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31-07-2025
(Ct. no.37)
debajyoti
(Bench ID
266311)

FMA 223 of 2025
+
IA NO:CAN/1/2024

Biswakarma Machinery Pvt. Ltd.
Vs.
M/s Advance Machine Tools

Mr. Debanik Banerjee,
Mr. Steven S. Biswas,
Mr. Sayan Chattopadhyay,
Mr. S. Shahid

... For the Appellant.

Mr. Abhimanyu Bannerjee,
Mr. Pawan Kumar Gupta,
Mr. Santanu Sett,
Ms. Priyanka Yadav

... For the Respondent.

Dictated by Om Narayan Rai, J.

1. By consent of the parties, the appeal and connected application are taken up together for hearing.

2. This appeal is directed against an order dated June 10, 2024, passed by the learned Chief Judge, City Civil Court, Calcutta on an application under Order VI Rule 17 read with Sections 151 and 153 of the Code of Civil Procedure, 1908, for amendment of an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter the said Act of 1996). By the order impugned, the appellant's application under Section 34 of the said Act of 1996 which was registered as Misc. Case No. 6526 of 2022 has been dismissed.

3. It is the appellant's case that the appellant before us had approached the said learned Court assailing an award passed by the West Bengal State Micro and Small Enterprises Facilitation Council against the appellant by filing an application under

Section 34 of the Arbitration and Conciliation Act, 1996 and that during pendency of the said proceedings the parties entered into a settlement under which certain amounts were paid to the respondent by the appellant in full and final settlement of the disputes. The respondent thereafter sought to resile from the said settlement and as such the appellant took out an application for amendment of its application under Section 34 of the said Act of 1996 thereby seeking to bring on record the said facts.

4. While hearing of the said application for amendment, the learned court below has dismissed the appellant's application under Section 34 of the said Act of 1996 itself, observing as follows:

"It is the contention of the Ld. Counsel for the opposite party that this case is not maintainable as the petitioner has ready complied with the award under challenge partially. Having complied with the order partially the petitioner is not entitled to challenge the award as has been passed by Micro and Small Enterprises Facilitation Council. Ld. Counsel for the petitioner submitted that an agreement was entered into by and between the parties that the principal amount being Rs. 7 Lakhs if paid by the petitioner, the opposite party shall withdraw all the pending proceedings in connection to their claim in the instant case. However after the petitioner had made payment as per the agreement that was entered by and between the parties the opposite party started demanding for more money i.e. the interest that has been awarded by the Council. In such circumstances the petitioner has come up with the instant amendment application to proceed with the matter as the opposite party failed to abide by the terms and conditions of the agreement that was entered into by and between the parties.

Having heard the Ld. Counsels this court is of the opinion that the

petitioner has already complied with the award partially which is under challenge before this court by filing the Misc. Case no.6526 of 2022. It is evident that the grounds on which legality of the award was challenged by the petitioner has been given a go by. In such circumstance this court find no reason to proceed with the Misc. Case filed by the petitioner challenging the authenticity of the award on the ground as stated in the petition of the Misc. Case No.6526 of 2022.

Hence, it is

Ordered

that the instant Misc. Case is dismissed on the ground of the same being partially complied with by the petitioner giving a go by to the grounds as made out in the instant Misc. Case to challenge the award.

The petitioner however is given the liberty to withdraw the 75% of the awarded amount deposited in the department as a precondition of filing the instant Misc. Case.

The Misc. Case thus stands disposed of accordingly. ”

5. Heard learned Advocates for the respective parties and considered the material on record.

6. We find that the order impugned is impeachable on several counts. It appears that the sole premise of the order impugned is that the appellant had partially complied with the award. Mere compliance with an order or award cannot be a ground to curtail the rights of the person aggrieved thereby to challenge the same by way of appropriate proceedings because there may be very many reasons behind such compliance.

7. Further, we are also of the view that while dealing with an application for amendment of pleadings or any other interlocutory application, a court should not, ordinarily, dispose of (dismiss) the main *lis* before it without putting the parties on

notice as regards the hearing of the main lis. The order impugned dated June 10, 2024, has done exactly so. The order is wholly unreasoned inasmuch as the reason assigned (i.e. partial compliance with the award) for dismissal of the Misc. Case is, in our opinion, no reason at all.

8. In such view of the matter, the order impugned cannot be sustained. The same is hereby set aside and the matter i.e. the application under Section 34 of the said Act of 1996 is remitted to the said learned Court for a fresh decision on merits along with the application for amendment which has also been left undecided, in accordance with law.

9. It is made clear that we have not gone into the merits of either the amendment application or the application under section 34 of the said Act of 1996 and the said learned Court shall be free to decide the applications on their own merits in accordance with law.

10. Parties shall be at liberty to pray for expeditious disposal of the said applications before the learned Court and if such prayer is made, the said learned Court shall consider and dispose of the same as expeditiously as may be convenient to the said learned Court.

11. FMA 223 of 2025 stands disposed of with the above observations along with the connected application.

12. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Om Narayan Rai, J.) (Arijit Banerjee, J.)