IN THE HIGH COURT AT CALCUTTA

Ordinary Original Civil Jurisdiction

Original Side

(Commercial Division)

Present :-

The Hon'ble Justice MOUSHUMI BHATTACHARYA

AP/815/2023

TERAI TEA COMPANY LTD.
VS
THE PRESIDENT, INSTITUTE FOR INDIAN LABOUR

WITH

EC/315/2023
IA NO.GA/1/2023

THE PRESIDENT, INSTITUTE FOR INDIAN LABOUR
Vs.
TERAI TEA COMPANY LTD.

For the petitioners	:	Mr. K. R. Thaker, Adv. Mr. Chayan Gupta, Adv. Mr. Ratul Das, Adv. Mr. Niladri Banerjee, Adv. Mr. Soumyajyoti Nandy, Adv. Mr. Deepankar Thakur, Adv.
For the respondent	:	Mr. Anuj Singh, Adv. Mr. Anil Dhar, Adv. Mr. Debabrata Das, Adv. Mr. Aman Agarwal, Adv.

Last Heard on : 07.12.2023.

Delivered on : 08.12.2023.

Moushumi Bhattacharya, J.

1. This is an application for stay of an Award dated 27th February, 2023. By the impugned Award, the respondent/claimant was held to be entitled to recover a sum of Rs.12,24,520/- on account of occupation charges for wrongful use and occupation of the subject premises by the petitioner (respondent in the arbitration) from July, 2020 to March, 2023. The petitioner (respondent in the arbitration and award-debtor) was also held liable to pay interest on this amount at the rate of 8% per annum. The claimant (respondent herein) was further entitled to recover mesne profits from the petitioner at the rate of Rs.53,240/- per month from April, 2023 till recovery of possession.

2. Learned counsel appearing for the respondent/award-holder prays that the award-debtor should be directed to pay occupational charges from the date of the Award at the prevailing market rate. Counsel submits that the petitioner/award-debtor has failed to vacate the subject premises from 30th April, 2023 contrary to the undertaking given by the petitioner. The respondent was hence constrained to file an application under Section 9 of The 1996 Act for securing the unpaid rent and the mesne profits. The said application was disposed of by the Court on 23rd June, 2023 directing the award-debtor to secure the sum of Rs.42,23,910/- being the awarded amount

by way of a bank guarantee. The respondent/award-holder was directed to accept this sum without prejudice to its rights and contentions.

3. Learned counsel appearing for the petitioner/award-debtor submits that the petitioner is ready to pay occupational charges at the rate of Rs.53,240/- per month which the petitioner, has in any event, paid till September, 2023. The respondent/award-holder apparently did not accept this amount from October, 2023 onwards. Counsel submits that any order directing occupational charges at the prevalent market rate would, in effect, modify the Award which cannot be done under the 1996 Act. It is also submitted that the Tabular Statement in the respondent's execution application mentions the sum of Rs.53,240/- and the respondent should hence be bound to it.

4. The undisputed fact in this case is that the impugned Award dated 27th February, 2023 held the petitioner liable in terms of monetary payments under various heads to the respondent. The respondent was accordingly held to be entitled to recover sums under these heads. The petitioner was found to have wrongfully occupied the subject premises from July, 2020 till March, 2023. The Award proceeds on the basis that the petitioner would vacate the subject premises on 31st March, 2023 and would pay the respondent Rs.53,240/- per month from April, 2023 onwards on this basis.

5. The petitioner, admittedly, did not hand over possession of the subject premises from 1st May, 2023 and has remained in occupation of the premises till date. The petitioner/award-debtor also failed to pay Rs.36 lakhs as directed by the Court on 23rd June 2023.

6. The petitioner now seeks stay of the Award by contending that the petitioner is indebted to the respondent to the extent of Rs.53,240/- per month on account of the awarded amount under the head of 'Mesne Profits'.

7. The law with regard to stay of a Decree or an Award is clear. Order XXI Rule 26(3) of The Code of Civil Procedure, 1908, reinforces the power of the Court to require security or impose such conditions as the Court may deem fit on the judgment-debtor before making an order to stay execution. A similar effect can be found in Order XLI Rule 5(5) giving sufficient leeway to the court.

8. Section 36(1) in relation to Enforcement of Arbitral Awards under Part-I of The Arbitration and Conciliation Act, 1996, makes it evident that the Award shall be enforced in accordance with the provisions of The Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. Section 36 (3) gives the Court unfettered discretionary powers to impose conditions as the Court may deem fit on the award-debtor for stay of the Award. The only caveat is that the Court must indicate its reasons in writing for grant of stay.

