IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
(COMMERCIAL DIVISION)

AO-COM/2/2024
WITH
AP/808/2022

M/S B B M ENTERPRISES
VS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 11th November, 2024.

Appearance:
Mr. Jayanta Kumar Mitra, Sr. Adv.
Ms. Nilanjana Adhya, Adv.
...for the appellant

Mr. Priyankar Saha, Adv.
Mr. Paritosh Sinha, Ld. AoR
Mr. Arindam Mandal, Adv.
Mr. Aishik Chakraborty, Adv.
..for the State

Mr. Krishnaraj Thaker, Adv.
..for Registrar, Original Side

The Court:- The appeal is arising out of an order passed by the learned Single Judge dated 11th October, 2023 rejecting the submissions on behalf of the award-holder that the learned Registrar, Original Side of this Court was not entitled to retain 1% of the amount which the petitioner was permitted to withdraw pursuant to a judgment dated 25th July, 2023. The Registrar, Original Side appears to have filed a report before the learned Single Judge.

The Registrar has also filed a report enclosing the report filed before the learned Single Judge.

In the aforesaid report, it is stated that deducting 1% towards commission is a usual practice following Rule 74 Clause 56 under Chapter XXXVI whenever any payment is made from the funds lying with the Personal Ledger (P/L) account of Registrar, Original Side, at RBI, Kolkata.

In the instant case, on 17th January, 2023, the award-debtor was permitted to deposit a sum of Rs.9 crores in cash with the Registrar, Original Side. The time to furnish the cash security was extended thereafter and on 16th March, 2023, the cash security was ultimately furnished. On 25th July, 2023, the prayer for withdrawal of the aforesaid sum by the award-holder was allowed after an extensive hearing. The relevant portion of order dated 25th July, 2023 is reproduced below:

> "25. GA 1 of 2023 is accordingly allowed for these reasons. The award-holder is permitted to withdraw the amount of Rs. 9 crores upon furnishing a bank guarantee of an equivalent amount with the Registrar, Original Side. The award-holder shall furnish the bank guarantee before withdrawing the money which shall be from a Bank which is a constituent of the RBI. The award- holder shall be at liberty of taking steps within such time as is found to be reasonable. The award-debtor shall be at liberty to take steps for listing of the application for setting aside of the award. GA 1 of 2023 is disposed of in terms of the above. The Bank guarantee shall be kept renewed till disposal". (emphasis supplied)

Thereafter, the matter was listed on 28th July, 2023 at the instance of the award-holder in which a prayer was made for directing the award-debtor to electronically transfer this sum of Rs.9 crores to the account of the award-holder.

This prayer was allowed.

The earlier order was modified and the award-holder was directed to furnish a bank guarantee of Rs.9 crores of the Punjab National Bank, Keyatala Branch to the Registrar, Original Side within three weeks from date of the order and the Registrar, Original Side was directed to electronically transfer Rs.9 crores on the same day, that is, on receiving the bank guarantee from the award-debtor to the account of the award-holder with the Punjab National Bank.

The Registrar, in doing so, had deducted a commission of 1% in terms of Chapter XXXVI Rule 74 Clause 56 of the Original Side Rules. The shortfall in the amount was questioned by the award-holder in which the impugned order was passed. In deciding the said issue in GA/3/2023, the learned Single Judge considered the report and observed as follows:

> "The fine distinction which counsel seeks to draw between deposit and withdrawal and the 1% being applicable only in cases of deposit is not applicable. This is also in view of the fact that the award-holder has furnished three bank guarantees amounting to Rs.9.9 crores along with 1% deposit, the records presented by the Department corroborates this. This is disputed on behalf of the award-holder."

Mr. Jayanta Kumar Mitra, learned Senior Advocate has submitted that the bank guarantee furnished is of only Rs.9 crores and no commission was paid towards furnishing of the bank guarantee and accordingly, the recording of such fact by the learned Single Judge was erroneous.

We also do not find any reflection of deposit of such amount or levying any commission of 1% as recorded by the learned Single Judge. However, such mistake does not affect the order as it is clear that the learned Single Judge by the subsequent order has followed Clause 56 which permits the Registrar to charge commission of 1% on monies invested.

Although the parent order gives an impression that there was an obligation on the part of the Registrar to transmit a sum of Rs.9 crores, however, by the subsequent order the relevant provision of the Rules was taken note of by the learned Single Judge and the earlier order was modified to the aforesaid extent.

On such consideration, we do not find any fault with the Registrar in deducting a commission of 1% in terms of the relevant provisions of the Original Side Rules. The learned Single Judge has not dispensed with such commission. Moreover, the Registrar-in-Insolvency has not charged 1% commission at the time of settling the bank guarantee furnished by the present applicant/appellant.

The appeal and the application thus stand disposed of. However, there shall be no order as to costs.

(SOUMEN SEN, J.)

(APURBA SINHA RAY, J.)

bp./R.Bhar