OD –5&6

ORDER SHEET

AP/174/2024
WITH
AP/824/2016
IA GA 1 of 2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

SANDHYA SINGH

VS

KRISHNA KUMAR SINGH

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 7th November, 2024.

Appearance:
Mr. Somnath Gangopadhyay, Adv.
…. for the petitioner

Mr.Rachit Lakhmani, Adv.
Mr. Avishek Das, Adv.
Mr. Soubhik Dey, Adv.
…for respondent/ award-holder

The Court: During the cross-examination of the award-debtor's husband in EC/220/2018, this application has been filed by the award-debtor under Section 36(2) of the Arbitration and Conciliation Act, 1996 in the month of September, 2024 with a prayer for stay of the award dated May 20, 2016.

Learned advocate for the petitioner submits that the award should be stayed unconditionally in terms of the second proviso to Section 36(3).

According to the learned advocate for the petitioner, the arbitration agreement as also making of the award were induced by fraud and corruption. Reliance has been placed on a decision of a coordinate Bench in the case of Union of India & Anr. Vs. Rashmi Metaliks Limited, reported in 2023 SCC OnLine Cal 2272, in support of such contention. Learned advocate refers to an insurance policy and submits that the same was not the actual document. The name of the petitioner was falsely incorporated. The genuine policy was filed in another proceeding. Learned advocate further submits that the proceedings before the learned Arbitrator proceeded ex parte and the learned Arbitrator was not inclined to allow a fair hearing to the petitioner. On these two grounds and also on the ground that the question of fraud and misrepresentation had not been decided by the learned Arbitrator, it is submitted that the award must be stayed unconditionally. The fact that the learned Arbitrator failed to decide the allegation of fraud against the award-holder and the issue that the award-debtor had manufactured the agreement by obtaining signatures of the petitioner on blank papers, should have been dealt with in the award. Such failure to exercise jurisdiction, made it crystal clear that the learned Arbitrator also was hand in gloves with the award-debtor. The facts in this case justified unconditional stay of the award. Further, the learned Arbitrator proceeded to pass an ex parte award. This also demonstrated that the learned Arbitrator was biased.

Learned advocate for the respondent/award-holder submits that the petitioner deposed in the execution case that, she was unaware of the proceedings and she broke down in Court. The Court permitted her husband to be examined in her place. In the midst of the examination of the husband, this application has been filed for unconditional stay of the award. All the factual allegations against the award-debtor were affirmed as true to the knowledge of the petitioner. Due to pendency of this application, learned Court before which the execution proceeding was pending, could not proceed with the same. This application has been filed as an afterthought and in order to stall the execution, after seven years from the date of the award. It is further submitted that the threshold to prove fraud or corruption is very high and neither the pleadings nor the documents support the contention of the petitioner. Mr. Lakhmani relies on certain documents to show that pursuant to the leave granted by the learned executing Court, an FIR has been lodged by the respondent before the jurisdictional police station as it was later discovered that the vehicle (subject matter of dispute) had been taken to Assam and registered in the name of the petitioner. This would show that the petitioner was feigning ignorance and thereby misleading the court.

Heard the parties.

From the pleadings in paragraphs 3 to 6, it is clear that the petitioner was aware that the award-holder, i.e., the nephew of the petitioner's husband, had requested his uncle to use the subject vehicle. It is pleaded that the petitioner's husband accepted such offer and used the truck for his transport-cum-logistic business. Regular payments as per the entitlement of the respondent for the trips that the truck had undertaken as also rent, were made by her husband. That the signature of the petitioner was taken on blank papers for the purpose of opening a bank account at Guwahati and the petitioner signed the papers in good faith. Thereafter, when the petitioner's husband came to know that the respondent was trying to take hold of the business in a clandestine manner and with a mala fide motive, he raised serious objections and the disputes arose. It has been specifically averred that the petitioner's husband paid off the entire amount payable to the respondent and also returned the truck. The respondent took back the truck from the petitioner's husband without any objection and dispute. It has been further pleaded that the respondent initiated frivolous litigations against the petitioner and that the petitioner was not aware of any such agreement. She came to know of the same only after the application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed.

