



O.A.No.284 of 2023

ORIGINAL APPLICATION NO.284 OF 2023

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KRISHNAN RAMASAMY, J.

This Original Application has been filed, seeking interim injunction against the respondents for the relief as sought therein.

2. The applicant has obtained an award passed by the learned Arbitrator vide order dated 28.06.2022, entitling him for a sum of Rs.4,65,00,000/- as principal amount and also a sum of Rs.3,10,00,000/- as interest and other incidental charges. Since the respondents and other parties have completed the making Web series called Queen-2 in all languages in the OTT Platform and attempting to release in the month of May, 2023 without making any payments towards the award to the applicant, the applicant has come forward with the present application for the interim relief.

3. Now an interesting issue that crops up for consideration is *whether the applicant/award holder can seek interim relief by invoking Section 9 of the Arbitration and Conciliation Act, 1996 (in short, 'the Act') before this Court, at any time after making of the arbitral award but before it is enforced, in accordance with Section 36 of the Act?*



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4. Mr.Abdul Hameed, learned Senior Counsel for M/s.Revathi Manivannan, on behalf of the respondents 1 to 3 would submit that the present application is not maintainable due to the reason that the Arbitrator has already passed the final award on 28.06.2022 and the said award is very much enforceable and the applicant herein has also filed Original Petition in O.P.No.556 of 2022 challenging the said award as against the disallowed portion of the claim under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, 'the Act') without filing the Execution Petition. He pointed out that once an arbitral award becomes enforceable, the present application moved under Section 9 of the Act, seeking for grant of interim order is not maintainable and it is not in accordance with Section 9 r/w Section 36 of the Act and filing the application under Section 9 of the Act is not permissible. He would also submit that the award is executable and till date, no stay order was granted by this Court and if at all the applicant is aggrieved, he has to approach the Executing Court for interim order by filing an Execution Petition under Section 38 of the Act and without exercising the same, the applicant filed the present application under Section 9 of the Act when the award is very much available for enforcement. Therefore, he would submit that the present application is not maintainable and he hence prayed for dismissal of the same.



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5. In support of his contentions, learned Senior counsel relied upon a judgment of the First Bench of this Court in “**Gopuram Enterprises Ltd. Versus M/s.Integrated Finance Company Ltd.**” in OSA No.53 of 2021, dated 15.02.2021.

6. On the other hand, R.Murari, learned senior counsel appearing for Mr.S.R.Sundar, learned counsel appearing for the applicant would submit Section 9 of the Act empowers the applicant to move an application for interim orders even after passing the award, but before the enforcement of the award with complete satisfaction under Section 36 of the Act. In the present case, no E.P. has been filed, but O.P. has been filed to challenge the award but no stay has been obtained and in these circumstances, the present OA is well maintainable. In this regard, he relied upon a decision of a Division Bench of the Bombay High Court in “**Dirk India Pvt. Ltd. v. Maharashtra State Electricity Generation Company Limited**” reported in 2013 SCC OnLine Bom 481 and also a decision of the Hon'ble Supreme Court in “**Hindustan Construction Company Ltd. Versus Union of India and Others**” reported in (2020)17 SCC 324.



7. Heard the learned counsel appearing for the applicant and the learned Senior counsel appearing for the respondents and perused the material available on record.

8. To deal with the present issue, it is appropriate to extract Section 9(1) of the Act which reads as under:

“9. Interim measures, etc., by Court.-

(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) & (ii)”

9. A perusal of the above provisions, it shows that Section 9 lays down three stages at which a party can approach the Court for seeking an interim relief namely, “before or during arbitral proceedings, or at any time before it is enforced in accordance with Section 36.” It has to be looked into the words of Section 9 of the Act, i.e, “at any time before it is enforced.” The object of the word "enforced" used in the third stage in section 9 of the Act appears to mean that “until the complete satisfaction of the award.”



