



A.No.1319 of 2024 in A.No.1189 of 202

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N.SATHISH KUMAR, J.

This appeal has been filed against the Order of the Master directing the judgment debtor to file an affidavit disclosing his assets after 30 days from the disposal of the applicant filed under section 34 of the Arbitration and Conciliation Act.

2. Brief facts leading to filing of this appeal is as follows :

The decree holder made reference to the Tribunal for claiming amount as per the agreement for sale. In the arbitration proceedings, the learned Tribunal has directed the judgment debtor to refund a sum of Rs.5,20,00,000/- with interest at the rate of 18% from the date of the award to the date of realisation besides Rs.2 lakhs towards costs. When the execution application has been filed, to enforce the award, the decree holder took up an application seeking for a direction to the judgment debtor to file an affidavit of his assets to execute the decree. The contention of the judgment debtor is that as against the arbitral award, an application under section 34 of the Arbitration and Conciliation Act is pending before this



A.No.1319 of 2024 in A.No.1189 of 202

Court. Therefore, opposed the application. However, the learned Master after hearing passed the following Order :

“Therefore the JD is directed to file his affidavit as to his assets within 30 days from the disposal of S.34 application if it ends in favour of the Decree holder. Accordingly, this application is ordered.”

3. I have perused entire materials. When the application filed challenging the award, mere pendency of the appeal filed challenging the arbitral award will not amount to stay of the award. In such view of the matter, as the execution proceedings has already been initiated, the law permits such an affidavit to be filed by the judgment debtor. Order 21 Rule 41 [2] of Code of Civil Procedure reads as follows :

(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any



A.No.1319 of 2024 in A.No.1189 of 202

officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.”

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4. The above provision makes it clear that the judgment debtor has to file an affidavit of assets within the specific period. Whereas, the learned Master has given 30 days time for filing the affidavit after disposal of the application filed under section 34 of the Arbitration and Conciliation Act. Granting such time to file the affidavit after disposal of the petition filed under section 34 of the Arbitration and Conciliation Act, in fact, will give undue advantage to the judgment debtor in pursuing his application filed under section 34 of the Arbitration and Conciliation Act. In such view of the matter, the direction of the learned Master to file an affidavit of assets within 30 days from the date of disposal of the application filed under section 34 of the Arbitration and Conciliation Act, which is in favour of the decree holder, is hereby set aside. Let the respondent file an affidavit within 30 days from today. Further, this Court is of the view that mere pendency of the application filed under section 34 of the Arbitration and Conciliation Act will not be a bar in proceeding the execution proceedings. In the event, the judgment debtor succeeds in the application filed under section 34 of the



A.No.1319 of 2024 in A.No.1189 of 202

Arbitration and Conciliation Act, his right is always protected under section 144 of Code of Civil Procedure for restitution.

5. With the above observations, the Order of the learned Master to extent referred above is set aside and the application is Ordered accordingly.

21.03.2024

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A.No.1319 of 2024 in A.No.1189 of 202

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A.No.1319 of 2024

in

A.No.1189 of 2022

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