14th July, 2022 which was issued by the Indian Bank and hence, the petitioner cannot use the subsequent letter of 11th August, 2023 in support of his prayer for withdrawal. Counsel has also placed a letter of 14th March, 2022 to urge that the Bank has made the same statements from 14th March, 2022 - 11th August, 2023 without any change in its stand.

8. Upon hearing learned counsel appearing for the parties, this Court is of the view that before articulating the decision on the application filed by the petitioner/award-holder, reference must be made to the relevant provisions of The Arbitration and Conciliation Act, 1996.

9. Section 35 of the Act declares arbitral awards to be final subject to the other provisions in Part-I of the Act. Section 36 allows for enforcement of arbitral awards after expiry of the time for making an application to set aside an award under Section 34 and subject to Section 36(2) of the Act. Section 36(2) stipulates that the mere filing of an application for setting aside of an award under Section 34 will not stand in the way for enforcement of an award

unless the court stays the operation of an award in accordance with Section 36(3) of the Act on an application being filed by the award-debtor to such end. The first proviso to section 36(3) of the Act empowers the court to stay the award guided by the principles of The Code of Civil Procedure, 1908 where the award is for payment of money. The Court has the duty to put its findings by way of a written order under section 36(3).

10. Reading the above provisions as a whole, there can be no doubt that the Act preserves the sanctity of an arbitral award and the right of an award-holder to enforce and execute the award subject to an order of stay under Section 36(3) of the Act read with the proviso. The Amendment Act of 2016 (with effect from 23.10.2015) made some important changes to the Act and made the filing of a Section 34 application for setting side of an award irrelevant for the purposes of enforcement of the award. Therefore, the only impediment to the award being executed is where the award has been stayed by the Court.

11. In the present case, the Award was stayed by the order of 25th March, 2022 subject to the award-debtor putting in Rs.6.8 crores, the entirety of which was to be by way of a cash deposit. The award-holder has already withdrawn half of this amount as permitted by a Co-ordinate Bench by the judgment of 30th January, 2023.

12. The only question therefore is whether the award-holder can be permitted to withdraw the balance amount of Rs.3.4 crores which is the relief sought for in the present Arbitration Petition.

13. The respondent/award-debtor's argument of the petitioner failing to make out a case of any subsequent event, pressing or otherwise, is not acceptable for the following reasons. First and foremost, the 1996 Act does not require an award-holder to furnish reasons to the Court or show evidence of any subsequent event for withdrawing the amount of security put in by the award-holder as a condition for stay of an award under Section 36(3) of the Act. While the Act does not contain any provision for permitting such an application of the award-holder for withdrawal of the security, the Act similarly does not prohibit such an order being passed by the Court upon fit circumstances. The presumption of the sections narrated above is that the award-holder must be allowed to enjoy the benefit of an Award in terms of execution and enforcement unless the Award has been stayed. The Act does not preclude the award-holder to withdraw the amount provided the Section 34 application is not rendered infructuous. In the present case, the award-holder intends to replenish the amount withdrawn by putting in a bank guarantee for an equivalent amount. Hence, there is no question of any prejudice being caused to the award-debtor if the award-debtor was to succeed in the Section 34 application.

14. The requirement of the award-holder showing a subsequent event for withdrawing the money is a requirement developed by the Court and one which is not provided under the statute. The consideration for the Court presumably is that there must be a ground for the Court to allow the award-holder to withdraw the amount of security put in by the award-debtor. In the present case, that requirement, even if taken as sacrosanct, is fulfilled by the order of the Indian Bank dated 11th August, 2023 which contains a specific threat of the Bank initiating proceedings against the award-holder if the specified amount of dues is not repaid by 30th September, 2023. The respondent's argument of the contents of this letter being identical to those of 14th July, 2022 and 14th March, 2022 cannot be a ground for refusing the relief prayed for. It is the Bank's prerogative to issue standardised letters and the Bank has chosen to do so in a gap of 18 months. The Court cannot rely on the similarity of content in all these three letters to say that the award-holder has not come with a subsequent event for withdrawing the money. The letter of 11th August, 2023 is on record and the Court cannot ignore it on the grounds urged on behalf of the award-debtor.

15. Moreover, the impugned Award is of 25th April, 2012 and the award-holder has waited for more than 11 years to enforce and execute the Award. This reason by itself is good enough for the Court to allow the prayer in the application. The other reason stated above is the award-debtor putting in the bank guarantee for an equivalent amount which act as a buffer against any

possible prejudice caused to the award-debtor if the Section 34 application is ultimately allowed and the impugned Award set aside. The Court is all the more resolute in its view since the petitioner cannot show any steps to have the section 34 application heard and adjudicated. Learned counsel appearing for the respondent/award-debtor submits that the Section 34 application is pending before a Co-ordinate Bench but cannot specify a date when the application will be taken up for hearing.

16. Similar points were taken before this Court in GA/1/2023 in AP/808/2022 which was disposed of by a judgment dated 25th July, 2023. The changes in the law were discussed in detail in that judgment but are not considered to be necessary for this application. The award-holder in AP/808/2022 was also granted similar relief.

17. The above reasons persuade this Court to allow and dispose of the Arbitration Petition in terms of prayer (a) which is that the award-holder/petitioner will be at liberty to withdraw the balance amount of Rs.3.4 crores upon furnishing a bank guarantee of an equivalent amount. The award-holder shall withdraw this amount a day after furnishing the bank guarantee of Rs.3.4 crores which will be within seven days from today.

18. The “strong arguable grounds” mentioned in the judgment of another Co-ordinate Bench of 30th January, 2023 is a matter to be considered in the

Section 34 application and the parties, needless to say, will be at liberty of urging all points before the Court which has the determination to hear the Section 34 application.

19. AP/651/2023 is accordingly allowed and disposed of in terms of the above.

20. The award-holder/petitioner will keep the bank guarantee renewed in the usual terms. The renewal shall be subject to the same conditions as recorded in the judgment of the Co-ordinate Bench, as prayed for on behalf of the respondent/award-debtor.

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

(Moushumi Bhattacharya, J.)