



Arb. Case No.40 of 2009.

7.1.2010 Present: Mr. J.S.Bhogal, Sr. Advocate with Mr. Suneet Goel counsel for the petitioner.

Mr. Sunil Mohan Goel counsel for the respondent.

CMP NO. 656 of 2009:

By means of this application the applicant has prayed that the non-applicant may be restrained from transferring, alienating or in any manner encumbering his properties detailed in Clause (a) and (b) of the prayer clause. It has also been prayed that the non-applicant be directed to furnish security and be directed to pay a sum of Rs.75,000/- as monthly withdrawal and Rs.10,000/- as use and occupation charges of the premises to the respondent. Other reliefs have also been prayed for. The application was filed on 4th December, 2009. Reply to the application has not yet been filed.

Briefly stated the facts of the case are that on a dispute having arisen between the parties an Arbitrator was appointed to resolve the disputes. The Arbitral Tribunal passed an award dated 16.02.2009. This award is under challenge before this Court in Arbitration Case No.40 of 2009 in which the present application has been filed. By this award a number of reliefs have been granted in favour of the respondent. The respondent-claimant has been granted a number of reliefs but the main relief with which we are concerned is relief No. 2 whereby claimant was held entitled to recover a sum of Rs.1,86,74,789-04 and the objector respondent has been



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directed to pay a sum of Rs.1,27,64,583-04. The claimant has been also held entitled to an amount of Rs.75,000/- per month as withdrawal and Rs.10,000/- per month as use and occupation charges of the premises. Various other reliefs have also been granted to the applicant.

Shri Sunil Mohan Goel, learned counsel appearing for the respondent-claimant submits that the objector is selling off his properties and in case he is permitted to do so then the applicant will be unable to recover the amount held due and payable to him under the award.

Shri Bhogal, learned Senior Counsel for the non-applicant submits that the application is not maintainable. He relies upon the judgement of the Apex Court in **National Aluminium Co. Ltd. vs. M/s Pressteel and Fabrications Pvt. Ltd. and another, AIR 2005 SC 1514**, wherein it was held as follows:-

“10. But then we noticed from the mandatory language of Section 34 of the 1996 Act that an award when challenged under Section 34 within the time stipulated therein, becomes unexecutable. There is no discretion left with the Court to pass any interlocutory order in regard to the said award except to adjudicate on the correctness of the claim made by the applicant therein. Therefore, that being the legislative intent, any direction from us contrary to that, also becomes impermissible. On facts of this case, there being no exceptional situation which would compel us to ignore such statutory provision and to use our jurisdiction under Article 142, we restrain ourselves from passing any such order, as prayed for by the applicant.”



Shri Bhogal, learned Senior counsel for the non-applicant, on the basis of the aforesaid law laid-down by the Apex Court submits that application itself is not maintainable and there is no discretion with the Court to pass any interlocutory order.

In my considered view this judgement is not applicable to the facts of the case. In the case before the Apex Court, it was held that though the arbitrator had been appointed by the Apex Court the said Court had not retained any power or control of the arbitration proceedings.

The import and ambit of Section 9 of the Arbitration and Conciliation Act, 1996 was not considered in this case at all. Section 9(ii)(b) of the Act reads as follows:-

“9. Interim measures, etc. by Court.- A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36 apply to a Court;-

- (i). xxx... xxx... xxx...
- (ii) for an interim measure of protection in respect of any of the following matters, namely:-
 - (a) xxx... xxx... xxx...
 - (b) securing the amount in dispute in the arbitration;”



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The bare provision leave no manner of doubt that under this section the Court even after passing of the Arbitral Award has the jurisdiction to pass orders to secure the amount in dispute in arbitration. In the present case an award has been passed in favour of the applicant. The award is for a large amount. In case the restraint order is not passed the objector can frustrate the award and it would be impossible for the respondent to recover the amount. This Court is not passing any order that some amount be deposited in terms of the award. It is only securing the amount in dispute.

Prima facie, I am of the view that the application is maintainable and till further orders it is directed that the respondent shall not alienate, transfer or in any manner encumber the properties detailed in relief clauses (a) and (b) of the application.

Reply to the application be filed within six weeks. Rejoinder, if any, within two weeks and the application be listed before the Court after 8 weeks.

7th January, 2010
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(Deepak Gupta)
Judge



2013:HHC:9458