

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA NO: GA-COM/1/2024
APOT/148/2024
WITH
AP-COM/490/2024

MR. MELEVEETIL DAMODARAN
VS
UPHEALTH HOLDINGS INC AND ORS

(Commercial Division)

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 24th April, 2024

Mr. Sudipto Sarkar, Sr. Adv.
with Mr. Siddhartha Datta,
Mr. Aditya Mukherjee,
Ms. Trisha Mukherjee,
Mr. Krishna Tangirala,
Mr. Chetan Kabra &
Mr. Aditya Thyagarajan, Adv.
..for the appellant.

Mr. S.N. Mookherjee &
Mr. Ratnanko Banerjee, Sr. Adv.
with Mr. Suddhasatva Banerjee,
Mr. Chayan Gupta,
Mr. Anand S. Pathak,
Mr. Vijay Purohit,
Mr. Shivam Pandey,
Mr. Anujit Mookherji,
Mr. Anirudhya Dutta,
Mr. Shyra Hoon,
Mr. Siddhant Bajaj,
Mr. Nav Dhawan,
Mr. Naman Chowdhury &
Mr. Sankit Jain, Adv.
...for the respondent no.1.

This is an appeal by the respondent no.5 against a judgement and order dated 12th April, 2024 made by a learned single Judge of this court in AP-COM/490/2024 (UPHEALTH HOLDINGS INC. AND ORS. VS. GLOCAL HEALTHCARE SYSTEMS PVT. LTD.).

The respondent no.1, M/s. Glocal Healthcare Systems Pvt. Ltd. had preferred an appeal from that judgement and order, which was disposed of by our judgement and order dated 22nd April, 2024, in the following terms :

“Order in terms of prayer (a) of the stay petition.

We are in a position to dispose of this appeal at this stage, dispensing with all formalities.

This is an appeal from a judgement and order passed by a learned single judge on 12th April, 2024 in an application under Section 9 of the Arbitration and Conciliation Act, 1996, connected with an international commercial arbitration.

The order complained of, is in terms of prayers (c) and (d) of the application which are as follows :

“c) Pending the hearing and final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein, this Hon’ble High Court be pleased to order and direct each of the Respondents to forthwith file an affidavit of their assets relating to their fixed, movable, tangible, intangible and other assets, properties including intellectual properties, bank accounts and receivables;

d) Pending the hearing and final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein, this Hon’ble High court be pleased to order and direct each of the Respondents to forthwith file an affidavit declaring all the encumbrances on their assets, their loans, their liabilities, and a detailed list of all of the litigations against them (along with the amounts involved) which shall include (in each of the following cases) the date of creation of such loans, liabilities, encumbrances on the assets and litigations against them (along with the amounts involved) along with the supporting documents and shall further contain a

statement on whether the Respondents are in a financial position to honour the obligations under Award dated 15 March 2024.”

The most substantial contention of Mr. Anindya Kumar Mitra, learned counsel for the appellant/petitioner is that the court has no jurisdiction under section 9 of the said Act to pass such an order. He also submitted that this order was in the nature of execution, which the court under section 9, ought not to have passed.

We find from the impugned judgement and order that after exchange of affidavits, the application would appear before the learned trial judge on 7th May, 2024.

We find from the said judgement and order that the question of jurisdiction, raised before His Lordship, was gone into by him at the prima facie stage. After going through the contention, His Lordship held that the court has jurisdiction.

We are of the view that by the impugned order, the court has neither levied execution nor taken any coercive step against the appellant. No valuable right of the appellant has so far been affected. In those circumstances, it would be more appropriate for us not to entertain this appeal, but to keep the point of jurisdiction to be argued after exchange of affidavits before the learned single judge. The point of jurisdiction should be decided before other issues are decided. However, the appellant has to comply with the impugned order in terms of prayers (c) and (d), without prejudice to their rights and contentions except the supporting documents which may be called for by the learned single judge after deciding the point of jurisdiction.

Appeal (AO-COM/10/2024) and the application (GA-COM/1/2024) are disposed of.

The prayer for stay of operation of this order made on behalf of the appellant is considered and refused.”

This is an independent appeal preferred by M/s. Meleveetil Damodaran, the respondent no.5 in the said appeal, against the 12th April, 2024 judgement.

Mr. Sudipto Sarkar, learned senior counsel moving the appeal made a scathing attack on the impugned judgement and order as against his client. His principal submission was that when in the award in question it had been held that Mr. Damodaran, the appellant, had not taken part in the meeting, the remarks in the impugned judgement and order about his client's alleged wrongful conduct and complicity in causing loss and damages to the claimant award-holder, Uphealth Holdings Inc., were also erroneous. Mr. Sarkar also submitted that after having made the above finding in the award, the apportionment of damages therein to his client was flawed and patently erroneous.

First of all, we would like to say that in this proceeding we have no jurisdiction to comment on the correctness of the award. We cannot adjudicate on whether the apportionment of damages awarded, in favour of the respondent no.5, was correct or not.

By our judgement and order made on 22nd April, 2024 in the other appeal, we had held that prima facie this court had jurisdiction to entertain the application under Section 9 of the Arbitration and Conciliation Act, 1996. Furthermore, we had observed that the impugned judgement and order was not in the nature of execution. It had only asked for certain information, data etc. from the respondents in that appeal which included the appellant herein. The Section 9 application was ready upon filing of affidavits before the learned single judge. We further observed that the matter should be heard out by the learned single judge. We had kept all

points open including the point of jurisdiction before the court of first instance, after holding that no prejudice would be caused to the respondents, upon their disclosure of information in terms of prayers (c) and (d).

We do not intend to alter our said judgement and order dated 22nd April, 2024 save and except that the learned single judge on hearing the Section 9 application, instead of considering any remark made in the impugned judgement and order as regards the appellant as tentative, would consider any allegation against him afresh without being influenced by such view or finding.

The appeal (APOT/148/2024) and the application (GA-COM/1/2024) are accordingly disposed of.

As affidavits were not invited, the allegations contained in the application are deemed not to be admitted.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)