OCD-13

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP-COM/6/2025

PAYAGPOUR VYAPAAR PRIVATE LIMITED
VS
RADHAKRISHNA CONSTRUCTION AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 30th January, 2025

Appearance:
Mr. Mainak Bose, Sr. Adv.
Mr. Rishabh Karnani, Adv.
Mr. N. Kumar Pandey, Adv.
Mr. S. M. Akhter, Adv.
…for petitioner.

Mr. Ratnanko Banerji, Sr. Adv.
Mr. Surendra Kumar, Adv.
Ms. Amrita Pandey, Adv.
Mr. Ghanshyam Pandey, Adv.
…for respondent no.1 to 3

Mr. Swatarup Banerjee, Adv.
Ms. Sheha Singh, Adv.
Ms. Bipasha Jaiswal, Adv.
…for respondent no. 4

The Court:- This is an application under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim measures to protect the unsecured loan of more than Rs. 20 crores. The petitioner claims to have granted loan in favour of the respondent no. 1. The respondent No.1 is a registered partnership firm and is represented by the respondent no. 2 and 3. Initially, an amount of Rs.3 crores was advanced. On the asking of the respondent no.1, subsequent disbursements were made to the tune of Rs. 5.38 crores. The respondent No.1 repaid some amount. It is the contention of the petitioner that, the payment schedule was not adhered after the subsequent disbursement and a considerable amount remained unpaid. Accordingly, the loan recall cum demand notice was issued by the petitioner to the respondents, including the respondent no. 4.

According to the petitioner, the respondent no. 4 had undertaken the liability of the respondent no. 1 insofar as, the loan repayment was concerned and the payments were made by the respondent no. 4 on behalf of the respondent no. 1, in discharge of such liability. Reliance has been placed on several bank statements and other communications in support of the above contentions. Vouchers and payment transaction details have been referred to in support of the contention that, the respondent no. 4 had made some payments on behalf of the respondent no. 1. The respondent no. 1 replied to the loan recall notice, inter alia, stating that the letter by the respondent no. 4 was never issued and after the amicable settlement between the parties, the balance amount of Rs. 25 lakhs had been paid in full and final settlement of the dues.

Mr. Bose further contends that the group companies doctrine should be incorporated in the facts of this case as some of the directors of the respondent no. 4 are the partners of the respondent no. 1. The conduct of the respondent no. 4 will indicate that, the respondent no. 4 had an intention to be bound by the terms and conditions of the contract and was the alter ego of the respondent No.1.

Reference is made to the decision of ***Cox and Kings Limited Vs. SAP India Private Limited and Another***, reported in (2024) 4 SCC 1.

Mr. Swatarup Banerjee, learned Advocate for the respondent no. 4 submits that even assuming that a letter was issued on behalf of the respondent no. 4 that, the liability of the respondent No.4 had been taken over, there is nothing on record to show that the respondent no. 4 was either intrinsically connected or inter linked with the project for which the loan was taken. The records do not reveal that either the respondent no. 1 or the respondent no. 4, had agreed to be bound by the agreement/contract that was entered into between the respondent no. 1 and the petitioner. Mr. Banerjee contends that, whether a non-signatory to the arbitration agreement should be joined in the proceeding, must be first determined by the learned Arbitrator. Before such determination is made in the arbitral proceeding, no injunction can be prayed for against the respondent no. 4. In order to establish that respondent no.4 is a veritable party, the first test is to find out from the records, whether there was a mutual intention of all the parties, both signatories and non-signatories, to be bound by the arbitration agreement or whether there was an absolute and unqualified acceptance of the arbitration agreement by the non-signatory. Mr. Banerjee has produced a complaint lodged before the Officer-in-Charge, Park Street Police Station, in support of his contention that the letter from the Director of the respondent no.4, which is at page 25 of the application, is a forged document. According to Mr. Banerjee, there is nothing on record to show that the letter allegedly written by the respondent no. 4, was ever acknowledged by the petitioner. Thus, there was no express or implied agreement between the parties.

