

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Execution Petition No.4 of 2006

Reserved on : 14.02.2008

Date of decision : 25.02.2008

IN THE MATTER OF :

#VIJAY GUPTA

!

.... Decree Holder
Through Mr.Chandan Kumar,
Advocate

Versus

\$RENU MALHOTRA

^

..... Judgment Debtor
Through Mr.Deepender Hooda,
Proxy Counsel, Advocate

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HON'BLE MS.JUSTICE HIMA KOHLI

1. Whether Reporters of Local papers may
be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be
reported in the Digest? Yes

HIMA KOHLI, J

:

1. By this order, the objection raised by the
counsel for the judgment debtor with regard to the
maintainability of the present execution petition in this

Court on the ground of lack of pecuniary jurisdiction is being decided.

2. The genesis of the dispute subjection matter of the present petition, arose in the year 1998, when the decree holder filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') before this Court in December, 1998, seeking appointment of an Arbitrator. For the purpose of jurisdiction and valuation, the decree holder valued the petition at more than Rs.5 lakhs. It is relevant to note that at that point in time, this Court had the pecuniary jurisdiction to entertain suits the value of which exceeded Rs. 5 lakhs. Consequent to the filing of the aforesaid petition, vide order dated 27.2.2002, an Arbitrator was appointed to adjudicate the disputes *inter-se* the parties.

3. During the pendency of the arbitration proceedings, the judgment debtor approached this Court on two occasions for seeking certain orders. On the first occasion, the judgment debtor filed a petition under Section

27 of the Act for summoning four additional witnesses, being OMP No.297/2003. The said petition was allowed by order dated 13.1.2005. Thereafter, the judgment debtor filed another petition under Section 37 (2) (b) of the Act assailing an order dated 28.9.2004, passed by the Arbitral Tribunal, being OMP No.382/2004. The aforesaid petition was disposed of vide order dated 27.3.2006, directing the judgment debtor to place the undertaking given to the Court on an affidavit, to the effect that the judgment debtor shall not transfer or create any third party interest in the assets of Manoranjan Cabel Network during the pendency of the present Execution Petition.

4. During the pendency of OMP No.382/2004, the Arbitrator passed an award dated 31.8.2005 execution of which is sought by the decree holder who filed the present petition on 2.1.2006. In the meantime, the judgment debtor assailed the aforesaid award by filing a petition under Section 34 of the Act in this Court on 28.11.2005. However, the aforesaid petition was taken back by the

judgment debtor from the Registry under objections and was thereafter filed in the Court of the District Judge, Delhi and numbered as OMP No.164/2005. Before the learned Additional District Judge, the judgment debtor made a request for withdrawing the petition on the ground that as the matter had earlier been proceeded with by the High Court under Section 11 of the Act, the District Court did not have the jurisdiction to try the petition. The petition was returned to the Judgment debtor by the Additional District Judge to be filed before the appropriate Court. A perusal of the following order passed by the learned Additional District Judge on 18.4.2006, is relevant:-

" Counsel for the petitioner submits that he accedes to the plea of the respondent that this court does not have the jurisdiction to try this petition; in as much as the matter had been earlier proceeded by the Hon'ble High Court u/s 11 of the Arbitration and Conciliation Act and hence, this petition should be filed before the Hon'ble High Court.

In the circumstances, he prays to withdraw the petition to file the same before the Hon'ble High Court. His

statement to this effect recorded separately.

Counsel for the respondent objects to the said permission stating that this court does not have jurisdiction to pass any order in this case as this court does not have the jurisdiction in the matter at all.

Heard. In my opinion, the returning of the plaint would not amount to any order on the subject matter of the said petition, but, only with respect to the fact that this court does not have the jurisdiction and the petition be filed before the appropriate court having the jurisdiction to try this petition. The petition is accordingly, returned to the petitioner to be filed before the appropriate court. Arbitration proceedings be returned to the Arbitrator.

File be consigned to the record room."

5. A review of the aforesaid order dated 18.4.2006 passed by the learned Additional District Judge, was sought by the Judgment Debtor who filed a review application which was rejected vide order dated 22.3.2007. Counsel for the judgment debtor stated that, aggrieved by the aforesaid order of rejection of the review application, an appeal was preferred by him and is pending in this Court,

being FAO No.155/2007.

6. Counsel for the Decree Holder drew the attention of this Court to the provisions of Sections 27, 37 and 42 read with Section 2 (e) of the Act to state that the aforesaid provisions which are contained in Part I of the Act, when read collectively, indicate that the word 'Court' as defined in Section 2 (e) of the Act, for the purposes of the present petition, is none other than the High Court and hence this Court has the pecuniary jurisdiction to entertain the Execution Petition. He also stated that the aforesaid conclusion is backed by the conduct of the judgment debtor herself who not only filed petitions under Sections 27 and 37 (2) (b) of the Act in this Court during the pendency of the arbitral proceedings, but after passing of the award, initially filed the Section 34 petition in this Court, then withdrew it and filed it in the District Court and again withdrew it from there to enable her to file it back in the High Court. Reliance was placed on Section 42 of the Act

which reads as below:

"Section 42- Jurisdiction- Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."