9. The provisions under the CPC as well as the 1996 Act make it clear that once the parties are before the Court for stay of the Award, the domain of decision shifts from that of the Arbitrator to the Court. The Court has complete powers to decide on the conditions for stay of the Award. The discretion is a consequence of the preceding sub-sections of Section 36 from where the intention of the framers appears to be that enforcement of an Award is the rule and stay is the exception.

10. The argument of the petitioner/award-debtor that any further imposition of terms over and above that directed by the Tribunal is hence found to be unacceptable. In any event, the issue of modification of an Award is relevant at the stage of Section 34 of The 1996 Act, namely, when the Court is considering setting aside of an Award. If the Court is of the view that the Award may be set aside, the Court may not modify or execute the Award at that stage.

11. Since the impugned Award is essentially concerned with an order of eviction of the petitioner/award-debtor, the Supreme Court decision in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*, (2005)1 SCC 705 becomes relevant. The relevance is on several heads: namely, (i) that the tenancy is terminated after a decree of eviction; (ii) that the Appellate Court under Order XLI Rule 5 has the power to put the appellant on terms for staying of execution of a decree; (iii) that the Appellate Court exercises equitable discretionary jurisdiction at the stage of grant of stay of a decree on terms; (iv) that depriving a landlord of the fruits of the decree of eviction and postponing execution of such a decree calls for suitable compensation to the landlord and last, (v) that the landlord/decree-holder should accordingly be suitably compensated.

12. Paragraph 18 of *Atma Ram* relied on *Marshall Sons & Co.(I) Ltd. vs. Sahi Oretrans (P) Ltd.*, (1999)2 SCC 325 to hold that since the decree for possession and execution thereof is delayed and the judgment-creditor is deprived of the fruits of the decree, it is necessary for the Court to pass appropriate orders so that reasonable mesne profits can be directed to be paid

to the decree-holder which may be equivalent to the market rent paid by a person who is holding the property.

13. In any event, the petitioner/award-debtor was to hand over vacant and khas possession of the subject property to the respondent/award-holder. The petitioner has failed to comply with this direction. The award debtor has also failed to furnish security as directed by the Court. Stay of this part of the Award would hence result in the Court sanctioning that the petitioner/award-debtor continues to remain in occupation of the subject property until the petitioner is successful in having the impugned Award set aside. If this be the consequence of an order of stay, the petitioner, despite having suffered the Award, cannot circumvent the law on the decree-holder/landlord being deprived of the fruits of the Award.

14. The petitioner must hence pay the occupational charges from 1st May, 2023 (the Award is dated 27th February, 2023) till the award-holder recovers the said property or till the petitioner is successful in having the impugned Award set aside, whichever is earlier.

15. The occupational charges at the prevailing market rate is presently Rs.200/- per sq.ft.. The petitioner will hence pay an amount of Rs.7,68,000/- per month to the award-holder from 1st May, 2023 till further orders in the Section 34 application for setting aside of the Award or till the respondent recovers the property from the petitioner. The petitioner shall adjust the amount already paid by the petitioner with the amount which has been directed to be paid today within seven days from today and pay the revised amount from 1st October, 2023 onwards.

16. Learned counsel appearing for the petitioner/award-debtor seeks to secure the amount of Rs.36,38,270/- which was allowed by the order dated 23rd June, 2023. This amount was, however, to be secured within three weeks from the date of the order which would be in the middle of July, 2023. The award-debtor has not secured this amount in the manner directed by the order.

17. AP/815/2023 is accordingly disposed of by directing the award-debtor to deposit the amount of Rs.36,38,270/- with the Registrar, Original Side, by way of a bank guarantee, by 4.30 pm on 11th December, 2023. The award-debtor will put in the interest amount at 8% per annum calculated from 15th July, 2023 till 11th December, 2023 by way of a cash deposit with the Registrar, Original Side, as suggested by learned counsel appearing for the award-debtor.

18. The operation of the impugned Award dated 27th February, 2023 shall remain stayed on and from 11th December, 2023 subject to the award-debtor complying with these directions. In the event of default, the respondent/award-holder shall be at liberty to proceed with the execution and mention to the Court for urgent listing of the matter.

Urgent certified website copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MOUSHUMI BHATTACHARYA, J.)

sg./bp.