Mr. Ratnanko Banerji, learned senior advocate appearing on behalf of the respondent nos.1 to 3, submits that the petitioner has not made out a, prima facie, case for injunction in respect of the properties belonging to any of the respondents. An unsecured loan cannot be secured by an injunction. According to Mr. Ratnanko Banerji, the contract between the parties was with regard to a loan amount of Rs.3 crores. The same was repaid. There is nothing on record to show that the money allegedly advanced by the petitioner amounting to Rs.5.38 crores, were part of the self-same contract. Unless, there is a clear indication before this court that the alleged subsequent loan, amounting to Rs.5.38 crores, formed a part of the same loan agreement, the application under section 9 should be dismissed. The demand cum loan recall notice also, does not indicate the fact that the subsequent alleged disbursements in favour of the respondent no. 1, were covered by the initial contract. Unless there was a further agreement with an arbitration clause, this application could not have been filed. No such agreement has been brought on record.

Heard learned advocates for the respective parties. Section 9 of the said Act deals with interim measures. Before, during or after an arbitral proceeding, a party may apply to Court for interim measures, seeking protection and preservation of any property, goods or the subject matter of the arbitration agreement. The party can also apply for a direction to secure any amount in dispute. Thus, while considering an application under Section 9 of the said Act, the Court can issue directions to preserve, protect and secure the subject matter of dispute, even if the subject matter is money.

Mr. Ratnanko Banerji's contention that the alleged advancement of loan for an amount of Rs.5.38 crores was not a part of the initial agreement, cannot be accepted. The letter dated December 25, 2024, records that, pursuant to an amicable settlement, the dues were paid in the month of October, 2024. Thus, in my prima facie view, the alleged amicable settlement as mentioned in the letter dated December 25, 2024, relates to further loans advanced by the petitioner. The tenor of the letter dated December 25, 2024, indicates that there were unpaid amounts arising out of a loan and the respondent no.1 had paid back the amount, thereby, discharging itself from all liability. This letter, prima facie, contradicts the submissions of Mr. Banerji that, the alleged subsequent transactions were not a part of the contract/loan agreement. The factum of advancement of the loan is accepted. The denial of the respondent no.1 is with regard to further claim. The respondent No.1 claimed discharge of all liability.

With regard to the submissions of Mr. Swatarup Banerjee, learned advocate for the respondent, this Court, prima facie, finds that the respondent no.4 discharged the liability of the respondent No.1 in terms of the contract, by making some payments. Even assuming that the letter is forged, as alleged by both the learned advocates for the respondents, the fact that the payments were made by the respondent no.4, is available from the payment receipts annexed to the application. The stand of the respondent no.4, in my prima facie view, is rather self-contradictory. From the conduct of the respondent no.4, this Court, prima facie, holds that by discharging the liability under the loan agreement and by making payments, the respondent no.4 has exhibited a link and/or connection with the transaction between the petitioner and the respondent No.1.

It appears from the record that huge sum of money is payable.

Under such circumstances, this Court deems it fit to restrain the respondent nos.1 from alienating, encumbering or creating any third party interest in respect of all its assets. The respondent Nos, 2 and 3 shall also be restrained from dealing with and/or alienating and/or encumbering or changing the nature and character of all of their personal immovable assets and properties. Further injunction is issued, restraining the respondents from dealing with or alienating or encumbering the properties at (a) Belmuri, P.S.-Dhaniakhali, District-Hooghly, (b) Tower-1, GP Bolck, 14th Floor, Unit No.1412, Salt Lake, Sector-V within P.S. Srijan Corporate Park, (c) Branch office No.1 at P-146 1st Floor, Lake Road, Near Daikin Solution, Kolkata – 29, and (d) Branch Office-II at 302, Shreenath Enclave, Sri Hari Kute Marge, Mumbai Naka, Nashik, Maharashtra,

This order is being passed upon considering the fact that a considerable amount is due and payable to the petitioner as would appear from the statement of accounts. Moreover, four cheques issued by the respondent no.1, through the respondent no.3, were dishonoured. Thus, such conduct of the respondent, prima facie, gives rise to a doubt with regard to either the ability of the respondent No.1 to repay the dues of the petitioner or their bona fide in this regard.

The learned Arbitrator will finally decide on the issue as to whether the respondent No.4 being a non-signatory, should be a party to the arbitral proceeding or not, but, prima facie, this court finds the said respondent No.4 to be the alter ego of the respondent No. 1. Thus, the registered office of the said respondent shall not be alienated or encumbered in any way. The nature and character of the same shall not be altered.

All points are kept open to be raised before the learned Arbitrator. This order will continue for a period of three months, within which time the petitioner shall take steps in accordance with law.

Thereafter, the petitioner will be entitled to make interim prayers before the learned Arbitrator.

The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

SK./B.Pal