

(2019) 03 CAL CK 0033
In the Calcutta High Court

Case No : Appeal From Order (APO) No. 359 Of 2018, General Application
(GA)No. 616 Of 2019

Shree Ganesh Company & Ors

APPELLANT

Vs

Manjushree Karnani (Nee Daga)

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9, 17, 34

Citation : (2019) 03 CAL CK 0033

Hon'ble Judges : Soumen Sen, J;Ravi Krishan Kapur, J

Bench : Division Bench

Advocate : Ashim Kr. Routh, N.K. Khaitan, Kabita Mukherjee, Manas Dasgupta,
Meghajit Mukherjee, Madhubauti Chakraborty

Judgement

The Court: The appeal and the application are taken up for hearing and disposed of by this order.

This appeal is directed against an order dated 13th September, 2018 by which the application for restoration of the application filed under Section 34 of the Arbitration and Conciliation Act, 1996 against a preliminary award passed by the then sole Arbitrator on 15th May, 2016 was restored. On 22nd November, 2017, the appellant filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the preliminary award dated 15th May, 2016. By the preliminary award, the learned Arbitrator has held the claimant, the respondent in this appeal, is entitled to be inducted as a partner of the petitioner no.1 firm and directed the present petitioner to disclose and submit before the Tribunal, the complete audited accounts of the petitioner no.1 firm since July, 1994. The award also restrained the firm from releasing any benefits, profits and interest in favour of the appellant nos.2 and 3. All the appellants were restrained from transferring, alienating and/or encumbering the property of the appellant no.1 firm. On consideration of the materials on record and the submission of the learned Counsel appearing for the respective parties, the following interim order

was passed:

"Accordingly, the operation of the preliminary Award dated May 15, 2017 passed by the learned Arbitrator shall remain stayed, subject to the condition that during pendency of this application the petitioners shall submit before the learned Registrar, Original Side of this Court the list of present tenants of the property of the petitioner firm and the monthly accounts of the firm for the period commencing from the month of May, 2017 till the disposal of this application. The petitioners are restrained from transferring or alienating or encumbering the property of the petitioner no.1 firm in any manner whatsoever, till the disposal of this application.

The monthly accounts of the petitioner no.1 for the period between May, 2017 and October, 2017 and the list of tenants of the petitioner no.1 shall be filed by the petitioners before the learned Registrar, Original Side of this Court by within December 20, 2017. The monthly accounts of the petitioner no.1 for the months commencing from November 2017 shall be filed with the learned Registrar, Original Side of this Court within the 15th day of each succeeding month.

The petitioners shall keep the learned Advocate-on-Record of the respondent of the filing of the list of tenants of the petitioner no.1, as well as the monthly accounts of the latter, filed before the learned Registrar, Original Side."

The said application being AP No.685 of 2017 was, however, dismissed for default on 12th July, 2018 as none had appeared on behalf of the appellant and the interim order passed on 22nd November, 2017 was also vacated.

On the self same day, the respondent filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 for appointment of receiver to visit the premises in question and to make an inventory of the persons in occupation of various rooms/flats in the said premises and file a report. A

member of the Bar was appointed as the Receiver. The said application was, however, disposed of on reconstitution of the arbitral Tribunal by an order dated 18th July, 2018 by which Mr. Debasish Roy, Advocate, Bar Association, Room No.2 was appointed as a new Arbitrator to proceed with the pending reference.

The application for restoration of AP No.685 of 2017 was disposed of by an order dated 13th September, 2018. Although the learned Single Judge had accepted the explanation offered for non- appearance on the date when the application was called and dismissed for default, but the interim order was not revived due to the indolent conduct of the petitioner. Ordinarily, when an application is dismissed for default, the Court, if satisfied with the ground for non appearance, would restore the interim order, unless there are circumstances to suggest that the restoration of the interim order would cause prejudice to the other side. In the instant case, the order dated 22nd November, 2017 passed in GA No.3505 of 2017 was continuing till the said application was dismissed for default. The respondent did not prefer any appeal against the said order.

There is nothing on record to show that till the matter was dismissed for default, the appellant had acted in breach of the order dated 22nd November, 2017. However, it appears that the respondent had expressed an apprehension that new tenancies were being created in breach of the order dated 22nd November, 2017 for which a member of the Bar was appointed Receiver and subsequently, the said application was disposed of by giving liberty to the respondent to apply before the Arbitrator for the self same reliefs.

We have perused the minutes of the arbitration proceedings held subsequent to the order dated 18th July, 2018 and it appears that the respondent has filed an application under Section 17 of the Arbitration and Conciliation Act, for certain interim reliefs. The sum and substance of the said application is that new tenancies are being created.

We feel that the interest of both the parties are required to be preserved till the application for setting aside of the preliminary award is decided. In addition to the conditions mentioned in the order dated 22nd November, 2017, the petitioner shall deposit a sum of Rs.10 lakhs either in cash with the Registrar, High Court, Original Side, or by way of bank draft drawn in favour of the Registrar, High Court, Original Side, within two weeks from date; failing which the interim order shall stand recalled and the arbitration proceedings will continue. The Registrar, Original Side, shall invest the same amount in a suitable interest bearing account in any nationalized bank till the disposal of AP No.685 of 2017. The interim order passed on 22nd November, 2017 by the learned Single Judge shall operate for two weeks unconditionally and subject to fulfilment of the additional conditions mentioned in this order. The interim order shall continue till the disposal of AP No.685 of 2017. It is needless to mention that in the event the direction contained in the order dated 22nd November, 2017 is not followed by the petitioner, it would be open for the respondent to apply for vacating of the interim order passed today. We have been informed by the parties that AP No.685 of 2017 is otherwise ready for hearing. The parties shall be at liberty to mention the matter before the appropriate Bench for early disposal. The Arbitrator shall, on fulfilment of the aforesaid conditions, stay his hands for the time being.

GA No.616 of 2019 and APO No.359 of 2018 stand disposed of.