ODC-9

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

APO/75/2023

HOOGHLY MILLS PROJECTS LIMITED
VS
ACUMEN (J) MARKETING PRIVATE LIMITED

Before:
The Hon'ble Justice RAVI KRISHAN KAPUR
Date: 21st January 2025

Appearance:
Mr. Ratnanko Banerjee, Sr. Adv.
Mr. Rajarshi Dutta, Adv.
Ms. Somali Bhatterjee, Adv.
...for the appellant.

Mr. Suvasish Sengupta, Adv.
Mr. Balarko Sen, Adv.
Mr. A. Roy Chowdhury, Adv.
Mr. S. Chowdhury, Adv
...for the respondent.

The Court: This is an appeal under section 37 of the Arbitration and Conciliation Act, 1996.

The petitioner assails an interim order dated 3 September, 2022 whereby the Sole Arbitrator has stayed the arbitral proceedings pending disposal of the proceedings being AP No.208 of 2022 and AP No.209 of 2022 before this Court.

Briefly, a group company of the petitioner, namely, Hooghly Investment Ltd. is the owner of a commercial premises commonly known as E-Mall situated at premises no. 6 Chittaranjan Avenue, Kolkata. The said Hooghly Investment Ltd. had entered into a license agreement with the respondent for a commercial space located on the ground floor of E-Mall. In fact, two separate leave and license agreements had been executed for Unit no.1 and Unit no.2 respectively located at the said mall by and between Hooghly Investment Ltd. and the respondent. Simultaneously, the petitioner and one Hooghly Mills Project Ltd. had also entered into a Facility Service Agreement and Maintenance Agreement respectively with the respondent which were co-related with the above leave and license agreement.

Disputes and differences having arisen, the parties had invoked the arbitration clause and a Sole Arbitrator had entered upon the reference.

The grievance in this appeal is directed against an interim order dated September 3, 2022 passed by the Sole Arbitrator whereby there has been a stay of the arbitral proceedings pending disposal of the proceedings being AP 208 of 2022 and AP 209 of 2022 respectively. The said two proceedings AP 208 of 2022 and AP 209 of 2022 respectively arise out of a final award for eviction which had been passed against the respondent in respect of the above two premises.

On behalf of the appellant, it is contended that the Arbitrator had no jurisdiction to stay the arbitral proceedings. On a combined reading of sections 21, section 23 (4) and 29 (A) of the Act, there is no power which an Arbitrator has under the Act to stay the arbitral proceedings. In fact, in view of the clear mandate under section 23(4) of the Act, an Arbitrator is now under an obligation to conclude the arbitral proceedings within a period of 12 months. In view of the above, the impugned order is unsustainable and is liable to be set aside.

On behalf of the respondent it is contended that the impugned order warrants no interference whatsoever. There being a cloud insofar as the legal status of the respondent *vis-a-vis* the subject premises, there is no question of the Arbitral Tribunal proceeding any further with the reference. An issue has also been raised as to the legal status of the respondent whether as trespasser or tenant and this has to be finally adjudicated upon before any further steps can be taken in the arbitral proceedings. In view of the above, the Arbitrator was fully justified in staying the arbitration proceedings. In support of such contention, the respondent relies on *Shyam Sel & Power Ltd. vs. Bahubali Promoters Pvt. Ltd. (2019) 2 CHN 368.*

The crux of the issue raised in this appeal pertains to the power of an Arbitrator, if any, to stay the arbitral proceedings.

The contention that such an order can be passed under section 17(1)(e) of the Act which provides for an Arbitrator to pass such other interim measures of protection as may appear to the Arbitral Tribunal to be just and convenient is rejected. The drastic nature of the interim order which has been passed endangers the rights of parties to the arbitration including the right to equal treatment, unreasonable delay in concluding the arbitral proceedings and also the right to fair hearing. In effect, the impugned order emasculates the objective of going to arbitration.

In such circumstances, there is simply no power nor jurisdiction which the Arbitrator had to stay its proceedings *ad infinitum*. It is true that an issue pertaining to the status of the respondent *vis-a-vis* the subject premises is pending in AP 208 of 2022 and AP 209 of 2022, nevertheless, this cannot be a ground to stay the arbitral proceedings. The passing of an award in the eviction case cannot be an impediment in pursuing the reference under the above two agreement. Such an approach is also not commercially prudent as it fails to appreciate the increasing liability under the above two agreements. There is also merit in the contention on behalf of the petitioner that on a combined reading of sections 21, 23(4) and 29(A) of the Act, any order of stay of the arbitral proceedings nullifies the very purpose and object of the Act.

On the other hand, there is no substance in the contention made on behalf of the respondent that in view of the stand taken by the petitioner at the 4th meeting held on 17 August 2021 or for any other reason, the arbitral proceedings were liable to be stayed. The ultimate object of the occupier respondent in procrastinating matters is unacceptable. The impugned order also fails to appreciate the true scope and purport of the Maintenance Agreement and the Facility Service Agreement.

The decision cited on behalf of the respondent is inapplicable and inapposite. In that decision, the Court was dealing with a suit which had been filed subsequent to the passing of a decree and had been stayed prior to the filing of the second suit. The facts of the case dealt with in a claim for mesne profits after the passing of a decree for eviction in the backdrop of section 10 of the Code of Civil Procedure 1908 are distinguishable.

In view of the above, the appeal is allowed and the impugned order is set aside.

It is made clear that there has been no adjudication of the underlying disputes pending before the Arbitrator and all issues are left open insofar as the merits of the case are concerned.

APO 75 of 2023 stands allowed.

With the above directions, APO 75 of 2023 stands disposed of.

(RAVI KRISHAN KAPUR, J.)

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