OD-6

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/268/2024
WITH
AP/117/2022
IA NO. GA/1/2024

RAKESH KUMAR JINDAL AND ANR
VS
ANOOP KUMAR JINDAL AND ORS.

BEFORE:
THE HON'BLE JUSTICE SOUMEN SEN
THE HON'BLE JUSTICE APURBA SINHA RAY
Date: 5th November, 2024.

Appearance :
Mr. Shreyaan Bhattacharyya, Adv.
...for the petitioners.

Mr. Sudip Deb, Adv.
Ms. Ipsita Ghosh, Adv.
Ms. Laxmi Agarwal, Adv.
...for respondent No. 1&2

The Court: Affidavit of service filed in court today be kept with the record.

This appeal is arising out of the order dated 2nd July, 2024 passed in connection with a post-award application under Section 9 of the Arbitration and Conciliation Act, 1996 at the instance of the award-holder. The award has several components. There are several proceedings between the parties. However, for the present purpose, we may refer to the order passed by a co-ordinate Bench on 16th April, 2021 where the Hon'ble Division Bench in disposing of an appeal arising out of the judgment and order dated 5th March, 2021 has made the following observations :

"The learned single judge has specifically held that Mr. Utpal Bose's client had paid "the corporation tax liability of the immovable property concerned by availing of the waiver scheme".

It is nobody's case that the money was not paid to the corporation or not on account of the property in question. Therefore, we see no reason to stay that part of the order directing the Receiver to disburse Rs.20 lac out of the funds in his hands to Mr. Bose's client as ad hoc payment towards the corporation tax liability of Rs.44,42,123/-.

There is some substance in the contention of Mr. Deb. We direct the Receiver to scrutinize the bills and receipts with respect to the payment of Rs.44,42,123/- and to apportion liability for this amount of the parties on the basis of their shareholding.

The Receiver shall prepare a report with which should be annexed a statement of account reflecting the figure and also the liability of each party, taking into account the reimbursement of Rs.20 lac made to Mr. Bose's client in terms of this order. The Receiver shall file a report by 9th June, 2021.

The direction in the impugned order upon Mr. Ghosh's client and Mr. Deb's client to "pay shortfall to the petitioner" is stayed for the time being.

The connected application is disposed of.

All observations are tentative and the directions contained in this order are interim in nature without prejudice to the rights of the parties in the section 34 application."

However, the appeal was disposed of on 28th January, 2022 along with two applications with the following observations;

"Section 34 applications are pending in this court challenging the award. A subject matter of the award is the municipal tax due and payable by the partnership firm, including fixation of the liability of the firm for it, and apportionment thereof among the partners.

We are of the opinion that the subject matters of these two applications can be properly decided in the forum where the final award is under consideration.

In those circumstances, we dispose of each of these two applications (IA No. GA 3 of 2021 and (IA No. GA 5 of 2022) on the basis of the observations made above, giving leave to the applicants to urge the self-same grounds as made in these applications by way of an application or otherwise before the said forum.

All points urged in each of the applications are kept open. The records of this court may be relied upon if the learned judge so deems fit and proper for the purpose of adjudication of the issues involved in these applications."

Before the learned Single Judge an application was filed by the award-holder for apportionment of liability and payment of the corporation tax to the tune of Rs.47,50,843/-. In previously instituted proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 being AP No. 80 of 2021, the learned Single Judge by an order dated 5th March, 2021 directed the Receiver who was collecting the rents to disburse a sum of Rs.20,00,000/- which is lying with him to the tune of Rs.25,00,000/- to the petitioners towards in protanto satisfaction of the share of the claim of the petitioners on account of corporation tax liability of Rs.44,42,123/-. The respondents were further directed to pay the corporation tax of Rs.44,42,123/- in accordance with their declared shares. The respondent was further directed to pay the shortfall to the petitioners if there be any. The petitioners were given liberty to execute the shortfall if not paid by the respondents within the period of four weeks from the date.

This order was modified on 16th April, 2021 and thereafter, by the order dated 28th January, 2022. It appears from the last order of the co-ordinate Bench that all the applications with regard to apportionment and payment of shortfall were left open to be decided by the learned Single Judge as the co-ordinate Bench was of the view that the said application can be properly decided in the forum where the final award was under consideration. The learned Single Judge, however, in construing the several orders was of the view that in view of the observations in the order dated 16th April, 2021 that the direction of the learned Single Judge dated 5th March, 2021 to pay the shortfall to the petitioners "was stayed" and this has not been vacated in the final order.

It is not in dispute that the Receiver has filed a report from which the respective liabilities are ascertainable vis-à-vis the parties and the parties may be directed to pay their proportionate liabilities on the basis of their declared shares. The learned Single Judge, however, dismissed the application on the ground that by reason of the aforesaid observation in the order dated 16th April, 2021, the relief claimed by the petitioners could not be allowed as it would amount in interfering in the order passed by the Hon'ble Division Bench.

On a meaningful reading of all the previous orders, it appears that the Hon'ble Division Bench stayed the order in so far as payment to be made to the petitioners by the respondents since the bills were under scrutiny by the Receiver, as would be clearly evident from the order dated 16th April, 2021. However, the report of the Receiver was not taken into consideration by the learned Single Judge on the ground that ultimately, there was no finding by the Hon'ble Division Bench or a specific direction by the Hon'ble Division Bench to pay the shortfall even after the Receiver filed a report.

After hearing learned counsel for the parties, we are of the opinion that keeping in mind the orders passed by the co-ordinate Bench on 16th April, 2021 and 28th January, 2022, the petitioners may pray for apportionment of liability based on the report filed by the Receiver and in deciding the said application the objections, if any, by the respondents are also required to be taken into consideration.

It would be open for the learned Single Judge to decide the said application independently or along with the application for setting aside of the award.

On such consideration, we set aside the order dated 2nd July, 2024 and restore the application being AP No. 117 of 2022.

It is needless to mention that for the purpose of preservation of the property in question, the municipal rents and taxes are required to be paid. We have been informed that the Receiver is presently collecting rents from which the property taxes are being paid.

The appeal and the application are disposed of.

(SOUMEN SEN, J.)

(APURBA SINHA RAY, J.)

KB/mg