

Present: Sri Utpal Misra (JO Code: WB00659)
Judge, Commercial Court at Alipore
Misc Case (Arb) 06 of 2023
CNR no. WBSP18-000015-2023

Order No. 03
15.03.2023

In the matter of:

An application under
Section 34 of the
Arbitration and
Conciliation Act, 1996

And

In the matter of:

Smt. Kajal Sahana.

Vs.

Smt. Pratima Sahana & 02
Others.

ORDERED

Today the record is taken up by way of a put petition along with an application for stay of the operation of the impugned award dated 01.11.2022 served on 03.11.2022 (hereinafter referred to as said application) as filed by Ld. Counsel for the Petitioner. Let the said application be registered as **I.A. No. 01 of 2023**.

Put up petition is allowed.

Now, the record is taken up for hearing.

It appears from the case record that on 24.01.2023 Petitioner filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 1996 Act) for setting aside an award dated 01.11.2022 passed by the Mr. Swarnendu Ghosh being the sole Arbitrator. The said application was registered as Misc Case (Arb.) 06 of 2023 and 28.06.2023 has been fixed for appearance of the Respondents.

In the meantime by way of put up petition Petitioner filed the said application for stay of operation of the said award dated 01.11.2022.

By moving the said application Ld. Counsel on behalf of the Petitioner states that one Late Kalipada Bag formed a firm named M/s. Kalipada Bag, which was subsequently converted into a partnership firm. After the demise of said Kalipada Bag a slew of pandemonium were arisen among the daughters of Late Kalipada Bag, which led to an arbitration proceeding by appointment of a Sole Arbitrator. On the end of the said arbitral reference an award dated 01.11.2022 was made, which was subsequently served upon the parties on 03.11.2022.

Ld. Counsel of the Petitioner further states that the impugned award dated 01.11.2022 is perverse, illegal and *mala fide* and is in conflict with the public policy of India and in contravention to the fundamental policy of Indian Law and in conflict with the most basic notion of morality and justice. The impugned award shocks the conscious of the court.

Ld. Counsel further claims that the Arbitrator cannot act according to his wish, desire, shims and caprices. The Arbitrator is not a conciliator nor can he act arbitrarily, capriciously and whimsically. He cannot choose to have unguided power. The Arbitrator did not act within the four-corner of the partnership deed and as well as law. The purported award is shocking as the entire properties left out by Late Kalipada Bag cannot by any stretch of imagination fetch near about Rs. 8 crores far less his firm. It is also sated by the Ld. Counsel that the firm being M/s Kalipada Bag had no such fund of Rs. 8 crores nor the money has been withdrawn by your petitioners at any point of time. In fact the said Late Kalipada Bag during his entire lifetime used to deposit and withdrawn cheques himself as would be apparent from the Bank account itself. Even in his personal account he used to handle the same personally.

As such he prayed before this Court that since the award is fictitious, illegal, perverse, *mala fide* and shocking, so unless the purported award is stayed Petitioner will suffer irreparable loss and injury and would be left with no remedy at all. Therefore, the impugned award deserves to be stayed till the disposal of the application under Section 34 of the 1996 Act.

Considering the submission of Ld. Counsel appearing on behalf of the Petitioner and also on perusal of the said application, this Court opines that, in such an inchoate stage, without hearing of other side it will not be niche to grant *ad interim* order as exposted on prayer (b) of the said application for stay on the operation of the impugned award dated 01.11.2022.

Therefore, the prayer of the Petitioner for an ad interim order said application for stay of the operation of the impugned award dated 01.11.2022 is hereby considered and rejected.

Issue notice accordingly, along with the instant petition and all annexure within 24 hours through post and/or Email and/or Whatsapp or

any other accepted modes of services and the Petitioner is further directed to file the affidavit of service within 48 hours.

To date i.e. 05.04.2023 at 10:45 a.m. for S/R, A/D and appearance of the Respondents.

Let a copy of this Order be supplied to the Ld. Advocate of the Petitioner after observation of proper formalities.

Both the parties are to act forthwith on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram