

(2020) 08 CAL CK 0043

In the Calcutta High Court

Case No : General Application (GA) No. 2567 Of 2019, 280, 895 Of 2020,
Arbitration Petition (AP) NO. 626 Of 2019

M/S. Jay Cr Stone Mining And Overseas Pvt. Ltd.

APPELLANT

Vs

M/S. Angel Exports

RESPONDENT

Date of Decision : 25-08-2020

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9

Citation : (2020) 08 CAL CK 0043

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Prantik Garai, Chandrachur Chatterjee, M. Halder

Final Decision : Disposed Of

Judgement

@JUDGMENT-JUDGMENT

The Court : The predicament of the applicant is that the vessel of the present applicant is stuck up due to an order passed by the Criminal Court as well as by dint of an order dated September 12, 2019 passed by a co-ordinate Bench of this Court, in a matter where a dispute has been raised by the opposite parties herein (petitioner in the application under section 9 of the Arbitration and Conciliation Act, 1996), that the respondent in the main application under Section 9 of the 1996 Act owes certain goods, which were carried by the applicant's vessel, to the petitioner therein.

It is submitted by learned Counsel appearing for the applicant that, despite having complied with an order of the Criminal Court dated 26th August, 2019 and furnishing a bond to the tune of Rs.50,000/- and a warehouse having already been allocated by the port authorities for unloading the goods-in-dispute, such unloading cannot be undertaken due to the pendency of the proceedings. The applicant is suffering due to such delay, both financially and in respect of maintenance of the vessel. It is submitted that the petitioner in the proceeding

under Section 9 has no lien or right over the vessel-in-question but at best to some of the goods stored thereon.

It is further submitted that merely due to a claim having been raised by the petitioner in the proceeding under Section 9 against the respondent therein, the applicant's vessel cannot be detained inordinately with heavy cargo on board, thereby causing loss of business as well as wear and tear of the vessel itself, along with ancillary expenses which are being borne by the applicant. In such view of the matter, since despite service none appears on behalf of the opposite parties in the present application, the matter is taken up ex parte.

The applicant in the present application, bearing GA No.280 of 2020, is permitted to unload the goods and articles stored on the applicant's vessel-in- question and stock the same in the warehouse allocated for such purpose, in the presence of the port authorities, representatives of the present opposite parties, that is the petitioner in the main proceeding under Section 9 of the 1996 Act, as well as the respondent therein. The said unloading shall be undertaken by the present applicant upon prior notice of at least seven clear days to all the parties in the main proceeding under Section 9 as well as on the port authorities.

It is made clear that since no order of injunction was passed by this Court at any point of time restraining the vessel from unloading such goods, there is no question of withholding the said articles without any rhyme or reason, merely because a dispute has been raised, to which the present applicant or the vessel is not even a party.

It is further made clear that the fate of the goods which shall be unloaded and kept for the time being at the warehouse, as directed above, shall be decided subject to the result of the application under Section 9 of the 1996 Act. It may further be noted that, no prejudice shall be caused to the rights and contentions of the parties in the proceeding under Section 9 by virtue of this order. The present applicant is also at liberty to seek police assistance, if necessary, from the West Port Police Station for the purpose of carrying out the above act of unloading, and if so requested by the applicant, the police authorities shall render necessary assistance, subject to payment of the costs therefor by the present applicant.

The applicant is permitted to take the vessel in question, namely, 'M.V. Jay Basudeb' off the dock where it is stationed at present for the limited purpose of repair work which is necessary for maintaining the same. However, the vessel shall not be taken out of the territorial limits of India and shall be made available by the applicant as and when directed by the appropriate Court taking up the main application under Section 9 of the 1996 Act, if required.

GA No.280 of 2020 is accordingly disposed of without any order as to costs.