Such pleadings clearly indicate that the petitioner was well aware that there was some kind of an arrangement between her husband and the respondent. The petitioner accepts to have signed blank papers as she had been given the impression that those were required for opening a bank account at Guwahati. She was also aware of the payments made. The petitioner further stated that when the husband came to know about the insidious manner in which the respondent was trying to gain control of the business, her husband returned the truck and paid off all the dues. Thus, on the face of record, the allegation that the agreement was induced by fraud, is not ex-facie established. The statement of defence also narrates the exact facts as stated hereinabove. The petitioner's defence was that her husband had inducted the truck into the business, but had returned the truck and paid all the dues. In view of the admission that transactions had taken place, the possibility of an agreement between the parties cannot be ruled out. There is mention of various dealings between the parties. The said agreement contains the arbitration clause.

The decision in Rashmi Metaliks (Supra) does not come to the aid of the petitioner in this case. That was a case where the officers of the South-Eastern Railways (respondent in the arbitration) had deliberately withheld the evidence and were reluctant to adduce evidence against the claimant. They jeopardized their own case in order to facilitate passing of the award. The proceeding was carried on reluctantly by the said officers, without any iota of seriousness. This culminated in an award in favour of the claimant. Union of India, challenged the said award on the ground of corruption and his Lordship found the conduct of the officers of the Railways to be irregular and improper and an attempt to clandestinely support the claimant.

The minutes of the proceeding in this case reveal that the notice of the proceedings could not be served upon the claimant on various occasions as the door was found lock. Learned Arbitrator recorded that the postal articles would return with the endorsement “door lock and key”. The award reflects that the statement of claim was sent by post by the same was refused. Only on the 6^{th} day, the petitioner was represented by his learned Advocate and a prayer was made for some time to file an appropriate application on the ground that the arbitration agreement was false and fabricated. On the 7^{th} day, the learned Advocate for the petitioner expressed inability to appear in his letter and the next date was fixed on January 16, 2015. On the 8^{th} day, none-appeared on behalf of the petitioner. No application had been filed. On the 9^{th} day, the petitioner appeared, but did not file any statement of defence. Instead, a prayer for adjournment was made on the ground that a discussion was going on for compromise. On the 10^{th} day, an application under Section 16 of the said Act was filed by the petitioner. On the 12^{th} day, the claimant filed an objection to the application under Section 16 of the said. On the 13^{th} day, learned Advocate for the petitioner appeared at 4.45 p.m., but the counsel was absent, accordingly a date was fixed on May 5, 2015. On the 14^{th} day, the arbitration proceeding continued with the hearing of the application under Section 16 of the said Act. The learned counsel for the petitioner did not press the issue regarding the validity and existence of the agreement in question, but restricted his argument to the point that before the expiry of the statutory period, the Tribunal could not assume jurisdiction. The application was rejected on the ground of waiver and the proceedings were adjourned till May 15, 2015. Thereafter, the proceedings continued.

The statement of defence was filed on November 23, 2015. The learned Arbitrator proceeded in the matter on the basis of the records, the statement of claim and the counter statement and passed his order. The matter proceeded ex parte when the petitioner stopped appearing. The learned Arbitrator came to a specific finding on the basis of the pleadings and evidence that the petitioner could not deny the existence and validity of the agreement on the ground of fraud. There was no denial about the existence of an arbitration agreement between the parties and the claimant had been able to substantiate such fact. Thus, on the face of record, this Court does not find that the award was a product of bad faith and corruption.

Thus, the prayer for unconditional stay of the award is refused. The contentions of the learned advocate for the petitioner, with regard to the merits of the award, shall be decided in the application under Section 34.

The application is accordingly disposed of. The execution shall proceed. All observations made in this order are, prima facie, for the purpose of disposal of this application. These observations shall not affect the proceeding under Section 34.

RE: AP No.824 of 2016

Let this application be detagged. Affidavit-in-opposition be filed within two weeks from date; reply thereto, if any, be filed within two weeks thereafter. Let the matter appear for hearing on 19th December, 2024. The respondent will prepare an informal paper book containing all the relevant documents which were used during the Arbitration and also the affidavits to be exchanged by and between the parties, to facilitate the hearing.

All parties to act on a server copy of this order.

(SHAMPA SARKAR, J.)

TR/B.Pal/SP