
(2011) 06 CAL CK 0085

Calcutta High Court

Case No: APO No. 28 of 2011; EC No. 220 of 2010

Srei Equipment
Finance Pvt. Ltd.

APPELLANT

Vs

Shridhar Jaykrishna
Pandey

RESPONDENT

Date of Decision: June 13, 2011

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 33, 34, 34(3), 36, 39

Citation: (2011) 4 CHN 694

Hon'ble Judges: Syamal Kanti Chakrabarti, J; Sengupta, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. The learned Executing Court has passed an order refusing to execute the deemed decree passed in the arbitration proceedings.

2. The learned Trial Judge has recorded that jurisdictional fact for execution of the deemed decree has not been established. We are to examine whether this fact finding of the learned Trial Judge is correct. Before that we are to state when deemed decree becomes executable. Section 36 of the Arbitration and Conciliation Act, 1996 is the legal provision for execution of the deemed decree and the same reads as follows :

On reading the aforesaid it necessarily follows that before putting the decree into execution the award holder has to satisfy the Court that either no application for setting aside of the decree u/s 34 of the said Act filed within the period as mentioned in the said sub-section (3) of section 34 from the date of receipt of the arbitral award by the judgment debtor, or such action if taken has been dismissed.

3. We accordingly for better appreciation of the fact quote sub-section (3) with proviso to section 34 as follows:

An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made u/s 33 from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant has been prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

4. Upon reading of the said sub-section (3) and proviso thereunder it appears to us the maximum period of limitation even taking into consideration the power of condonation, for applying setting aside of the award is three months plus 30 days.

5. In the affidavit in support of the Tabular Statement before the learned Trial Judge, the appellant before us with the supporting documents stated that the judgment debtor was served with the copy of the award by the learned Arbitrator and on request being made the learned Arbitrator has been pleased to give the copy of the postal receipt whereby the said award has been forwarded to the respondent.

6. It appears that the award was communicated by the learned Arbitrator to the judgment debtor (award debtor) by Registered Post with Acknowledgment Due. Xerox copy of the Acknowledgement Due Card has also been annexed and it appears from this card that the judgment debtor viz., Bhagwanbhai J. Ode duly received copy of the award some time in the month of March, 2010. Similarly it was duly despatched on 19.02.2010 to others.

7. The execution application was presented before the learned Trial Judge on 20.8.2010. Accordingly, the execution was levied after expiry of the maximum period of limitation as stated above. We are of the view that the award holder/ appellant has discharged its burden to establish before the Court with a document that award had become executable. Even despite service of notice upon the respondent no one has come forward to say whether any step has been taken to set aside the said award. Going by the subsequent fact because of passage of time award has now become executable.

8. We accept the argument of Mr. Bose that learned Trial Judge was not justified in refusing to entertain the execution application and to hold that it was not executable on the date of presentation.

9. On the ground of non executability on the date of presentation of the application the same was dismissed and there was no scope for any further orders.

10. Accordingly, the judgment and order of the learned Trial Judge is set aside and we accept the argument of Mr. Bose that award has now become executable.

11. While considering whether this award can be executed by this Court or not, it is apparent admittedly the judgment debtor does not have any property within the territorial jurisdiction of this Hon"ble Court in its Original Side. It is also admitted position that none of the judgment debtors resides and/or carries on business within the territorial Jurisdiction in the Original Side of this Court.

12. Accordingly, taking note of sub-section (4) of section 39 of the CPC we cannot pass any orders as prayed for in Column 10 of the Tabular Statement. It would be apposite to set out the sub-section (4) of section 39 of the Civil Procedure Code:

Nothing in this Section shall be deemed to authorise the Court, which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

13. The aforesaid legislative mandate cannot be ignored as it is mandatory in nature as it appears from language from the said sub section.

14. In view of this situation this Court refused to execute the decree with the mode of assistance sought for in Column 10 of Tabular Statement. It would be ideal that this decree should be executed by the Competent Court within whose jurisdiction the award debtor or any of it is having property or they or any of them is residing within the territorial limit of any Competent Court.

15. We, therefore, dispose of the appeal allowing the appellant to take back the original award filed before the learned Trial Judge for execution and to enforce the same before Appropriate Court of appellant's choice.

16. In exercise of inherent power and without offending the provision of such section 4 as above we pass an order of injunction restraining the judgment debtors from transferring and/or alienating and/or disposing of any of their immovable property save and except in usual course of business. However, this order will be continuing for a period of six weeks from date or till the date of moving fresh execution application as above whichever is earlier.

17. Affidavit-of-service be kept on record.

18. Let certified photostat copy of this order be made available to the parties, if applied for upon compliance of usual formalities.

S.K. Chakrabarti, J.

19. I agree.