OIPD-22

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

AP/899/2011
IA NO: GA-COM/4/2025

STATE OF WEST BENGAL
VS
CAB ENGINEERING PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 22nd April, 2025.

Appearance:
Mr. Sakya Sen, Sr. Adv.
Mr. Sabyasachi Sen, Adv.

Ms. Noelle Banerjee, Adv.
Mr. Paritosh Sinha, Adv.
Mr. Arindam Mandal, Adv.
Ms. Swagata Ghosh, Adv.
....for the State

The Court:

This is an application seeking recalling of an order dated 28th March, 2024. By the order dated 28th March 2024, this Court had recalled an earlier order of a Coordinate Bench dated 19th December 2018 (prior to the Amendment Act, 2015) whereby the award-debtor had been granted an unconditional stay of an award dated 27th June, 2011.

Briefly, by an award dated 27th June, 2011, the award-debtor was directed to pay a principal amount of approximately Rs. 2 crores to the award-holder. Upon passing of the award, the award-debtor had filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 and in view of the then prevalent law an unconditional stay of the award was granted by a Co-ordinate Bench.

Subsequently, in view of Amendment Act, 2015, the award-holder sought for recalling of the order dated 19 December 2018. In such circumstances, by an order dated 28th March, 2024 this Court, had directed as follows:

> *"This is an application for recalling of an order dated 19 December, 2018 whereby a Co-ordinate Bench had granted an unconditional stay of an award dated 27 June, 2011.*
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> *It is submitted on behalf of the petitioner that in view of the amended provisions of the Arbitration and Conciliation Act, 1996 and different pronouncements of the Hon'ble Supreme Court, the judgment debtor is now obliged to secure the entirety of the awarded amount. It is submitted on behalf of the award debtor State that they are ready and willing to deposit the entire principal amount of Rs.2,03,37,231/-. Insofar as the interest component is concerned, both parties seek an opportunity to take instructions.*
> *In view of the amended provisions of section 36(2) of the Act, the order dated 19 December, 2018 stands recalled.*
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> *The State is directed to deposit the entire principal amount of Rs.2,03,37,231/- by way of a cash with the Registrar, Original Side. If such amount is deposited within four weeks from date, the Registrar, Original Side shall create a fixed deposit of the same amount with any nationalized bank until further orders of Court.*
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> *In the meantime, there shall be an order of stay of the award dated 27 June, 2011 until further orders of Court. In default of making the deposit within the prescribed time period, the award holder shall be at liberty to apply for variation or modification of this order.*
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> *Let this matter appear on 15 April, 2024 for further hearing. In the meantime, the parties are directed to exchange the particulars in respect of the interest component prior to the returnable date."*

It is submitted on behalf of the award-debtor that there were no grounds for recalling of the order dated 19th December, 2018 and that too after a period of five years. The application for recalling of the order dated 19 December 2018 was barred by limitation and was liable to be dismissed. In any event, the Court had no jurisdiction to revisit the issue of stay of the award.

There is also no power nor jurisdiction under the Arbitration and Conciliation Act, 1996, which empowers the Court to recall its order. It is further submitted on behalf of the award-debtor that there is no question of re-agitating the issues which had already been adjudicated by virtue of the order dated 19th December, 2018 and all such issues are barred by the principles of *res-judicata*. Neither the amendments provisions nor the decision in *Pam Development Pvt. Ltd. Vs. State of West Bengal (2019) 8 SCC 112* are any grounds to recall the order dated 19 December 2018.

On behalf of the award-holder, it is submitted that the application is misconceived and is liable to be dismissed with costs. The application has been filed simply to procrastinate furnishing of security under section 36(2) of the Act. The entire object of the award-debtor is to unnecessarily delay the proceedings *ad infinitum*. As such, this application is liable to be dismissed both on the ground of maintainability and on merits. The order dated 28 March 2024 was passed at the instance of the State and the State cannot resile from the same. In any event, in view of the subsequent events which have transpired post the order dated 19th December, 2018 and the change in law, there are no grounds to interfere with the order dated 28th March, 2024.

The award is in excess of Rs.2 crores (exclusive of interest). The initial order dated 19th December, 2018 passed by the Coordinate Bench was in the light of the then prevalent position of law and on the ground of exemption which was afforded to the State under Order 27 Rule 8A of the Code of Civil

Procedure, 1908. Thereafter, the legal position has changed insofar as it has now became obligatory on an award-debtor to obtain a stay of the award on terms and condition as the Court may deem fit and proper. In addition, in the light of the decision in *Pam Development (Supra*), no special treatment is to be meted out to the State in adjudicating the question of stay.

The present application seeking recalling of the order dated 28th March, 2024 is a desperate attempt to unnecessarily prolong proceedings. There are no grounds which merit recalling of the order dated 28th March, 2024. In fact, by an order dated 13th January, 2025 passed in *Hooghly River Bridge Commissioner Vs. MBL Infrastructure* in AP-COM/187/2024 similar contentions which are now sought to be re-agitated by the State had been rejected. Being aggrieved by the said order, the State had also preferred a Special Leave Petition which was dismissed on 17 March, 2025. In such circumstances, the State cannot be afforded any differential treatment.

In *Hooghly River Bridge Commissioner* (*Supra*) this Court had held as follows:

> *"11. In its amended form, section 36 contemplates a party now being statutorily obliged to furnish security in order to obtain stay of an arbitral award. The purpose of security is to ensure and facilitate fulfilment and enjoyment of the ultimate fruits of an award. In such matters, there cannot be any straight jacket formula. Each case has to be decided on its own merits. In exercising the powers under section 36 of the Act, the provisions of the Civil Procedure Code, 1908, may be taken into consideration. However, even though not mandatory, a Court is obliged to give "due regard to the provisions of the Code". The order also requires to be reasoned. Needless to say, the discretion by a Court has to be exercised judicially and not arbitrarily depending on the facts and circumstances of each case.*

> *There is also no question of res judicata as contended by the respondent. In Arjun Singh v. Mohindra Kumar AIR 1969 SC 993, it has been held as follows:*
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> *"14. It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court, usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situation which subsequently emerge."*

In view of the above, there is no merit in any of the grounds urged by the State, GA-COM/4/2025 stands dismissed. However, there shall be no order as to costs.

(RAVI KRISHAN KAPUR, J.)

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