

01.02.2024
Sl. No.16(DL)
srm

C.O. No. 4526 of 2023

M/s. Deecon India Pvt. Limited

Versus

Union of India

Mr. Ajay Debnath,
Mr. Sujit Saha,
Mr. Devranjan Das,
Mrs. Swagata Datta

...for the Petitioner.

1. The revisional application arises out of an order dated November 24, 2023 passed in Misc. Case Execution (Arb) No.08 of 2022 (C.C.) by Neyaz Alam, learned Judge, Commercial Court at Rarajarhat.
2. By the order impugned, the learned court rejected an application filed under Section 47 of the Code of Civil Procedure read with Section 151 of the said Code.
3. The petitioner contends that the arbitration award should not be executed and the execution proceeding should be rejected in view of the fact that an application for restoration of the Misc. Case No.2 of 2019 is pending. The petitioner suffered an award. Challenging the award Misc. Case No.2 of 2019 was filed. Misc. Case No.2 of 2019 was dismissed for default on September 2, 2019. Against the order

of dismissal, an application for restoration, upon condonation of delay of almost 3 years, has been filed by the petitioner which has been numbered as Misc. Case No.29 of 2023 (CC).

4. The petitioner's contention is that the award was inexecutable, on account of pendency of the application for setting aside the award. Even if the application for setting aside the award had been dismissed for default, an application for restoration, upon condonation of the delay, was pending. The learned court should dismiss the execution proceeding. The other contention of the petitioner is that the execution case had not been filed in its proper form and under the proper provisions of law. It is further contended that the transfer of the application under Section 34, to the court of the learned Judge, Commercial Court at Rajarhat was not known to the petitioner. No administrative notice upon receipt of the records of the said misc. case, was served upon the petitioner. Thus, the petitioner had a good ground for seeking restoration of Misc. Case No.2 of 2019 and for dismissal of the execution proceeding.

5. The learned court held that the application under Section 47 of the Code of Civil Procedure for rejection of Misc. Case Execution (Arb) No.08 of 2022 (C.C.) was not

maintainable under the facts and circumstances of the case and the same was misconceived.

6. Section 47 of the Code of Civil Procedure operates in a different field. The said provision deals with discharge, satisfaction and execution of a decree and an application can be filed on these three grounds. The application of the petitioner, at this stage, of the execution case is misconceived. If the petitioner's case is that the execution should be stayed in view of the pendency of the restoration application in connection with the application for setting aside the award, the petitioner ought to have filed an application for stay in the execution case. Neither this court, nor any other court can prevent the award holder from filing an application for execution.

7. Although, it is submitted by the petitioner that a stay application was also filed, the petitioner has not been able to produce the same before this Court.

8. Thus, the revisional application is disposed of without interfering with the order impugned.

9. The following directions are passed :-

- (a) The petitioner shall be at liberty to file an application for stay of the execution in accordance

with law, if not already filed. Copy be served upon the Award-holders.

(b) The learned court shall dispose of the application for stay on its own merits, upon hearing both the parties.

(c) The contentions of the petitioner that his application in connection with Misc. Case No.2 of 2019, i.e. Misc. Case No.29 of 2023 will become infructuous, will also be decided on merits by the learned court while deciding the prayer for stay within a period of two months from the next date fixed.

10. This order will not preclude the petitioner from challenging the executability of the award at an appropriate stage, if permitted by law.

11. It is expected that the stay application shall be decided first, strictly in accordance with law, upon providing adequate opportunity to the Award-holder.

12. This Court has not entered into the merits of the claims of the petitioner.

13. There shall be no order as to costs.

14. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)