

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.12 OF 2018

IN

INTERIM AWARD DATED 31st JULY 2017

Deepak Kumar Jain & Anr.

...Petitioners

vs.

Sanjay Chandrakant Panchal & Anr.

...Contemnors

Mr. Abhishek Sawant with Mr. Ameet Mehta, Ms. Vaishali Sanghavi,
Mr. Hrishikesh Nadkarni i/b. Solicis Lex, for the Petitioners.
Mr. Amit G. Dubey i/b. Ashok M. Saraogi, for the Contemnors.

CORAM : G.S. KULKARNI, J.

DATE : APRIL 28, 2022.

P.C.:

1. This contempt petition has been filed alleging the contempt of an award dated 31 July 2017 passed by the learned arbitrator, which reads thus:-

“a) that the respondents are ordered and directed to secure an amount of Rs.50 lacs to the claimant by furnishing a Bank Guarantee of a nationalized bank or depositing the amount of Rs.50 lacs in an escrow account with a bank which gives such escrow facilities within a period of four weeks from the date of this order.”

2. Learned Counsel for the petitioners has drawn the Court's attention to the provisions of Section 17(2) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') to contend that even if the execution proceedings are filed that does not mean that the respondents-contemnors would not comply with the directions of the learned sole Arbitrator as contained in the said interim order. He would

submit that the entire purpose of the arbitral tribunal making the interim orders would stand defeated and it is for such reason the provisions of sub-section (2) of Section 17 of the Act have been incorporated, so as to make the provisions of the Code of Civil Procedure applicable in regard to enforceability of the interim orders passed by the arbitral tribunal as if the order passed by the Court.

3. The learned Counsel for the petitioners has also drawn the Court's attention to the provision of Rule 2A of the Code of Civil Procedure, 1908 to submit that the Court in these circumstances would be empowered to apply such provisions of Rule 2A of Order 39 of the CPC as the respondents with impunity has disobeyed the orders of the arbitral tribunal, which are now required to be the orders of the Civil Court. In support of his contention, learned Counsel for the petitioners has placed reliance on the decisions of the Supreme Court in **Alka Chandewar Vs. Samshul Ishrar Khan** [(2017)16 SCC 119), and **Rama Narang vs. Ramesh Narang & Anr.** [(2016)11 SCC 114] to contend that it is now clearly held that the interim orders passed by the tribunal needs to be complied and not disobeyed by the litigants.

4. On the other hand, learned Counsel for the respondents would submit that the execution application has already been filed by the petitioners and therefore, no orders need to be passed.

5. I find myself persuaded to accept the submissions of the learned

counsel for the petitioner considering the clear provisions of sub-section (2) of Section 17 of the Act, by virtue of which the law has conferred a status to an order passed under Section 17(1) by the arbitral tribunal to be deemed to be an order passed by the Civil Court for the purposes of its enforceability. If that be the position, then clearly the provisions of Order 39 Rule 2A of the CPC would become applicable to the facts of the case as also the provisions of the Contempt of Court Act, 1971. Accordingly, the respondents-contemnors are required to be called upon to show cause to why proceedings under the Contempt of Courts Act read with the provisions of Rule 2A of Order 39 be not initiated against him for willfully disobeying the orders dated 31 July 2017 passed by the arbitral tribunal. Hence, the following order:-

ORDER

- (i) Issue notice to the respondents as to why an action for having committed contempt of Court and for a punishment thereof be not taken against the respondent.
- (ii) A reply to the notice be placed on record on or before 6 June 2022. Stand over to 14 June 2022 at 2.30 p.m.
- (iii) The respondents-contemnors are directed to remain present in the Court on the adjourned date of hearing.
- (iv) In the event, the respondents do not remain present in the Court on the adjourned date of hearing, the Court would be constrained to pass further appropriate orders as known to law to secure their presence.

[G.S. KULKARNI, J.]