10. In the case of "**Hameed Joharan (dead) and others versus Abdul**

Salam (dead) by Lrs.and others" reported in (2001) 7 SCC 573, the Hon'ble

Supreme Court held in para 9 has held as under:

9. As noticed earlier in this judgment, Article 136 of the Limitation Act, 1963 being the governing statutory provision, prescribes a period of twelve years when the decree or order becomes enforceable. The word "enforce" in common acceptation means and implies "compel observance of" (vide Concise Oxford Dictionary) and in Black's Law Dictionary "enforce" has been attributed a meaning "to give force or effect to; to compel obedience to" and "enforcement" has been defined as "the act or process of compelling compliance with a law, mandate or command". In ordinary parlance, "enforce" means and implies "compel observance of". Corpus Juris Secundum attributes the following for the word "enforce":

"Enforce.—In general, to cause to be executed or performed, to cause to take effect, or to compel obedience to, as to enforce laws or rules; to control; to execute with vigor; to put in execution; to put in force; also to exact, or to obtain authoritatively. The word is used in a multiplicity of ways and is given many shades of meaning and applicability, but it does not necessarily imply actual force or coercion. As applied to process, the term implies execution and embraces all the legal means of collecting a judgment, including proceedings supplemental to execution.

The past tense or past participle 'enforced' has been said to have the same primary meaning as 'compelled'."



11. Therefore, “enforcement” has been defined as “the act or process of compelling compliance with a law, mandate or command”. If we go by this definition, the 'enforcement of the award' will commence by the act of the parties to the award passed by the Tribunal. The moment, the award holder brings the award for execution after appeal time by filing Execution Petition, the enforceability of the award starts and it should be construed as 'enforced' only when the award holder gets the fruits of the award after complete satisfaction of the Award.

12. In the case of ***"Dirk India Pvt. Ltd. v. Maharastra State Electricity Generation Company Limited"*** reported in 2013 SCC OnLine Bom 481, a Division Bench of the Bombay High Court has held in para 8(i) and 14 as under:

"8(i) The expression "enforced" in section 9 means "legally executed".

"14.....The interim measure provided under Section 9 of the A&C Act, 1996 is intended to safeguard the subject-matter of the dispute in the course of arbitral proceedings. The second facet of Section 9 is the proximate nexus between the orders that are sought and the arbitral proceedings. When an interim measure of protection is sought before or during arbitral proceedings, such a measure is a step in aid to the fruition of the arbitral proceedings. When sought after an arbitral award is made but before it is enforced, the measure of protection is intended to safeguard the fruit of



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the proceedings until the eventual enforcement of the award. Here again the measure of protection is a step in aid of enforcement. It is intended to ensure that enforcement of the award results in a realisable claim and and that the award is not rendered illusory by dealings that would put the subject of the award beyond the pale of enforcements.

13. In the above referred judgment, the Bombay High Court has categorically held that when a relief is sought under Section 9 after an arbitral award is made but before it is enforced, the measure of protection is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award. It has further held that the measure of protection is a step in aid of enforcement and it is intended to ensure that enforcement of the award results in a realisable claim and that the award is not rendered illusory by dealings that would put the subject of the award beyond the pale of enforcements.

14. Therefore, on going through the above judgment of the Bombay High Court (delivered by Hon'ble Dr.Justice D.Y.Chandrachud as he then was and Hon'ble Mr.Justice A.A.Sayed) and Section 9 r/w Section 36 of the Act, it is crystal clear that the interim protection of the award is available under Section 9 and it is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award.



15. The above judgment of the Bombay High Court in "Dirk (India) (P)

Ltd. case has been taken note of by the Hon'ble Supreme Court in ***"Hindustan Construction Company Ltd. Versus Union of India and Others"*** reported in (2020)17 SCC 324 while dealing with the issue as regards the constitutional validity of Section 87 of the Act and it was observed as under in para 35 to 37 as under:

"35. This also finds support from the language of Section 9 of the Arbitration Act, 1996, which specifically enables a party to apply to a court for reliefs "...after the making of the arbitration award but before it is enforced in accordance with Section 36". The decisions in NALCO [National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd., (2004) 1 SCC 540] and Fiza Developers & Inter-Trade (P) Ltd. [Fiza Developers & Inter-Trade (P) Ltd. v. AMCI (India) (P) Ltd., (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637] overlook this statutory position. These words in Section 9 have not undergone any change by reason of the 2015 or 2019 Amendment Acts.

