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Arb.Appln.No.318 of 20



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RESERVED ON
25.09.2024

PRONOUNCED ON
23.10.2024

K.KUMARESH BABU, J.

The present Application has been filed to direct the respondents to deposit a sum of Rs.5,27,854.35/- together with compound interest with monthly rests, three times the bank rate per annum from the year 2019 till the date of deposit before this Court.

2. Heard Mr.Harikrishnan R., learned counsel for Mr.Sharath Chandran, learned counsel for the applicant and Ms.Shubharanjani Ananth, learned counsel appearing on behalf of the respondent.

3. Mr.Harikrishnan R., learned counsel for the applicant would submit that an Award had come to be passed against the respondent in favour of the applicant on 23.11.2023 against which no appeal have been filed under the Provisions of Section 34 of the Arbitration and Conciliation Act, 1996. The time period for filing the O.P. under Section 34 of the Act had also long expired and the respondent has also not complied with the Award and hence, the present application had been filed under Section 9 of the Act to protect the interest of the applicant and seek for a permission to



interest as made in the Award within the time stipulated by this Court.

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4. Countering his arguments, Ms.Shubharanjani Ananth, learned counsel appearing on behalf of the respondent would at the outset contend that the present Section 9 application is framed by the applicant is not maintainable. She would contend that what is to be executed by way of filing of an Execution Petition is now sought to be executed by filing an application under Section 9. She would contend that therefore, Section 9 application is not maintainable. She would further submit that the relief sought for by the applicant in the present application can always be sought for under Order XXI of C.P.C is the provision under which Execution of an Award could be claimed for and hence, would seek dismissal of the application.

5. In response, the learned counsel for the applicant would vehemently contend by relying upon various judgments of this Court as well as the Hon'ble Apex Court and contend that Section 9 can be invoked even after an Award had been passed and the power vested with this Court under Section 9 is to preserve the subject matter of the dispute, so that the fruits of the Award can be enjoyed by the holder of the Award. Hence, he would contend that this Court does not have any impediment in ordering the



petition as prayed for.

6. I have heard the rival submissions made by the learned counsels appearing for their respective parties and also perused the materials available on record.

7. Admittedly, an Award had been made in the month of November 2023 and the time-line prescribed under Section 34 for filing the O.P. against the Award had also expired which would mean that the respondent cannot challenge the Award in any manner known to law. Section 9 enables the Court for providing interim protection to preserve the subject matter of the arbitration proceedings, pending the Arbitral proceedings or even other proceedings under the Arbitration and Conciliation Act, 1996 either under Section 34 or Section 37. Such proceedings under Section 9 is a proceedings for an interim measure, pending finality of an Award. When an Award has become final to become enforceable, the holder of an Award who had attained finality, in my view cannot seek for an interim protection, as such the interim protection will be subject to the finality of the Award and not after attaining the finality. When the respondent had not filed an appeal to set aside an Award and it had attained finality, then the Award holder have



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to take out an execution application before the concerned Court to execute the award and an interim protection at this stage, cannot be permitted in perpetuity to invoke the provisions of Section 9 of the Act, which would be available during the pendency of the Arbitral proceedings or any further proceedings either under Section 34 or 37 of the Act and not otherwise i.e., when the Award had attained finality then the recourse for the Award holder will be only under Section 36 of the Act and not under Section 9 of the Act. In such view of the matter, I am of the view that the present application is not maintainable.

8. In fine, the above captioned application is dismissed.

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