

Rameshkumar Vs. the Learned Principal District Judge and Others

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Court : Mumbai Nagpur

Decided On : Nov-12-2013

Judge : Z.A. HAQ

Appeal No. : Writ Petition No.5720 of 2012

Appellant : Rameshkumar

Respondent : The Learned Principal District Judge and Others

Judgement :

Oral Judgment: (Z.A. Haq, J.)

1. Heard the learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith.
3. The challenge is to the order passed by the learned Principal District Judge allowing the application filed by the respondent no.2 praying for stay of the proceeding till the decision of the Special Civil Suit No.24 of 2012. It is the submission of the respondent no.2 that the father of the respondent no.2 has filed the Special Civil Suit No. 24 of 2012 praying for confirming the partition in respect of the property, which is the subject-matter in the arbitration proceedings, and for setting aside the award.

4. The application filed by the respondent no.2 per se is not maintainable. The respondent no.2 has not quoted the provisions under which the application is made. At the time of argument, perhaps, the jurisdiction of the Court was sought to be invoked under Section 9 of the Arbitration and Conciliation Act, 1996 and under Section 151 of the Civil Procedure Code.

5. Shri V. M. Deshpande, learned Advocate for respondent no.2 has submitted that the father of the respondent no.2 was not party to the arbitration proceedings and therefore, he could not have raised any grievance in the proceedings going on before the District Court. The submission is that the respondent no.2 was, therefore, constrained to file the application. The learned counsel has further submitted that the respondent no.2, being a party as defined under Section 2(h) of the Arbitration and Conciliation Act, 1996, can invoke the jurisdiction of the District Court under Section 9 of the Arbitration and Conciliation Act, 1996. Section 9 of the Arbitration and Conciliation Act, 1996 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) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:-

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken or any observation to be made, or experiment to be tried, which may be

necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

6. Prayer made by the respondent no.2 in the application filed before the District Court does not fit in any of the provisions of Section 9 of the Arbitration and Conciliation Act. It cannot be said that the powers of the District Court under Section 9 of the Arbitration and Conciliation Act, 1996 are invoked for interim measures as contemplated by Section 9 of the Act.

7. Shri Deshpande, learned Advocate for the respondent no.2, has further submitted that, in any case, the proceedings can be stayed by the District Court under Section 151 of the Civil Procedure Code exercising its inherent power. It is the settled law that if there is no provision under the enactment, then the provisions of Section 151 of the C.P.Code cannot be invoked to do indirectly what is not permitted to be done directly. In view of the above, impugned order is unsustainable in law. The impugned order is set aside and the application filed by the respondent no.2 (Exh.23) is rejected. Rule is made absolute in the above terms. In the circumstances, the parties to bear their own costs.

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