(2018) 01 CAL CK 0179

In the Calcutta High Court

Case No : 113 of 2018

SREI EQUIPMENT FINANCE LIMITED — APPELLANT

Vs

RAJI NAIK & ANR. — RESPONDENT

Date of Decision : 24-01-2018

Acts Referred:

Arbitration and Conciliation Act, 1996, Section 9, Section 34(3) - Interim measures, etc., by Court - Application for setting aside arbitral award

Citation : (2018) 01 CAL CK 0179

Hon'ble Judges : Sanjib Banerjee, Sabyasachi Bhattacharyya

Bench : Division Bemnch

Advocate : Utpal Bose, Ayan Chakraborty, H. Singh

Judgement

1. The respondents are not represented despite service. The appeal arises out of an order passed on a petition under Section 9 of the Arbitration and Conciliation Act, 1996. At the initial stage of the proceedings under Section 9 of the said Act, particularly upon the respondents not showing any interest in the matter, a receiver was appointed to take possession of the asset covered by the principal agreement between the parties. The appellant says that the receiver has been in possession of such asset for a considerable period.

2. According to the appellant, during the pendency of the proceedings under Section 9 of the said Act, an arbitral reference was commenced and concluded and an award has been rendered by the arbitrator. When such fact - of an award being passed in the arbitral reference - was brought to the notice of the arbitration Court at the final stage of the proceedings under Section 9 of the said Act, the Court was pleased to dismiss the pre-reference petition under Section 9 of the Act and direct the receiver to hand over possession of the asset to the respondents. The appellant is understandably aggrieved by the order impugned dated December 20, 2017.

3. Ordinarily, in hire-purchase matters as the present one, there would be a pre-

reference petition under Section 9 of the Act and, sometimes, the arbitral reference would be concluded before the Section 9 proceedings could be finally decided. There is now the amendment of 2015 which has come in; but such amendment does not affect the authority of the Court to pass an appropriate order.

4. In this case, since the Court found it prudent to appoint a receiver to take possession of the asset that was covered by the principal agreement between the parties, once the arbitral award provided for a substantial payment, the Court should not have directed the receiver to return the asset to the respondents unless an extreme case was made out by the respondents or it was evident that a nominal amount was due which paled in comparison to the value of the asset retained by the receiver. In this case the respondents were not represented to make any suggestions as to the extent of the award or the value of the asset.

5. In such a situation, the arbitration Court should have followed the usual course of action adopted in this Court: of allowing the receiver to continue for some time and by giving liberty to the award-holder to put the award into execution upon it ripening for such purpose and the further continuation of the arbitrator to abide by any order passed in the execution proceedings.

6. It must not be lost sight of that an arbitral award does not become immediately executable, particularly since in many cases of the present kind, the respondents are not represented in course of the arbitral reference and the arbitrator has to ensure the service of the award on the respondents and the time permitted for the respondents to challenge the award under Section 34(3) of the Act has also to be taken into consideration. Thus, the reasonable time that a Court would allow a receiver to retain possession of the asset taken custody of in course of a pre-reference petition under Section 9 of the Act that has outlived the arbitral reference would depend on how soon the arbitral award becomes executable. It must also be remembered that a postaward petition under Section 9 is also permissible till such time the award becomes executable.

7. The order impugned dated December 20, 2017 is set aside insofar as it completely dismissed the petition under Section 9 of the Act of 1996 and directed the receiver to return possession of the asset to the respondents.

8. The arbitral award was passed on September 7, 2017. It is hoped that the award has been served on the respondents. Since the papers pertaining to the present appeal have been served on the respondents, whether or not the original award was served on the respondents, the respondents are deemed to be aware of the making and publishing of the arbitral award as the appeal papers contain references to the same.

9. Accordingly, the receiver in possession of the asset covered by the original agreement between the parties is directed to retain possession thereof for a period of six weeks from date and subject to the orders that may be passed by the executing Court in appropriate proceedings launched by the award-holder

appellant. APO No.16 of 2018 and GA No.113 of 2018 are disposed of without any order as to costs.

