

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP/742/2023

ASHOK KUMAR CHAUDHARY ALIAS
ASHOK KUMAR RAM SABADH CHAUDHARY AND ANR
VS
KOTAK MAHINDRA BANK LIMITED

With

AP/741/2023

ASHOK KUMAR CHAUDHARY ALIAS
ASHOK KUMAR RAM SABADH CHAUDHARY AND ANR
VS
KOTAK MAHINDRA BANK LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 19th January, 2024.

Appearance:

Mr. Debraj Sahu, Adv.

Mr. Sormi Dutta, Adv.

...for the petitioner

Mr. Ritoban Sarkar, Adv.

Ms. Shreyashee Das, Adv.

Mr. Himanshu Bhawsinghka, Adv.

...for the respondent

The Court:- This is an application for stay of an Arbitral award dated 30th December, 2017. The awarded amount is Rs.26.77 lakhs. Learned counsel appearing for the award-debtors submits that the award-debtors are truck drivers and presently have no assets or properties to secure the award. Counsel accordingly prays for exercise of discretion in that respect.

Learned counsel appearing for the award-holder submits that the award-holder has challenged a judgment passed by this Court on 22nd December, 2023 on a preliminary point of objection taken by the award-debtor (petitioner before the Court) which was decided in favour of the award-debtor. Counsel also seeks to file an Affidavit-in-Opposition to the Section 34 application of the award-debtor.

Section 36(2) and (3) read with the proviso under the 1996 Act allows for discretion but does not permit unconditional stay of an award unless the award-debtor makes out a case under the second proviso to Section 36(3) of the Act which is for unconditional stay of the award. In the present case, learned counsel appearing for the award-debtors has, with fairness, not made out such a case.

However, Section 36(3) gives the Court discretion in the matter of stay of award.

Hence, AP/742/2023 is disposed of by directing the award-debtors to secure an amount of Rs.15 lakhs by way of a bank guarantee which shall be furnished with the Registrar, Original Side of this Court within five weeks from date. The direction is only in view of the fact that the award-debtors are in financially involved circumstances. The award will remain stayed from 19th February, 2024 if the award-debtors comply with this direction. The award-holder will be at liberty to enforce the award from 20th February, 2024 if the award-debtors choose not to comply with the direction.

The award-holder shall file its affidavit-in-opposition to the Section 34 application in AP/741/2023 within three weeks from date. Reply within two weeks thereafter.

List the Section 34 application after five weeks.

(MOUSHUMI BHATTACHARYA, J.)

T.O.
A.R.(C.R.)