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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 311/2024, CM APPL. 62786/2024 (stay)

BHARAT LALWANI

.....Petitioner

Through: Counsel for petitioner (appearance
not given).

versus

GARIMA KUMAR & ANR.

.....Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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24.10.2024

CM APPL. 62787/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

C.R.P. 311/2024

3. The Civil Revision Petition under Section 115 of CPC read with Section 13 of the Commercial Courts Act has been filed on behalf of the petitioner to challenge the Order dated 18.09.2024 in Execution Petition No. 21/2024 whereby the objections filed by the revisionist/Judgment Debtor have been dismissed.
4. The brief background is that an Award dated 30.11.2023 was passed by the learned Arbitrator, which was received by the parties on 05.12.2023. Thereafter, the Execution Petition was filed by the Decree Holder on 22.01.2024 on which date, Notice was directed to be issued to the Judgment Debtor for 21.02.2024, on which date, the Judgment Debtor was reported to be unserved. The warrants of possession were consequently issued by the



learned Executing Court. Soon thereafter he was appeared in the Court on 23.03.2024 and informed the Court that the Objections to the Execution, have been filed by the Judgment Debtor. These were eventually disposed of vide impugned Order dated 18.09.2024 by observing that even though the Execution Petition got filed within the period of 90 days from the date of Award but since more than 90 days have elapsed on the date of writing of the Order, it cannot be said that the Execution Petition itself is not maintainable.

5. Aggrieved by the said Order, the present Revision Petition has been filed on behalf of the Judgment Debtor/revisionist. The basic grievance of the learned counsel on behalf of the Judgment Debtor is that the Award was received on 05.12.2023 and the Judgment Debtor had a right to file his Objections under Section 34 up till 04.03.2023. However, the Decree Holder in total disregard of Section 36 of the Arbitration and Conciliation Act, filed the Execution Petition on 23.01.2024 which is much prior to elapse of 90 days available with the Judgment Debtor, to file the objections. Not only this, the warrant of possession got issued on 21.03.2024 which again was prior to elapse of 90 days from the date of receipt of the signed Award. Therefore, though the Objections under Section 34 have now been preferred by the Judgment Debtor, within time and are pending adjudication but the Execution Petition itself is not maintainable as it was filed before the expiry of 90 days. The Execution Petition itself is liable to be rejected.

6. **Submissions heard.**

7. Learned counsel for the Judgment Debtor/petitioner has placed reliance on Section 36(1) of the Arbitration and Conciliation Act, which



reads as under:

“36. Enforcement-(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section(2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the Court.”

8. From the bare perusal of this Clause (1) of Section 36, it is evident that not has been mandated is that the Award shall not be enforced whereby inclined that no effective steps for Execution shall be taken. It cannot be said that no Execution Petition itself can be filed before the expiry of 90 days. This is exactly what has been observed in the Case of Vindhya Telelinks Limited vs. Bharat Sachar Nigam Limited & Ors., [103 (2003) DLT 82, relied upon by the petitioner. There also the Execution Petition had got filed before the expiry of 90 days from the date of Award. The learned Court observed that even though it had got filed within 90 days of the Award but because no default can be found with the Executing Court, which waited till September, 2020 i.e. much after the 90 days for issuing the warrants of attachment.

9. The learned Executing Court may have erroneously directed issue of warrants of possession vide Order dated 21.03.2024 but the same were never issued/executed as admitted on behalf of the revisionist. More than 90 days have since elapsed.

10. To say, it cannot be said that mere filing of the Execution Petition is against the mandate of Section 36 of the Arbitration and Conciliation Act, it only directs that no enforcement be done of the arbitral Award, which



implies that no steps be taken towards the execution of the Award.

11. There is no infirmity in the Order of the learned Trial Court. The Revision is hereby dismissed. Pending application also stands disposed of.

NEENA BANSAL KRISHNA, J

OCTOBER 24, 2024/RS