

Paramount Blue Chips Ltd. Vs Srei Equipment Finance Ltd.

Court: Calcutta High Court

Date of Decision: June 28, 2018

Acts Referred: Arbitration and Conciliation Act, 1996 – Section 9, 17, 37

Hon'ble Judges: ASHIS KUMAR CHAKRABORTY, J

Bench: Single Bench

Advocate: Nimai Srinivas, Arik Banerjee, Utpal Bose, Swatarup Banerjee, Kaushik Chatterjee

Final Decision: Allowed

Judgement

In this appeal under Section 37 of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2016 (in short, the said Act of 1996), the

appellant has assailed the order dated March 27, 2018 passed by the arbitrator in an application under Section 17 of the Act of 1996 in the arbitral

proceeding between the present respondent and the appellant. By the impugned order, the arbitrator appointed two of the officers of the present

respondent, the claimant in the arbitral proceeding as the Joint Receivers to take possession of the assets hypothecated by the present appellant in

favour of the claimant- respondent. In the appeal, the appellant has also filed an application, G.A. No. 1313 of 2018 praying for, stay of operation of

the impugned order.

The grievance of the appellant is that when a copy of the application filed under Section 17 of the Act of 1996 was served upon it only on May 7,

2018 the arbitrator passed the impugned ex-parte order dated March 27, 2018 by holding that in spite of service it had chosen to stay away from the

arbitral proceeding. In the application, GA No.1313 of 2018 filed in the appeal the present appellant has demonstrated that a copy of the application

filed by the present appellant was dispatched only on April 27, 2018 and the same was received by it on May 7, 2018. Accordingly, it is contended on

behalf of the appellant that when it is proved beyond doubt that as on the date of passing of the impugned order, that is, on March 27, 2018, a copy of

the application under Section 17 of the Act of 1996 was not even dispatched to itself, the impugned order passed by the arbitrator is vitiated by patent

illegality and the same is liable to be set aside.

At this stage, it is brought to the notice of this Court that after the Joint Receivers went to take possession of the hypothecated assets in terms of the

impugned order passed by the arbitrator, the present appellant filed an application under Section 9 of the Act of 1996, before the learned Court of the

16th Additional District & Sessions Judge, Malkajgiri, Medchal, against the respondent. It is, however, submitted by the petitioner that in view of the

arbitration agreement between the parties providing that only the Courts of Kolkata would have jurisdiction to entertain an application filed by any of

the parties herein, no Court in Andhra Pradesh has the jurisdiction to entertain the said application filed by the appellant under Section 9 of the Act of

1996.

Mr. D. Padmanavan Reddy, one of the directors of the respondent company, present before this Court through Mr. Srinivas, gave an undertaking

before this Court to take steps for withdrawal of the said application under Section 9 of the Act of 1996 from the Court of the 16th Additional District

& Sessions Judge, Malkajgiri, Medchal positively within July 4, 2018. On the basis of the above undertaking given on behalf of the appellant the appeal

is taken up for hearing.

The fact urged by the present appellant that the copy of the application under Section 17 of the Act of 1996 was dispatched to itself by the claimant

only on April 27, 2018 could not be disputed by the claimant, the respondent herein. Accordingly, the impugned ex-parte order dated March 27, 2018

passed by the arbitrator is set aside. Since, the impugned order dated March 27, 2018 is set aside, the Joint Receivers appointed by the said order shall

forthwith return possession of the hypothecated assets in question to the respondent and thereafter, they shall stand discharged.

Considering the undisputed facts as mentioned above, this Court is extremely disturbed with the manner in which the arbitrator has been conducting

the arbitral proceeding between the parties herein, resulting in passing of the impugned order. However, the learned counsel appearing for the

appellant as well as the respondent, upon taking instruction from their respective clients, agreed for appointment of a new arbitrator in place and stead

of the arbitrator who passed the impugned order.

As agreed by the parties, Mr. Raj Ratna Sen, Bar-at-Law, advocate is appointed as the new arbitrator to proceed with the arbitration proceeding

between the claimant and the respondent. The new arbitrator shall be free to fix his remuneration and engage the staff for conducting the arbitral

proceeding. The fees of the new arbitrator and the remuneration of staff engaged in the arbitral proceeding shall be borne by the parties in equal

share.

However, in the interest of justice, there shall be an order of injunction restraining the present appellant from transferring or alienating or encumbering

or parting with possession of the hypothecated assets, namely 1(one) Mesto Crusher (containing three units) and 1(one) 80 ton Weighbridge along

with all its accessories. It is, however, made clear that the claimant respondent shall be free to file a fresh application, under Section 17 of the Act of

1996, before the new arbitrator. The parties may also approach the new arbitrator for settlement of their disputes.

With the above directions, the appeal stands allowed. Since the appeal stands allowed, the application, G.A. No. 1313 of 2018 also stands disposed of

without any further order. There shall, however, be no order as to costs. Urgent certified website copies of this order, if applied for, be made available

to the parties subject to compliance with all requisite formalities.