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ORDER SHEET
RVWO/15/2021
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

BHARAT HEAVY ELECTRICALS LIMITED -ELECTRICAL DIVISION
VS
OPTIMAL POWER SYNERGY INDIA PVT LTD.

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 21ST FEBRUARY, 2022.

Appearance :
Mr. Jishnu Saha, Sr. Adv.
Mr. T. Khan, Adv.
Mr. Ishan Saha, Adv.
Mr. Arindam Paul, Adv.

Mr. Tilak Bose, Sr. Adv.
Mr. Ganesh Prasad Shaw, Adv.

The Court: The present application for review is by the judgment-debtor of a Judgment and order passed by this Court on 1st September, 2021 in GA 1 of 2020 in AP 175 of 2020 (*Bharat Heavy Electricals Limited Electrical Division vs. Optimal Power Synergy India Pvt. Ltd.*). The impugned Judgment was passed in an application under section 36 of The Arbitration and Conciliation Act, 1996 filed by the judgment-debtor Bharat Heavy Electricals Limited for stay of an Award passed by the West Bengal State Micro Small Enterprises Facilitation Council on 24th September, 2019.

The said Award was passed on a claim made by the respondent, Optimal Power Synergy India Pvt. Ltd., by which the judgment-debtor was held to be liable for a total principal amount of Rs. 61,08,654/- and interest thereon at three times the RBI rate compounded with monthly rests to Optimal Power/ the supplier unit. The Award debtor filed applications under sections 34 and 36 of the 1996 Act for setting aside and for stay of the Award respectively. According to the learned senior counsel appearing for the petitioner, by the impugned Judgment, Court has adjudicated on the applicable interest rate to be paid by the judgment-debtor and held that the Award of the Facilitation Council did not suffer from a lack of clarity. Counsel submits that the impugned Judgment would have a bearing in the adjudication of the section 34 application filed by the judgment-debtor which is pending before the Court.

Learned senior counsel appearing for the respondent decree-holder (Optimal) seeks to sustain the impugned Judgment on the ground that the present application does not fall within the purview of Order XLVII of The Code of Civil Procedure, 1908.

The first question which should be answered is whether the present application falls within the parameters of Order XLVII Rule 1 of the CPC – “Application for review of judgment”. Under Order XLVII Rule 1, a person aggrieved under sub-Rules 1(a), (b), (c) may apply for review of a judgment to the Court which passed the decree or made

the order upon discovery of new and important matter or evidence which could not be produced by him at the time when the decree was passed, despite due diligence or because the new matter was not within his knowledge at the relevant point of time. The second requirement is that the Judgment must reflect a mistake or error apparent on the face of the record. The provision also makes room for applying for review for any other sufficient reason.

The applicant in the present case falls within the second requirement as would be clear from the position taken by counsel appearing on its behalf. The error apparent on the face of the record, as submitted, is that the impugned Judgment was adjudicated on the total amount payable by the applicant to the respondent together with the quantum of interest without taking into account the alleged lack of clarity in the Award passed by the Facilitation Council.

The issue to be decided is whether the request to the Court to revisit the Judgment for the purposes of Order XLVII can be brought within the purview of a “mistake or error apparent on the face of the record”. The accepted proposition of law, as settled by several decisions of the Supreme Court and the High Courts, is that an error apparent on the face of the record is an error which would be self-evident and obvious even at first glance. An error which needs to be established by a long-drawn process of reasoning on points requiring a contested hearing would not be an apparent error but a hidden

error which would have to be detected by re-engaging on the merits of the matter. Such an error would in effect amount to reappraising the decree which is not permissible under Order XLVII. In other words, an error apparent on the face of the record is hence a mistake which stares back at the Court and directs the attention of the Court to the mistake for taking brisk steps for correction.

The language of Order XLVII is in fact an indicator of the boundaries of the reviewing Court. The provision discourages a re-appraisal by the same Court unless the conditions of sub-Rule-(1) of Rule 1 of Order XLVII are fulfilled. The legislative intent is that the Court which passed the decree would allow an application for review if an apparent error, left uncorrected, would amount to an erroneous decision. The conditions built-in in Order XLVII for a reviewing Court to step in makes it clear that the process of review must be decisive, quick and without an exhaustive factual re-appreciation. An arduous re-look at the Judgment is saved for a higher forum under Orders XLI, XLII and XLIII of The Code of Civil Procedure.

The difference in the hierarchy also serves as an important reflector of the limited role of the reviewing Court. The mistake which requires the Court to unravel the layers of a decree for locating the mistake calls for a different procedure of challenge to the decree by way of an appeal. The three clauses of sub-rule (1) of Rule 1 of Order

XLVII differentiate the provision from other routes of challenge to a Judgment.

The arguments advanced by counsel make it evident that the so-called "error" is not one which is immediately apparent to the Court but goes to the root of the controversy and this Court would be required to re-hear the parties on the issues in the application for stay of the Award passed by the Facilitation Council.

The sub-text of Order XLVII Rule 1(1) is that the error can be corrected without clamour; the parties being on the same page that the correction of the error would not alter the decree, subject to the importance and the new-ness of the evidence which is subsequently discovered**.**

Since this Court is not inclined to accept the present application within the confines of Order XLVII Rule 1 of the CPC, the reason for this disinclination should be stated in brief. The contention of the applicant with regard to this Court not having addressed the allegation of vagueness of this Award with reference to the relevant materials and provisions was dealt with in paragraph 14 of the impugned Judgment. This Court clarified the interpretation of the expression "appointed day" as explained under section 2(b) of The Micro, Small and Medium Enterprises Development Act, 2006 and held that the petitioner's contention would actually defeat the very argument advanced on its behalf. With reference to lack of clarity on

the compound of interest, this Court was of the view that the Award is not confined to Rs. 61,08,654/- but is to be taken along with interest on the said amount at three times of the RBI Bank rate compounded with monthly rests under section 16 of the 2006 Act. This Court was also of the view that the alleged lack of clarity in the computation of interest was straightened out by the computation submitted by the Chartered Accountant to the petitioner and which was accepted by the latter. None of the aforesaid views constitute an error apparent on the face of the record, including in the manner provided under Order XLVII of the CPC, which warrants correction thereof by review of the impugned Judgment.

The apprehension of the petitioner that the section 34 Court would be influenced by the conclusions in the impugned Judgment is untenable and against the tenor of The Arbitration and Conciliation Act, 1996. The Act provides for the procedure of stay of an award on an application filed by the award debtor under section 36(2) of the Act. Section 36(3) empowers the Court to stay the operation of the arbitral award subject to conditions which may be imposed by the Court and for reasons to be recorded for allowing the application for stay. Further, Chapter VIII- Finality and Enforcement of Arbitral Awards - contemplates simultaneous adjudication of an application for stay and for setting aside of an award. Moreover, the grounds of challenge under section 34(1) and (2) are distinct and independent

from the grounds which are generally accepted by the Court for stay of an award under section 36(2). The proviso to section 36(3) reinforces the difference between the fields occupied by an application for stay and that for setting aside an award. This Court hence sees no basis for the apprehension expressed on behalf of the petitioner since a section 34 Court would only assess the sustainability of the Award on the grounds available under section 34 of the 1996 Act.

In view of the above reasons, RVWO No.15 of 2021 is dismissed without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(MOUSHUMI BHATTACHARYA, J.)

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