"36. Interpreting Section 9 of the Arbitration Act, 1996, a Division Bench of the Bombay High Court in Dirk (India) (P) Ltd. v. Maharashtra State Power Generation Co. Ltd.[2013 SCC OnLine Bom 481 : (2013) 7 Bom CR 493] held that : (SCC OnLine Bom para 13)

"13. ... The second facet of Section 9 is the proximate nexus between the orders that are sought and the arbitral proceedings. When an interim measure of protection is sought before or during arbitral proceedings, such a measure is a step in aid to the fruition



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of the arbitral proceedings. When sought after an arbitral award is made but before it is enforced, the measure of protection is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award. Here again the measure of protection is a step in aid of enforcement. It is intended to ensure that enforcement of the award results in a realisable claim and that the award is not rendered illusory by dealings that would put the subject of the award beyond the pale of enforcement.”

"37. This being the legislative intent, the observation in NALCO [National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd., (2004) 1 SCC 540] that once a Section 34 application is filed, “there is no discretion left with the Court to pass any interlocutory order in regard to the said award...” flies in the face of the opening words of Section 9 of the Arbitration Act, 1996, extracted above.

16. Therefore, the very purpose of providing interim relief after the passing of the award but before the enforcement of the arbitral award is to secure its value for the benefit of the party who seeks the enforcement of the award. Thus, after the award is made, the remedy under Section 9 is only a step-in aid of enforcement of the arbitral award until the complete satisfaction of the award or eventual enforcement of the award. In order words, until the complete satisfaction of the award, the protection under Section 9 is very much available to the award holder, otherwise the award become illusory.



17. Of course, Section 9 of the Act does not bar either party, viz., award holder and award debtor from approaching the Court to seek interim measures under any given situation, but on a harmonious reading of Section 9 of the Act denotes that only the successful party (award holder) in the arbitration proceedings is entitled to seek interim protection towards his award from the Courts, while the unsuccessful party in the arbitration proceedings (award debtor) is not entitled to seek any remedy under Section 9, except challenging the award under Section 34 where, he can seek interim relief of stay of the award under *proviso* to Section 36(3) of the Act by making out a prima facie case to the satisfaction of the Court that the arbitration agreement or the making the award was induced or effected by fraud or corruption.

18. Mr.Abdul Hameed, learned Senior counsel has laid much emphasis on a judgment of a Division Bench of this Court in in “***Gopuram Enterprises Ltd. Versus M/s.Integrated Finance Company Ltd.***” in OSA No.53 of 2021, dated 15.02.2021 and contended that once the award is passed and became enforceable, the remedy available for the award holder is to approach the executing Court for interim relief and without filing E.P., he cannot maintain the application for interim relief before this Court. The relevant portion as found in Paragraph Nos.8 to 12 is extracted as under:



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“8. However wide the powers conferred on a Court under Section 9 of the Act may be seen to be, such powers may not extend to issuing orders for discovering the assets of an award-debtor. Order XXI of the Code, that provides for execution, carries the necessary provisions for such purpose and Section 9 of the Act cannot be enlarged to incorporate the wide authority that an executing Court has to aid the award-holder, who metamorphoses as a decree-holder by the legal fiction contained in Section 36(1) of the Act, to seek or obtain orders of such nature or of arrest or detention of the award-debtor or the sequestration of its assets and properties.

“9. The quality of orders that can be passed under Section 9 of the Act are substantially different from the quality of orders that may be passed in course of execution. While the emphasis in Section 9 is to the subject-matter of the arbitration and may even, charitably, be seen to cover the subject-matter of the award; orders in the nature of discovering assets of the deemed judgment-debtor or requiring him to file an affidavit of assets and the like may not be seen within the ambit of the authority available under Section 9 of the Act of 1996.

