
(2009) 08 DEL CK 0033
In the Delhi High Court
Case No : OMP No. 205 of 2009

Goyal MG Gases Pvt. Ltd.

APPELLANT

Vs

Gulati Industrial Fabrication (P) Ltd.

RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 17, 9
Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5

Citation : (2009) 08 DEL CK 0033

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : P.S. Bindra, for the Appellant; Sudeep Kr. Shrotriya and K.K. Khurana, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this application u/s 9 of the Arbitration and Conciliation Act petitioner has sought an injunction against the respondent, company to the effect that the respondent and its directors, employees, etc. should be restrained from selling, transferring and alienating or creating any third party rights and interest over the assets and properties of the respondent.

2. The case of the petitioner is that the petitioner has filed an arbitration claim against the respondent, company before the learned Arbitrator to the tune of Rs. 1,16,52,301/- as liquidated damages on account of delay in supply of air cooling towers, water cooling towers and GOX vessels.

3. It is stated that the respondent, in view to frustrate the execution of the award likely to be passed in favour of the petitioner was trying to sell his property so that the petitioner may not execute the award and was left high and dry. Hence the prayer.

4. The petition is accompanied by a supporting affidavit only wherein an authorized signatory has stated that he was conversant with the facts. Notice of

the petition was served upon the respondent and Counsel for the respondent stated that he need not file reply and arguments can be heard right away.

5. It is submitted by respondent's Counsel that on an application u/s 17 made by the respondent before the learned Arbitrator it is the petitioner who has been asked to give a bank guarantee of Rs. 25 lakhs in favour of the respondent. He also submitted that the petitioner had failed to place on record any material to show that there was any effort by the respondent to sell or dispose of any property. On the other hand, respondent was establishing another factory to manufacture more products. Thus, petition was a frivolous petition and liable to be dismissed.

6. A Division Bench of this Court in Rite Approach Group Ltd. Vs. Rosoboronexport, has observed that the provisions of Order 38 Rule 5 CPC and the conditions stipulated therein can be read into Section 9 of the Arbitration and Conciliation Act while granting a relief of that nature. It is undisputed that the present application made by the petitioner u/s 9 is in the nature of an application under Order 38 Rule 5 CPC seeking an injunction before passing of decree against sale or transfer of any movable or immovable properties of the respondent. Such an injunction in fact amounts to bringing the entire business of the respondent to standstill since if this Court injuncts the respondent from disposing of or dealing with any movable or immovable assets, respondent would not be able to operate its bank accounts, would not be able to deal with the shares, securities or any of its properties. Such an injunction cannot be granted merely because the petitioner makes vague and unsubstantiated allegations that the respondent was out to sell his property without placing on record any material to show that any effort was made by the respondent in this direction. In order to grant such a relief, the Court has to be satisfied that the plaintiff had a prima facie case before the Arbitrator and after being satisfied on this ground, the Court has to be further satisfied that the respondent was attempting to remove or disposing of his assets with intention of defeating the award that may be passed.

7. There was nothing on record to arrive at the conclusion that plaintiff had a prima facie case. The plaintiff has not shown how he has a good prima facie case. Mere filing of claim before the Arbitrator does not amount to having a good prima facie case. There are no restrictions in filing inflated claims before the Arbitrator because no ad veloram Court fee is payable on value of claim. Even where the real claim may be of few lakhs, one may file a claim running into crores as he has not to pay Court fee. Similarly the petitioner has failed to place on record any material to show intention of the respondent to sell or dispose of property to defeat the claim of petitioner. A respondent cannot be debarred from dealing with his property merely because claimant has invoked Arbitration Clause and filed a claim before the Arbitrator. An applicant u/s 9 of the Arbitration and Conciliation Act, to get such an order has to show that he has prima facie a bonafide and a valid claim before the Arbitrator and he has also to satisfy the

Court that the respondent was about to remove or dispose of all or any part of his property with the intention of obstructing or defeating the implementation of the award that may be passed against the respondent. The petitioner has failed on both the counts to satisfy this Court. There are no merits in the petition. The petition is hereby dismissed.