

(2020) 01 DEL CK 0353

In the Delhi High Court

Case No : Execution First Appeals(Original Side) No. 25 Of 2019, Civil
Miscellaneous Application No. 55683 Of 2019

Brawn Laboratories Ltd

APPELLANT

Vs

Fittydent International GMBH

RESPONDENT

Date of Decision : 09-01-2020

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 49

Citation : (2020) 01 DEL CK 0353

Hon'ble Judges : G.S. Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Kirti Uppal, Garima Gupta, Siddharth Chopra, Aditya Awasthi,
Maneet Kaur Johar, Naveen Chawla, H.S. Parihar, Kuldeep S. Parihar

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. The present appeal is directed against orders dated 12.12.2019 and 13.12.2019 by which the learned Single Judge of this court has observed that the judgment debtor (appellant herein) has abused and misused the process of law and has also misled the court by pleading that it has no objection to remitting the decretal amount to the decree holder, whereas actually attempting to impede the process.

2. Notice to show cause as to why this appeal be not admitted.

3. Learned counsel for respondent No. 1 as also counsel for Reserve Bank of India (RBI) accept notice.

4. With the consent of the parties, the appeal is set-down for final hearing and disposal at the admission stage itself.

5. In this case, the parties had entered into license agreement dated 20.05.1994, which was terminated on 25.04.1996. Resultantly, arbitration was

invoked before the International Court of Arbitration (ICC) which resulted in making of a foreign award dated 24.03.2000 against the judgment debtor for USD 1,75,000/- alongwith the interest @ of 8.5% per annum.

6. Thereupon the decree holder (respondent herein) filed a suit under section 49 of the Arbitration and Conciliation Act, 1996 for enforcement of the foreign award. The objections raised by the appellant were rejected vide judgment dated 11.05.2010, with a modification that the rate of interest was reduced from 8.5% to 2% per annum. This led to filing of an execution petition on 01.11.2011.

7. It is not in dispute that after order dated 05.04.2018, on which date the judgment debtor was directed to deposit the amount with the Registrar General of this court, the matter has been pending for remittance of the amount to the decree holder. It may not be out of place to mention that the RBI has also granted permission for remittance vide letter dated 01.08.2013, subject to the condition that the Chief Manager, Punjab National Bank, which is the remitting bank, would ensure :

(a) bonafides of the transaction ;

(b) collect applicable taxes, fees relating to the remittance ; and

(c) any other approvals as required from the government bodies/departments are to be obtained by the applicant separately.

8. An affidavit has also been filed on behalf of RBI, para 4 of which reads as under :

" 4. It is submitted that the Reserve Bank of India vide letter dated August, 1, 2013 (Copy of the said letter is annexed hereto and marked as ANNEXURE-A) granted its approval to the Authorized Dealer bank (hereinafter referred to as AD bank) i.e. Punjab National Bank, for remitting USD 175.000 to the overseas company Fittydent International GMBH, subject to certain terms and condition. Inter alia, AD bank ensuring the bonafides of the transaction and the Applicant obtaining any other approval as required from the Government bodies/departments. However, the AD bank, vide its letter dated November 20, 2015 has advised Reserve Bank of India that the transaction, according to them is not bonafide as per law and the Applicant has not received permission from the required Ministry for making the remittance.

Since the permission was granted to the AD bank under FEMA for making the remittance subject to fulfillment of the terms and conditions of Reserve Bank of India approval letter, the onus of ensuring the genuineness of the transaction before processing the remittance is on the AD bank."

9. Learned counsel appearing for the respondents are in agreement that once the decretal amount stands deposited by the judgment debtor in court, he would have no role to play in the remittance of the amount since the question of the transaction being doubted as not bona fide does not arise for the reason that it is

a decree of the court based on a foreign award ; as far as collection of applicable taxes is concerned, the same are not to be paid by the judgment debtor ; and no other governmental approval is required.

10. In this backdrop, Mr. Kirti Uppal, learned senior counsel for the appellant, on instructions, submits that no reference was required to be made to the judgment debtor prior to remittance once money stands deposited by the judgment debtor in court ; and even otherwise, there is nothing to show that any compliance was to be made by the judgment debtor which he declined or delayed. It is submitted that in the absence thereof, any observation made by the learned Single Judge with regard to delay and obstruction by the judgment debtor is misplaced. Mr. Uppal reiterates that since the decretal amount stands deposited, it is really between the Registrar General of the court and the decree holder to ensure that the money is remitted ; however, if any other compliance is to be made, the judgment debtor would comply with the same.

11. In view of what has been stated on behalf of the appellant, we are of the considered view that there is no material on record to show any delay or interference with the administration of justice, by the judgment debtor. It seems that on a pointed question being asked, the judgment debtor did not make a positive statement before the Single Judge recording his no objection to the remittance being made, as has been made before us in court today.

12. Accordingly, binding the appellant/judgment debtor to the statement so made, with the consent of all the parties, the impugned order is set-aside.

13. The matter be listed before the Registrar General on 27.01.2020 to ensure compliance of the order of the Single Judge as far as it relates to remittance of the award amount, subject to completion of other formalities, if any.

14. The appeal and the pending application are disposed of.