“10. The Act of 1996 covers all things pertaining to arbitration and operates between the commencement of the arbitral proceedings within the meaning of Section 21 of the Act of 1996 and the conclusion of all matters pertaining to the arbitration before Section 36 of the Act kicks in, so to say, and renders the award enforceable.



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“11. For the reasons aforesaid, the order impugned in O.S.A.No.53 of 2021 is found to be in excess of jurisdiction and not being squarely covered by the limited ambit of Section 9 of the Act of 1996 available at the post-award stage. Such order is set aside.

“12. This, however, may be a pyrrhic victory for the appellant herein since the order is now available for execution. Nothing in this order will prevent the award-holder now to seek the same directions from the appropriate executing court to which the award is carried.”

19. On going through the judgment rendered by the Division Bench of this Court, I find that the Hon'ble Division Bench of this Court has not considered the law laid down by the Hon'ble Apex Court in "Hindustan Construction Company" case cited supra wherein the judgment of the Bombay Division Bench in "Dirk India Pvt.Ltd." case cited supra was approved. In the said judgment of the Bombay High Court, it was held that when an interim measure of protection is sought before or during arbitral proceedings, such a measure is a step in aid to the fruition of the Arbitral proceedings. When sought after the arbitral award is made but before its enforcement, the measure of protection is intended to safeguard the fruit of the proceedings until the



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eventual enforcement of the award. Therefore, it was held that the interim measure of protection is a step in aid of enforcement and intended to ensure that the enforcement of the award results in a realisable claim and that the award is not rendered illusory by dealings that would put the subject of the award beyond the pale of enforcement. These aspects were not considered by the Hon'ble First bench of this Court in "Gopuram" Case, even though the judgment of the First bench was subsequent to the judgment of the Hon'ble Supreme Court in "Hindustan Construction Company" case. Therefore, this Court is inclined to apply the ratio laid down by Hon'ble Division Bench of the Bombay High Court in "Dirk India Pvt.Ltd." case which was subsequently approved by the Hon'ble Apex Court.

20. Further, Section 36 of the Act provides for the "enforcement of the arbitral award" and Sub Section (1) of Section 36 envisages that the award shall be enforced in accordance with the provisions of the CPC in the same manner as if it were a decree of the Court. Article 136 of the Limitation Act, 1963 prescribes a period of twelve years for the execution of a decree. Therefore, an award holder can have time limit of 12 years and he can have his own choice and take a decision at appropriate time for execution of the award by filing E.P. and during this interregnum period, if any interim relief is required in order to



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safeguard the award, the award holder can very well and always approach this

Court under Section 9 of the Act until the full satisfaction of the award.

21. Even when the time limit starts for challenging the award, it is the choice of the award holder either to await the outcome of the O.P. filed by other side or to file E.P. for execution of the award and he may take his decision depending upon the outcome of the O.P. in the event of dismissal and confirming the award. While so, the Court cannot compel the award holder that once the award is passed, he has to necessarily approach the Executing Court and seek interim relief. In the event, when the O.P. is allowed and the award is set aside, there would be no scope for the award holder to approach the Executing Court.

22. Therefore, the words "before it is enforced" mentioned in section 9 of the Act would mean that "until the complete satisfaction of the award." Thus, the remedial measures are available under section 9 to the parties is 'until the complete satisfaction of the award is attained'. Mere filing of the E.P. for execution of the award and the pendency of the E.P. Proceedings does not mean that the 'award is enforced'. Therefore, till the complete satisfaction of the award is attained, the award holder can approach the Court for interim relief under Section 9 of the Act.



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23. In the light of the above discussion, this Court has no hesitation to hold that the award holder can very well maintain application under Section 9 of the Act and he is entitled to seek interim relief before this Court. Having arrived at this conclusion, this Court is not inclined to traverse the other decisions relied upon by the learned Senior counsel for the respondent as the same would not be applicable in the present facts of the case.

24. In the result, the Application is allowed and the interim relief already granted by this Court, dated 03.04.2023 is made absolute. No costs.

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KRISHNAN RAMASAMY, J.

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