

(2023) 02 OHC CK 0188

In the Orissa High Court

Case No : Writ Petition (C) No. 2133 Of 2023

Paradip Port Trust, Jagatsinghpur And Others

APPELLANT

Vs

M/s. Surana Solar Ltd., Secunderabad

RESPONDENT

Date of Decision : 28-02-2023

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(5), 36(2), 36(3)

Citation : (2023) 02 OHC CK 0188

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Satya Smruti Mohanty, G. K. Acharya

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. The writ petition has been listed under heading 'To Be Mentioned' at instance of opposite party (award holder). Mr. Acharya, learned senior advocate appears on behalf of award holder, while Mr. Mohanty, learned advocate appears on behalf of petitioners (award debtors). On consent of the parties the writ petition is taken up for adjudication at this stage.

2. Upon hearing the parties it appears, petitioners had suffered award dated 8th April, 2021. There was direction to pay Rs.8,69,34,723/- and consequential directions. Petitioners had challenged the award under section 34 in Arbitration and Conciliation Act, 1996. The challenge is pending adjudication.

3. Mr. Acharya submits, the challenge petition was filed on 30th of May, 2022 as has been discovered by his client. No notice has been served. Mr. Mohanty submits, the petition has been posted to 12th April, 2023. He is unable to inform Court whether there was direction for issuance of notice.

4. It is clear that award holder proceeded for execution. Order-sheet stands disclosed to show that petitioners did not take steps to enter appearance therein.

In the circumstances, impugned order dated 11th January, 2023 attaching petitioners' bank account came to be passed. Petitioners had filed for recall of the order and thereafter moved the writ petition, in which coordinate Bench by order dated 25th January, 2023 directed stay of the execution case on condition that petitioner deposits entire awarded amount in the registry of this Court. Mr. Mohanty submits, petitioners have done so.

5. Mr. Acharya submits, sub-section (5) in section 34 mandates filing of petition under section 34 to be after issuance of prior notice. No such notice was received by his client, even after filing of the same, let alone prior to it. Mr. Mohanty submits, the Supreme Court in *State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti*, reported in (2018) 9 SCC 472 has held that the mandate in sub-section (5) is directory.

6. Sub-section (2) in section 36 provides for filing of application for stay of the award. Sub-section (3) says stay of operation of the arbitral award may be granted by the Court subject to such conditions as it may deem fit having due regard to provisions for grant of stay of money decree in Code of Civil Procedure, 1908.

7. Interim order dated 25th January, 2023 made by coordinate Bench in the writ petition is in effect one passed under section 36(3). On query from Court Mr. Mohanty submits, the demand draft was drawn in favour of Registrar (Judicial) of this Court.

8. Registrar (Judicial) is directed to encash the deposit and transmit the same in favour of Registrar, Commercial Court, Bhubaneswar, for reinvestment in short term interest bearing deposit to be made and held in favour of ARBP no.19 of 2022, pending in the Commercial Court at Bhubaneswar. The interim order passed will continue till three weeks from date, within which time the cash security is to be transmitted and petitioners, to inform the learned Civil Judge (Senior Division), Commercial Court, Bhubaneswar and seek continuance of the same, upon notice to award holder. It is made clear that award holder will be entitled to oppose prayer for extension of stay of execution of the award on all points to be taken by it before the Commercial Court. Petitioners will promptly produce web-site copy of this order to the Registrar (Judicial) of this Court for compliance of the directions made upon the office.

9. The writ petition is disposed of.

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