



GAHC010076592022

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/110/2022

M/S C C CONSTRUCTION AND 2 ORS
RAMKUMAR ARCADE, 4TH FLOOR, CHATTRIBARI ROAD, GUWAHATI-
781001, REPRESENTED BY SHRI SUDHIR CHOUDHURY AGED ABOUT 50
YEARS, OBERON APARTMENT, 3RD FLOOR, LAMB ROAD, AMBARI,
GUWAHATI-781001

2: SUDHIR CHOUDHURY
S/O LATE SATYA NARAYN CHOUDHURY
OBERON APARTMENT
3RD FLOOR
LAMB ROAD
AMBARI
GUWAHATI-781001

3: RINKOO CHOUDHURY
W/O SHRI SUDHIR CHOUDHURY
OBERON APARTMENT
3RD FLOOR
LAMB ROAD
AMBARI
GUWAHATI-78100

VERSUS

THE UNION OF INDIA AND 2 ORS
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI-781011

2: THE CHIEF ENGINEER/CON
N.F. RAILWAY
MALIGAON
GUWAHATI-781011

3: THE DY. CHIEF ENGINEER/CON-1



N.F. RAILWAY
LUMDING-78244

Advocate for the Petitioner : MR. R HUSSAIN

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER

Date : 17-06-2022

Heard Mr. R Hussain, learned counsel for the petitioner and Mr. C.K.S Baruah, learned counsel for the respondent.

2. This is an application under Article 227 of the Constitution for setting aside and quashing the impugned order dated 16.12.2021 passed in Misc (Arb) Case No.49/2021 whereby the Court of the Additional District Judge FTC No.3, Kamrup (M) Guwahati have stayed the operation of the award dated 28.01.2020 till disposal of Misc (Arb) Case No.49/2021.

3. From a perusal of the award dated 28.01.2020, it appears that the learned Arbitrator had awarded an amount of Rs.11,76,322.29 in respect to Claim No.1; Rs.50,000/- in respect to Claim No.2; Rs. 16,39,511/- in respect to Claim No.3; Rs.34,72,174.89 in respect to Claim No.5 i.e., in total Rs.63,38,008.18 p. Apart from that, the learned Arbitrator have awarded interest @ 7% p.a in respect to the sum awarded against claim No.1, 2, 3 and 5 from the date of the final claim dated 05.04.2014 till the date of the award and further cost of Rs.1,00,000/- as litigation cost. Further to that, in terms with Section

31(7)(b) of the Arbitration and Conciliation Act, 1996 (for short the Act of 1996), the learned arbitrator had awarded interest @ 2% higher than the current rate of interest prevailing on the date of the award in respect to the claim No.1, 2, 3 & 5 from the date of the award till the date of the payment. Additionally, the learned Arbitrator further awarded that an amount of Rs.5,45,042/- which was paid by the Petitioner as claimant to the Arbitrator and Secretary respectively be paid back to the Petitioner along with interest @7% from the date of the award till the payment and the same to be treated as the part of the award.

4. Feeling aggrieved with the said award dated 28.01.2020 the respondents herein filed an application under Section 34 of the Act of 1996 for setting aside the Award dated 28.01.2020 in Arbitration Reference Case 02/2018. Along with the said application, an application was filed under Section 36(2) of the Act of 1996 for stay of the arbitral award till disposal of the Section 34 proceedings. The said application under section 34 was registered as Misc (Arb) Case No.49/2021 and the petition under Section 36(2) of the Arbitration and Conciliation Act 1996 was separately numbered as Pet No.1217/2021.

5. The Court of the Additional District Judge, FTC, No.3 Kamrup (Metro) at Guwahati vide the order dated 16.12.2021 had admitted the said application under Section 34 for hearing and issued notice upon the respondent. In the separately registered application being Pet No.1217/2021, the said Court without assigning any reasons and just on the ground to avoid multiplicity of proceedings, stayed the operation of the award dated 28.01.2020 till the disposal of the

arbitration application. It is against this order dated 16.12.2021 that the petitioner is before this Court under Article 227 of the Constitution.

6. I have heard the learned counsel for the parties and also perused the materials on record.

7. Section 36 of the Arbitration and Conciliation Act, 1996 as stands today was brought into effect w.e.f 23/10/2015. The said section 36 is quoted herein below:

“36. (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, in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing

provided that the Court shall, while considering the

application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.”

8. From a reading of the above quoted provision, it would transpire that Section 36 of the Act of 1996 provides for (a) after expiry of making an application to set aside the arbitral award i.e., 90 days from the award, the award shall be enforced as if it was decree of the court; (b) filing of an application under Section 34 shall not by itself render the award unenforceable; (c) upon an application for grant of stay of the award, the Court has the discretion to grant stay, which may be subject to such condition as it may deem fit; (d) while passing any stay order, the court is to “had due regard” to the provisions of the CPC for grant of stay of money decree.

9. Sub-section (3) of Section 36 of the Act of 1996 specifically mentions that while considering an application for stay filed along with or after filing of the application under Section 34 of the said Act of 1996, if stay is to be granted then it shall be subject to such condition as may be deemed fit by the Court. The said sub-section clearly mandates that the grant of stay of the operation of the award is to be for reasons to be recorded in writing “subject to such condition as it may deem fit”. The proviso makes it clear that the Court has to “have due regard to the provisions of grant of stay of a money decree under the provisions of the Code of the Civil Procedure, 1908. The phrase “have due regard to” would only mean that the provisions of CPC are to be taken into consideration and not that they are mandatory.

