

(2023) 06 OHC CK 0135
In the Orissa High Court
Case No : ARBA No. 17 Of 2021

Sri Sri Param Premamaya Purusottam Trust And Others	APPELLANT
Vs	
Stride Hosptial Private Limited And Others	RESPONDENT

Date of Decision : 28-06-2023

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9, 17

Citation : (2023) 06 OHC CK 0135

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : A. R. Dash, A. K. Parija

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

I.A. nos.21, 25 and 28 of 2023

1. Mr. Parija, learned senior advocate appears on behalf of applicant, who was respondent no.1 in the arbitration appeal, disposed of by order dated 23rd February, 2022. He submits, his client has applied for clarification of said order dated 23rd February, 2022. It be certified that the appeal disposal order is not a final adjudication of disputes and that it was passed prior to commencement of arbitral proceeding and could only be implemented till before that time.

2. Referring to appeal disposal order he points out from direction paragraph 6 therefrom, the direction was modification of order made by the District Judge under section 9 of Arbitration and Conciliation Act, 1996 to extent that there will be termination of the Memorandum of Understanding (MOU), on the date when appellants repay entirely the interest free loan granted to them by his clients. Appellants were directed to do so and thereupon approach the District Judge for recording compliance and order vacating the status-quo.

3. He submits, subsequent to above appeal having been disposed of, there was

appointment of arbitrator. Appellant submitted to the reference. His client petitioned the Tribunal for interim measure under section 17. Appellants participated in hearing of the petition that resulted in order dated 28th October, 2022. He demonstrates from said order that the appeal disposal order was taken cognizance of by the Tribunal, to direct interim measure restraining appellants from creating any third party rights over the hospital in question and be further restrained from interfering with day to day functioning of the hospital by restricting their activities to office space only, strictly in accordance with the MOU. The order was thereafter, modified to include appellants having activities in the Eye Department.

4. Appellants had not refunded the interest free loan to his client prior to commencement of proceeding before the Tribunal. It is in those circumstances his client approached the Tribunal for further interim measure. In the circumstances, his client has applied for clarification of the appeal disposal order as working of section 9 requires interim measure to be directed by the Tribunal after commencement of arbitral proceeding.

5. Mr. Dash, learned advocate appears on behalf of appellants. He submits, his client has approached the District Judge for compliance with directions made earlier under section 9, as modified by this Court. In the circumstances, there is no scope for clarification as sought for by applicants/respondents.

6. There is no dispute nor clarification is necessary regarding this Court's order dated 23rd February, 2022 having had been passed before the arbitral Tribunal was constituted or arbitrator appointed. Whether or not on commencement of arbitral proceeding the order made under section 9, as modified by this Court, can still be implemented, particularly, where further interim measure has been directed by the Tribunal, is not a question for clarification of this Court's order but a question that may arise before the District Judge on approach by the parties asserting compliance.

7. The applications are disposed of with above observation.

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