

IN THE HIGH COURT OF DELHI AT NEW DELHI

EFA(OS) 19-21/2006

Reserved on : 29th July, 2008

Date of decision : 14th August, 2008

MOREPEN LABORATORIES LTD. & ORS Appellants
Through Mr. Ravishankar Prasad, Senior
Advocate with Mr. Rahul Srivastava, Advocate

versus

MORGAN SECURITIES & CREDITS PVT. LTD. Respondent
Through Mr. Arvind K. Nigam, Advocate

EFA(OS) 4/2007

BLUE COAST HOTELS & RESORTS LTD. Appellant
Through Mr. Ravishankar Prasad, Senior
Advocate with Mr. Rahul Srivastava, Advocate

versus

MORGAN SECURITIES & CREDITS PVT LTD. Respondent
Through Mr. Arvind K. Nigam, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported
in Digest? Yes

JUDGMENT

Dr. S. MURALIDHAR, J.

1. These appeals are directed against the common judgment and order dated 17th July 2006 passed by the learned Single Judge of this Court, dismissing the appellant's Execution Applications (E.A) Nos. 296 of 2005 and 324 of 2005 in Execution Petition No.13 of 2004.

2. The facts are that by an inter-corporate agreement dated 19th September 2002 the appellant No. 1 Morpen

Laboratories Limited (MLL) availed from the Respondent Morgan Securities and Credits Pvt. Limited (MSCPL) financial facilities in the form an inter-corporate deposit (ICD) of Rs. 5 crores for its business operations. The ICD was for a period of 120 days up to 17th January, 2003 and carried interest at 21 per cent per annum payable in advance with quarterly rests. In case of delay or default in making payment of principal amount or any part thereof, interest at 36 per cent per annum with monthly rests was payable by MLL from the date of default till the date of repayment of the deposit along with interest/overdue interest in full. Clause 5 of the Agreement which provides for interest reads as under:

“5.The normal agreed rate of interest for placement of the ICD is 36% p.a., however as a special case the lender is placing the ICD at concessional rate of 21% front ended payable at quarterly rests. In case of delay or default in making payment of principal amount or any part thereof on its due date, the normal rate of interest of 36% p.a. with monthly rests shall be payable by the borrower from the date of default till the date of repayment of the ICD along with interest/overdue interest in full.”

3. Appellant No. 2 Sushil Suri and Arun Suri furnished personal guarantees for repayment of the loan. In addition, Blue Coast Hotels & Resorts Limited [appellant No.3 in EFA (OS) No. 19 to 21 of 2006 and the appellant in EFA (OS) No. 4 of 2007] stood surety.

4. The disputes between the parties in relation to the

repayment of the loan were referred to the sole arbitration of Justice A.P. Chowdhry (Retd.).

5. During the pendency of the arbitration, the parties entered into a memorandum of settlement dated 27th May 2003. Thereafter the learned Arbitrator made an Award on 20th June 2003 under Section 30 of the Arbitration and Conciliation Act, 1996 (Act) in terms of the said settlement.

6. The decree holder, i.e., MSCPL found that after the Award, the judgment debtor MLL had paid only a sum of Rs.12,50,000/- and that three cheques issued by it which had fallen due on 28th September 2003, 28th October 2003 and 28th November 2003 had been dishonoured on presentation. MLL made a further payment of Rs.35 lakhs but thereafter made no other payment. As on 31st December 2003, a total sum of Rs.6,24,44,250/- was due from MLL. MLL was also liable to pay interest at 30% per annum with monthly rests till the time the entire amount was paid by them to the decree holder. Accordingly, the aforementioned execution petition was filed.

7. Before the learned Single Judge, it was contended by MSCPL, the decree holder, that the parties had agreed not to challenge the Award which had been made in terms of the settlement arrived at between them. In any event, no application under Section 34 of the Act had been filed within three months of the date of the Award. Further in terms of Section 36 of the Act, since no challenge was

made to the award within the further grace period of one month, the award became enforceable under the Code of Civil Procedure, 1908 (CPC) in the same manner as a decree of the court. Accordingly, the decree holder prayed in the execution petition that the properties of the judgment debtor must be attached to realize the outstanding decretal amount.

8. At that stage, the appellants filed the aforementioned two execution applications, EA Nos. 296 of 2005 and 324 of 2005 raising objections. By the impugned judgment, the learned Single Judge rejected these objections and therefore, the present appeals have been filed.

9. We have heard the submissions of Mr. Ravishankar Prasad, learned Senior Counsel, appearing for the judgment debtor MLL and Mr. Arvind K. Nigam, learned Advocate, appearing for the respondent MSCPL, the decree holder.

10. Mr. Ravishankar Prasad advanced the following four submissions:

- (a) The learned Arbitrator could not have awarded interest higher than 18 per cent per annum in terms of Section 31 (7)(b) of the Act. In other words, even if the parties agreed for a rate of interest higher than 18 per cent, the Court is at the stage of execution entitled to invoke Section 31 (7)(b) and direct that the judgment debtors will not pay the interest higher than 18 per cent per annum. It is submitted that

since under Section 28(1)(a) the Arbitrator was required to decide the dispute “in accordance with the substantive law for the time being in force in India”, the award of interest higher than 18 per cent as stipulated in Section 31(7) was liable to be interfered with even at the stage of execution.