10. The Supreme Court in the case of ***Pam Developments Private Limited Vs. State of West Bengal*** reported in (2019) 8 SCC 112 had observed in paragraph 20 that the phrase used is "having regard to" the provisions of CPC and not "in accordance with" the provisions of CPC is pertinent inasmuch as, in the case of "in accordance with" it would have been mandatory to apply the provisions of the CPC. However, in the form as mentioned in Section 36(3) of the Arbitration Act, it would only be directory or a guiding factor. Mere reference to CPC in the said Section 36 cannot be construed in such a manner that it takes away the power conferred in the main statute i.e., the Arbitration and Conciliation Act, 1996. It was further observed that the provisions of the CPC be taken as a general guideline which will not make the main provisions of Act of 1996 inapplicable. The provisions of the CPC are to be followed as guidance, whereas, the provisions of the Act of 1996 are essentially to be first applied. Since the Act of 1996 is a self contained Code, the provisions of the CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Act of 1996.

11. In paragraph No. 26, the Supreme Court dealt with the question as to whether there should be an automatic stay when the Government has filed an application under Section 34 of the Act of 1996. The said paragraph 26 for the sake of convenience is quote herein below.

26. Arbitration proceedings are essentially alternate dispute redressal system meant for early/quick resolution of disputes and

in case a money decree — award as passed by the arbitrator against the Government is allowed to be automatically stayed, the very purpose of quick resolution of dispute through arbitration would be defeated as the decree-holder would be fully deprived of the fruits of the award on mere filing of objection under Section 34 of the Arbitration Act. The Arbitration Act is a special Act which provides for quick resolution of disputes between the parties and Section 18 of the Act makes it clear that the parties shall be treated with equality. Once the Act mandates so, there cannot be any special treatment given to the Government as a party. As such, under the scheme of the Arbitration Act, no distinction is made nor any differential treatment is to be given to the Government, while considering an application for grant of stay of a money decree in proceedings under Section 34 of the Arbitration Act. As we have already mentioned above, the reference to CPC in Section 36 of the Arbitration Act is only to guide the court as to what conditions can be imposed, and the same have to be consistent with the provisions of the Arbitration Act.

12. In the instant case, if this Court peruses the impugned order, there is no reasons assigned as to why the stay had been granted except stating that it would lead to multiplicity of proceedings. The Award in question as has been already mentioned herein above, is nothing but an award for payment of money and as such, the question of substantial loss may result to the party, cannot arise.

13. The Supreme Court in the case of ***Srei Infrastructures Finance Limited Vs. Candor Gurgaon Two Developers and Projects***

Pvt. Ltd. reported in **MANU/SCOR/73122/2018** passed the following order in the said case:

“Heard learned counsel on both sides.

In the circumstances of the case, we consider it appropriate, in the interest of justice, that the following interim order shall be in force during the pendency of proceedings under [Section 34](#) of the Arbitration and [Conciliation Act](#), 1996:- There shall be interim stay of the award subject to the petitioner's depositing 60% of the amount of the decree. The remaining 40% of the amount shall be secured by way of bank guarantee(s) of the nationalized bank within eight weeks. The respondent shall be at liberty to withdraw the said amount on furnishing appropriate security.

The proceedings under [Section 34](#) of the Arbitration and Conciliation Act, 1966 may be decided as expeditiously as possible, not later than six months.

The special leave petitions are disposed of accordingly.”

14. In another case i.e., in **Manish Vs. Godawari Marathawada Irrigation Development Corporation**, reported in **MANU/SCOR / 19566/2018**, the Supreme Court held that since the award was a money decree there should be 100% deposit with the respondent being entitled to withdraw the amount deposited and furnish solvent security to the satisfaction of the High Court. It is relevant to take note of that the Bombay High Court had ordered 60% deposit pending the Appeal under Section 37 of the Act of 1996. The said order is quoted herein below:

“No one appears for the respondent, even though served.

The Bombay High Court has ordered 60% deposit, pending the Section 37 appeal. We have passed orders stating that since these are money decrees there should be 100% deposit, with the respondent being entitled to withdraw the amount deposited and furnish solvent security to the satisfaction of the High Court.

Accordingly, we set aside the impugned orders dated 19.03.2018 and mandate a 100% deposit be made within a period of eight weeks from today.

The Special Leave Petitions are disposed of accordingly.”

15. However, it is seen that the Court below had passed the blanket stay to the Award without taking into consideration the amended provisions of Section 36 of the Act of 1996 as well as without assigning any reason(s). This Court therefore interferes with the said order and stays the Award dated 28.01.2020 subject to the Respondent herein who is the Applicant in Misc (Arb) Case No.49/2021, depositing 60% of the amount of the Award before the Court below within 8 (eight) weeks from today. The remaining 40% of the awarded amount shall be secured by way of bank guarantee of a nationalized bank drawn in favour of the District Judge, Kamrup (Metro) within 8 (eight) weeks from today. The validity of the said bank guarantee should be contemporaneous to the Section 34 proceedings. The petitioner herein shall be at liberty to withdraw the said amount of 60% to be deposited, on furnishing appropriate security. Failure to adhere to the conditions mentioned within 8 (eight) weeks from today, would automatically vacate the stay of the Award.



16. It is further directed that the proceedings under Section 34 of the Arbitration and Conciliation Act 1996 may be decided as expeditiously as possible, and not later than 6 (six) months.

17. Consequently, this Court interferes with the impugned order dated 16.12.2021 insofar as grant of the stay of the award is concerned and stays the award subject to the observations and directions made herein above.

18. With the above observations, the instant petition stands disposed of.

JUDGE

Comparing Assistant