

OCD-6

EC/237/2023
IA NO: GA-COM/2/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

CAT'S WHISKERS PVT. LTD.
VS
G D ENGINEERING CO (INDIA) PVT. LTD.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 3rd January, 2025.

Appearance:
Mr. Priyankar Saha, Adv.
Mr. Arindam Samanta, Adv.
Mr. Hemant Tiwari, Adv.
...for the decree-holder

Mr. Sakya Sen, Sr. Adv.
Mr. Amritam Mandal, Adv.
Mr. Sukrit Mukherjee, Adv.
Ms. Shipra Naskar, Adv.
...for the respondent

The Court: IA No.GA-COM/2/2024:

This is an application seeking dismissal of EC/237/2023 on the ground that the High Court does not have territorial jurisdiction. Mr. Sen, learned senior advocate, places the pleadings in the application in order to substantiate that the specific case of the petitioner was that the assets and properties both movable and immovable belonging to the award-debtor were situated within the jurisdiction of Howrah. On a similar pleading the petitioner had already approached the Commercial Court at Rajarhat for execution of the award. The said application for execution was rejected on the ground of lack of pecuniary

jurisdiction. According to the Commercial Court at Rajarhat, the claim of the award-holder was below Rs.30 lakhs and the said Court did not have the pecuniary jurisdiction to enforce the award. Liberty was granted to the petitioner to approach the competent Court and the benefit of Section 14 of the Limitation Act was also permitted to be taken. The petitioner did not challenge the said order, but instead, filed this application for execution of the award on the selfsame pleadings.

Mr. Sen further urges this Court to consider the fact that the petitioner has not pleaded that any kind of asset of the award debtor is within the Original Civil Jurisdiction of this Court. Reference is made to several decisions of the Delhi High Court, Madras High Court and the Supreme Court in support of the contention that (a) The seat of arbitration will not be the determining factor for enforcement of an award. (b) Once the award is published and the time to pray for setting aside of the award is over, the applicability of the Arbitration and Conciliation Act, 1996 ceases. The party enforcing the award has to proceed under the provision of the Code of Civil Procedure. (c) In terms of the Code of Civil Procedure, the competent court to enforce the award will be the court having territorial jurisdiction over the assets of the award debtor, in respect of which the award is sought to be enforced.

Mr. Saha, learned advocate for the award-holder submits that the learned Commercial Court at Rajarhat erroneously held that it lacked pecuniary jurisdiction. The pecuniary jurisdiction should be computed on the basis of the sum awarded and not the original claim. Moreover, interest was a part of the total claim in the arbitration proceeding. He further submits that the award-

holder can file multiple execution cases at various places and relies on certain Division Bench judgments to show that until the award-debtor is examined and until the Court is convinced upon examination of the award-debtor that no assets are situated within the jurisdiction of this Court, the application for execution cannot be rejected on the basis of the prayer made by the award-debtor at initial stage.

Prima facie, the court finds substance in the submissions of Mr. Sen. The court finds that the pleadings in EC/237/2023 indicate that the assets are all situated within Howrah. The application for execution is bereft of any information with regard to any property within the jurisdiction of this court. Moreover, the seat of arbitration is no longer the determining factor.

In the midst of arguments, Mr. Saha upon instruction from his client, submits that his client will withdraw the execution case and take appropriate steps by challenging the order passed by the learned Commercial Court at Rajarhat.

EC/237/2023 is dismissed as withdrawn, as prayed for. Accordingly, IA No.GA-COM/2/2024 has become infructuous and the same is dismissed as infructuous. The petitioner is at liberty to take appropriate steps as permissible in law.

By an order dated February 27, 2024, a coordinate Bench of this Court had directed the award-debtor/Mr. Sen's client to deposit 75% of Rs.12,13,174/- with the Registrar, Original Side as a pre-condition to entertain the applications filed by the award-debtor. It was further directed that the deposit would be transferred to the court if the award-debtor succeeded in the two applications

filed before this court. In view of the withdrawal of the execution case by the award-debtor, the application challenging the jurisdiction of this Court has now become infructuous. The other application challenging the execution case was rejected. The award-debtor is at liberty to withdraw the amount which is lying with the Registrar, Original Side as deposited on the basis of the order dated February 27, 2024. The question of transmission of the said amount to the court does not arise in this case, as the issue of jurisdiction has not been finally decided. Mr. Saha submits that the application of the award debtor under Section 36(2) of the Arbitration and Conciliation Act was rejected. This court refrains from making any observation on such controversy and leaves it open to the parties to take steps before the appropriate forum as may be permitted in law.

(SHAMPA SARKAR, J.)