- (b) The Award was not a decree under the CPC particularly since it was an Award made on the basis of a settlement. In other words, an Award by way of consent has an inferior status to that of a decree. It did not have a status higher than an Award for the purposes of Section 30(4) of the Act.
- (c) All objections permitted to be raised under Section 47 CPC to the execution of a decree were available to be raised in execution proceedings for the enforcement of an award under the Act.
- (d) Under Section 3 of the Usurious Loans Act, 1918 read with Section 2(3) thereof, the Court could declare that the interest charged was excessive or that the transaction was “substantially unfair” and could relieve the debtor of the liability in respect of such excessive interest.

Reliance was placed on a number of judgments to which reference will be made shortly.

11. Appearing for the respondent Mr. Arvind Nigam submitted that the learned Single Judge had given detailed reasons for rejecting each of the objections and had discussed the relevant decisions. He submitted that the Award itself remained unchallenged under Section 34 of the Act and therefore at the stage of execution the objections now sought to be raised, could not be permitted at the instance of the judgment debtor. If the executing court were to go behind the agreed terms on the basis of

which the Award was made under Section 30 of the Act, it would render the scheme of the Act itself totally unworkable. He submitted that legislative intent in prescribing 18 per cent per annum interest under Section 31 (7) (b) was to provide a guideline to the court to grant interest where the Award was silent on that aspect. Where the parties had agreed upon a rate of interest then there was no question of the Court substituting that rate of interest with what it considered to be reasonable. He submitted that the appellants' contention regarding Usurious Loans Act was totally misconceived since that provision would apply to a suit and not to proceedings for the execution of an Award.

12. In order to appreciate the first contention of the appellants, a reference may be made to Section 31(7) of the Act which reads as under:

“31. Form and contents of arbitral award.

(1) to (6) xxx xxx xxx

(7)(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the

award to the date of payment.”

13. It is not possible, even on a plain reading of Section 31 (7)(b) to accept the submission of the learned counsel for the appellant that where the Award stipulates a rate of interest higher than 18 per cent per annum then it can be reduced to 18 per cent per annum by the Court at the stage of execution. Section 31(7)(b) uses the words “unless the award otherwise directs.” It can only mean that what is stipulated in the Award gains precedence and that the Court cannot interfere. If the Award grants a different rate of interest, then there is no question of court awarding interest at 18 per cent per annum. It is only where the Award is silent that the court can possibly invoke this clause.

14. In support of the proposition that the Award was not a decree in terms of the CPC and, therefore, could be interfered with even at the stage of execution, the learned Senior Counsel for the appellant placed considerable reliance upon the judgment of the Supreme Court in ***Paramjeet Singh Patheja v. ICDS Ltd. (2006) 13 SCC 322***. The question that arose in the said case was whether for the purposes of the Section 9 of the Presidency Towns Insolvency Act, 1909 (‘Insolvency Act’), an arbitration award could be construed to be a decree? In the said case the appellant was a guarantor of dues owed by the company which was registered under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 [‘SICA’] . On the basis of the Award, an insolvency notice

was issued under Section 9(2) of the Insolvency Act. Meanwhile, the Board for Industrial and Financial Reconstruction (BIFR) rejected the application of the company for being declared sick. The appellant then filed a notice of motion in the High Court, challenging the insolvency notice on the ground that the award was not a decree for the purposes of the Insolvency Act. The High Court negatived this challenge and the appellant approached the Supreme Court. It was held that inasmuch as the Insolvency Act does not define “decree’ or “order’ and since Section 9(e) and (h) of the Insolvency Act only mention “decree of any court for the payment of money”, the said statute enacted in 1909 could only have dealt with “debtors who have suffered a decree by any court for payment of money”. In those circumstances, it was held that for the purposes of the Insolvency Act “an arbitrator is not a court, an arbitration is not an adjudication and, therefore, an award is not a decree”. It was further held that the words “decision” and “civil court” in Section 2(14) CPC rule out the execution of the Award by arbitrators.

15. A reading of the said judgment in ***Paramjeet Patheja*** indicates that the Supreme Court was essentially concerned with the interpretation of the provisions of the Insolvency Act and the CPC. The said decision cannot be read as laying down the law for the purposes of Arbitration and Conciliation Act, 1996 that an Award is not a decree and cannot be enforced as such. In fact, in paras 38 and

39, this position is made explicit and they read as under:

“38. The Insolvency Act of 1909 was passed, and amended by the Bombay Amendment of 1939, and also by Parliament in 1978 when two laws were on the statute book-the Arbitration Act, 1899, and the Civil Procedure Code, 1908. Parliament and the Bombay Legislature were well aware of the difference between awards on the one hand and decrees and orders on the other and they chose to eschew the use of the word 'award' for the purposes of the Insolvency Act.

