
(2009) 08 DEL CK 0399
In the Delhi High Court
Case No : OMP. No. 464 of 2009

Himachal Futuristic Communication Ltd.	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 9
Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, 151

Citation : (2009) 7 ILR Delhi 494

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Bishwajit Bhattacharya, Debashis Mukherjee, Ajay Singh and Parmanand, for the Appellant; Monica Garg, Sweta Kakkad and Varun Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—Petition for interim measures u/s 9 of Arbitration Act, 1996, after the making of the arbitral award, but before its enforcement, is for admission.

2. The respondent Union of India has preferred petition u/s 34 of the Act with respect to the said arbitral award. The award is for a sum of Rs. 55 Crores with simple interest thereon @ 9% per annum till payment or realization, by the respondent Union of India to the petitioner.

3. The petitioner seeks interim measure of directing the respondent Union of India to deposit the awarded amount in this Court, to be kept in a fixed deposit in a nationalized bank.

4. In the short pleadings in this petition, all that has been said is that attitude of the respondent Union of India in the petition u/s 34 of the Act has been of procrastination and the petitioner has a strong case on merits in the petition and the order of deposit is sought to secure the amounts in dispute and if the said

order is not made, the petitioner would suffer immense injury in as much as the Union of India would continue to delay the petition u/s 34 of the Act. The senior counsel for the petitioner during the course of hearing has also emphasized on the merits of the matter and has pointed out the dilatory tactics adopted by the counsel for the Union of India in the proceedings u/s 34 of the Act and has further pointed out that though an application for early hearing of the petition u/s 34 of the Act had been preferred by the petitioner herein but the same was dismissed by the court where the said petition is pending and the appeal against the said order was also dismissed as not pressed by the petitioner.

5. Section 9 of the Act expressly provides that the court, in dealing with such petitions shall have the same powers as it has for the purpose of and in relation to any proceedings before it.

6. Attention of the senior counsel for the petitioner was invited to provisions of Order 38 Rule 5 of the CPC. He has replied that the same are not strictly applicable because in the present case there is already a decree in favour of the petitioner. However this is not the correct position in law and the senior counsel has also fairly conceded that though the arbitral award till date is not a decree but has contended that it is akin to a decree. Once there is no decree, the powers of the court to be exercised u/s 9, for granting interim measures in the nature of attachment before judgment, as sought are the same as in Order 38 or Order 39 of the CPC.

7. The petitioner has neither pleaded any of the ingredients of Order 38 or Order 39 CPC nor can it possibly do so. The award is against the Union of India. It cannot be possibly suggested that unless the interim order of deposit as sought is made, the petitioner would suffer a *fait accompli* or would not be in a position to execute the award in the event of dismissal of the petition u/s 34 of the Act. The senior counsel for the petitioner has again fairly stated that the same cannot even be suggested against the Union of India. He has however contended that Section 9(ii)(b) empowers the court to secure the amount in dispute in the arbitration and has further contended that the order of deposit sought by him is for securing the amount.

8. However the aforesaid provision cannot be equated to the execution of an award. If, even in the absence of averments of the party against whom monetary award has been passed changing the position in a manner so as to render the execution of the award an impossibility or an impracticality, orders are made for deposit of the award amount in the court, even before the award has become executable as a decree, powers u/s 9 would become the same as in execution and which the courts have held is not permissible in law.

9. The powers u/s 9 are for granting interim measures by the court. The Supreme Court recently in *State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha*, has held that the interim orders do not finally and conclusively decide the issue and are temporary arrangements to preserve the status quo till the

matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. They are in aid of the final order and to prevent the position from changing during the pendency of the proceedings and cannot be in the nature of a final order. In the present case the interim measure sought is in the nature of the final order/execution of the award before the same has become executable.

10. There is another aspect of the matter. It is not as if the petitioner under the award has not been allowed any interest on the principal amount or that the deposit of the money in a nationalized bank is sought to earn interest therefrom. As noticed above, the petitioner has been awarded interest @ 9% per annum. Even if, as sought, the amount is deposited in a fixed deposit in a nationalized bank, the same is unlikely to earn interest at a rate more than the rate awarded.

11. Therefore in such circumstances no case is made out for grant of the interim measures. The petition is dismissed. IA No. 10347/2009 (Under Section 151 CPC for exemption)

Allowed subject to just exceptions.