

Arbitration Execution– 03/2023
CNR :WBBD17-000007-2023
JO Code : WB01311

Order No – 06

Dated :20/05/2023

This day is fixed for further consideration of the execution application.

Award Holder & Award Debtor no. 1 files hazira.

The Award Holder has also filed an application U/Or. XXI Rule 30 of the Code of Civil Procedure.

Let the same be registered as separate IA being no. 05 of 23 dated 20/05/2023.

Another application has also been filed by the Award Holder U/Or. XXI Rule 41 of the Code of Civil Procedure.

Let the same be registered as separate IA being IA no.06 of 23 dated 20/05/2023.

Copied of both the applications have been served to the Ld. Advocate of the Award Debtor no. 1.

The Award Debtor no. 1 has filed an application wherein prayer has been made for dismissal of the instant execution application and or stay of the proceedings of the instant execution application till the disposal of the revisional application being C.O. No. 1493 of 2023 pending before th Hon'ble High Court , Calcutta.

Let the same be registered as separate IA being IA no. 07 of 23 dated 20/05/2023.

A separate adjournment application has been filed by the Award Debtor no.1 praying for adjournment of the instant execution application.

It is submitted by the Ld. Advocate for the Award Debtor no. 1 that C.O. no. 1493 of 2023 which was due to be taken up for hearing on 17/05/2023 could not be taken up for consideration and that the Hon'ble Court has been pleased to fix the matter for hearing at 2.00 pm on 07/06/2023.

He therefore submitted that the hearing of the instant execution case

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be postponed to any date after 07/06/2023.

The Ld. Advocate for the Award Debtor no. 1 relied on the decision of Satya Narayan Prasad Gooptu vs. Diana Engineering Company reported in 1951 SCC Online Cal 195, Sheikh Abdul Karim vs. M.K. Prakash reported in (1976) 1 SCC, 975 and Kishor vs. Preeti reported in 2007 (2), MHLJ 481 to substantiate that when a higher court is seized of any matter, the subordinate Courts are expected to stay their hands away.

The Ld. Advocate representing the Award Holder vehemently opposed the prayer for adjournment and submitted that mere filing of a revisional application in the Hon'ble Court would not operate as a stay.

He also submitted that since there is no specific order of stay in C.O. no. 1493 of 2023 this Court is not prevented in proceeding with the execution case.

In support of his submission the Ld. Advocate relied on the decision of Sanjiv Kumar Singh vs the State of Bihar and oths. reported in 2023 Live Law (SC 63).

He also relied on the decision of Rahul S Shah vs. Jitendra Kumar Gandhi and others reported in (2021) 6 SCC 418 and submitted that the executing Court must dispose of an execution proceeding within six months from the date of filing.

He referred to paragraph of 42.6 of the Judgment and submitted that in a Money Suit the Court must invariably resort to order 21 Rule 11 to ensure immediate execution of decrees for payment.

I have heard the Ld. Advocates for the parties and have considered their submissions.

Admittedly there is no order of stay, in C.O. no. 1493 of 2023.

However it is a fact that C.O. no. 1493 has been filed challenging the order dated 25th of April, 2023 passed by Ld. Judge , Commercial

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Court at Alipore in Misc. Arbitration Case no. 10 of 2023 , whereby the Ld. Judge , Commercial Court, Alipore had rejected the prayer of the Award Debtor no.1 for extension of time to furnish the Bank Guarantee.

There is also no denial and the same is also apparent from the cause list that C.O. no. 1493 of 2023 has been fixed for hearing by the Hon'ble Court on 07th June, 2023 at 2.00pm.

Therefore in my considered view although there is no order of stay but when the Hon'ble Court is seized of the matter the executing Court should adjourn the matter atleast till 07th June, 2023 to avoid multiplicity of proceedings.

Accordingly the hearing of the execution case stands adjourned to 15th June, 2023.

It is made clear that no further adjournment will be granted on the next date so fixed.

The application of the Award Debtor no. 1 praying for dismissal of the instant execution being IA no.07 of 23 dated 20/05/2023 is heard in -part

The Award Debtor no.1 is at liberty to file objection to IA no.05 of 23 & IA no. 06 of 23 dated 20/05/2023.

To date for further consideration.

D/C by me

Judge, Commercial Court
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Judge, Commercial Court
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