39. Section 15 of the Arbitration Act, 1899 provides for 'enforcing' the award as if it were a decree. Thus a final award, without actually being followed by a decree (as was later provided by Section 17 of the Arbitration Act of 1940), could be enforced, i.e. executed in the same manner as a decree. For this limited purpose of enforcement, the provisions of CPC were made available for realizing the money awarded. However, the award remained an award and did not become a decree either as defined in the CPC and much less so far the purposes of an entirely different statute such as the Insolvency Act.”

We therefore do not see how the judgment in ***Paramjeet Patheja*** helps the appellant.

15. In ***Morgan Securities & Credit (P) Ltd. v. Modi Rubber Ltd. (2006) 12 SCC 642***, the question was whether the Arbitration & Conciliation Act, 1996 could prevail over the provisions of the SICA. That question was answered in the negative. In that case, the BIFR had not

yet passed an order under Section 22(3) SICA and, therefore, it was held that the Court before whom the suit had been filed, had to proceed with the objection filed by the respondent in Section 34 of the Act. The Court added:

(SCC p. 665 @ para 67)

“However, if the objection filed by the respondent is rejected, the question of its enforceability would come into being. Once the arbitral award having the force of a decree is put into execution, sub-section (1) of Section 22 of SICA would come in its way from being enforced. The contention raised by Mr Sundaram that having regard to the provisions of Section 5 of the 1996 Act, the Board would have no jurisdiction, therefore, does not seem to have any force.”

Again, this judgment does not help the case of the appellant. The sanctity of the Award of an arbitral tribunal being considered to be a decree for the purposes of an execution has in no way been diluted by the aforementioned judgments of the Supreme Court.

17. The learned Single Judge has after analyzing Sections 30 and 34 of the Arbitration and Conciliation Act, 1996 summarized the position as under:

- “(i) There can be no interference with respect to matters covered under Part I of the Arbitration and Conciliation Act, 1996 except where it is so provided. This is notwithstanding anything contained in any other law for the time being in force;
- (ii) An arbitral tribunal is fully empowered to record a settlement between the parties

settling their disputes and to make an arbitral award on agreed terms;

- (iii) Once an arbitral award on agreed terms is made, it shall have the same status and effect as any other arbitral award on the substance of the disputes. There is no distinction between an arbitral award on agreed terms or an arbitral award on the substance of the disputes.
- (iv) Recourse to Court against an arbitral award can be had only by an application for setting aside such award under Section 34 of the Arbitration and Conciliation Act, 1996 and that, too, within the period stipulated under Section 34(3) thereof.
- (v) Where no application under Section 34 is made during the stipulated period, the award is to be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court.”

18. We find no reason to take a different view of the matter and fully concur with the above reasoning of the learned Single Judge.

19. We may mention here that the learned Senior Counsel for the appellant also placed reliance on the judgments of this Court in ***C.L. Gupta v. DDA 2006 (1) Arb. L.R. 576 (Del)***; ***Shankar Construction Company v. National Building Construction Company AIR 2003 Delhi 374***; ***G.S. Kalra v. New Delhi Municipal Committee AIR 1999 Delhi 355*** in support of the proposition that the Court could interfere with the award of interest. It was further submitted that the ground on which the court

could have interfered in execution was that under Section 3 of the Usurious Loans Act, 1918 read with Section 2, interest awarded should be held to be “substantially unfair”.

20. In the first place, it must be mentioned that Section 3 of the Usurious Loans Act is explicit that the provisions will apply to a suit which has been defined in Section 2(3) of that statute as under:

“2. Definitions. (1) to (2) xxx xxx xxx

(3) “Suit to which this Act applies” means any suit ____

(a) for the recovery of a loan made after the commencement of this Act; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made, after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act; or

(c) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act.”

21. This court is not inclined to hold that the word “suit” includes execution proceedings and that even at the stage of execution, notwithstanding the decree having attained finality, it would be open to a judgment debtor to resist the execution on the ground that the interest awarded by way of the decree is excessive. That would render every decree vulnerable at the stage of execution. It is not unusual that in a suit, even if no such point is raised by a

judgment debtor, interest is awarded to the decree holder on the decretal amount. The entire decree does not become open to challenge at the stage of execution for this reason. None of the judgments cited by the learned Senior Counsel support this proposition of his. As observed by the learned Single Judge, the course available to the judgment debtor here was to have filed an application under Section 34 of the Arbitration and Conciliation Act, 1996. In the instant case, the appellants did not do so. If objections of the kind raised by the appellants are permitted at the stage of execution, then it would defeat the scheme of the Act. Clearly, this is neither intended nor permissible.

22. For all the aforementioned reasons, we find no merit in the appeals. The appeals are accordingly dismissed with costs of Rs. 20,000/- each which will be paid by the appellants to the respondent in each appeal within a period of four weeks.

S. MURALIDHAR, J

CHIEF JUSTICE

14th AUGUST, 2008
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