7. Counsel for the judgment debtor on the other hand submitted that merely because an Arbitrator was appointed by this Court on a petition preferred by the decree holder under Section 11 of the Act, and/or merely because the judgment debtor filed applications before this Court during the pendency of the arbitral proceedings and withdrew her petition under Section 34 of the Act from the District Court for being filed before the appropriate forum, the provisions contained in Section 42 of the Act will not be applicable and this Court will not be vested with the jurisdiction to entertain a petition under Section 34 of the

Act, or for that matter, the present execution petition. In support of his contention, he placed reliance on the order dated 3.1.2006, passed in OMP No.55/2005, entitled NDMC Versus D.K. Construction Company, as also the judgment reported at **2002 (3) ALR 8 (Delhi)** entitled National Thermal Power Corporation Versus R.S. Avtar Singh and Anr. Counsel for the judgment debtor also placed reliance on the judgment reported at **87 (2000) DLT 405** entitled Kinetic Capital Finance Ltd. Versus Anil Kumar Misra and **125 (2005) DLT 511** entitled Apparel Export Promotion Council Versus Prabhati Patni, Proprietor Comfort Furnishers and Anr. to state that arbitral award of which the decree holder seeks execution can only be enforced by the Civil Judge and not this Court.

8. I have heard the rival contentions of the parties and have perused the documents placed on record. As stated above, the question that arises for consideration herein is confined to whether this Court has the pecuniary jurisdiction to entertain the present execution petition, or

not.

9. There is no dispute on the fact that the value of the claims involved were less than Rs.20 lakhs and the amount awarded by the Arbitrator is also below Rs.20 lakhs. It is therefore necessary to see as to which Court would be "the Court" within the meaning of Section 2(e) of the Act for the purposes of executing the award, i.e, whether it is this Court as the decree holder contended, or is it the District Court, as contended by the judgment debtor.

10. Section 2 (e) of the Act reads as below:-

"court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

11. A bare reading of Section 2(e) of the Act shows

that a Court having jurisdiction would mean the Court having jurisdiction to decide the questions forming subject matter of the arbitration, if the same had been the subject matter of a suit, being the "principal Civil Court of original jurisdiction".

12. Counsel for the decree holder relied on Section 42 of the Act and sought to derive strength from the conduct of the judgment debtor in submitting that as an application under Section 11 of the Act for appointment of an Arbitrator was filed by him before this Court and not opposed by the judgment debtor, and also since the judgment debtor had herself filed applications under Section 27 and Section 37(2)(b) of the Act in this Court during the pendency of the arbitral proceedings, therefore, as per the provisions of Section 42 of the Act, this Court has the jurisdiction over all the arbitral proceedings and all the subsequent applications arising out of the arbitral proceedings including the present execution petition. Much emphasis was laid on the fact that the judgment debtor had

also filed a petition under Section 34 of the Act in this Court, which was taken back by her from the Registry and thereafter filed in the District Court, but was withdrawn from there subsequently with liberty to file the same before the appropriate Court, thus conceding that the District Court was not the appropriate forum having jurisdiction to entertain the same.

13. In view of the judgment in the case of National Thermal Power Corporation (supra), which has been consistently followed in various judgments of this Court, it is well settled that the expression "Chief Justice" as contained in Section 11 of the Act, is not synonymous with the term the "Court" as defined in Section 2(e) of the Act, and therefore merely because an Arbitrator has been appointed by the High Court, the same in itself would not be sufficient to vest jurisdiction with the High Court to entertain any other/ subsequent applications relating to the said arbitral proceedings in which the Arbitrator was appointed, irrespective of the pecuniary limits on its

jurisdiction.

14. Moving on to the argument of the counsel for the decree holder that the judgment debtor having herself filed applications under Section 27 and Section 37(2)(b) of the Act in this Court, which were duly entertained and having withdrawn her objections under Section 34 of the Act from the District Court, to file it before the appropriate Court, is sufficient to negate the objection raised on her behalf with respect to lack of pecuniary jurisdiction of this Court, a reference to the judgment rendered in the case of Apparel Export Promotion Council (supra) is relevant. In the said case, the Court when confronted with the issue as to whether the mere filing of objections under Section 34 of the Act in this Court would clothe the Court with the jurisdiction to entertain the disputes interse the parties, in view of the provisions of Section 42 of the Act, observed as under:

"21..... A reading of Section 42 makes it clear that it is a non-obstante provision and that it indicates that if any application

is submitted under Part I (which includes an application under Section 34) in a court, then that court alone would have jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement and the arbitral proceedings shall be made in that court and in no other court. Mr Rawal has construed this provision to mean that since the petitioner had filed his objections under Section 34 first in this court and the respondent had thereafter filed its objections in the court at Jaipur, this court and this court alone would have jurisdiction and the court at Jaipur, notwithstanding anything contained elsewhere or in any other law for the time being in force, would not have jurisdiction. I am unable to agree with this submission of Mr Rawal. The primary reason being that **Section 42 also uses the word 'court' which has to be construed in terms of the definition in Section 2(e). This court (i.e., Delhi High Court), clearly, is not the 'court', in the facts of the present case, which is referred to in Section 2(e) of the said Act. Therefore, the mere filing of the petition under Section 34 in this court would not clothe this court with jurisdiction in respect of the disputes between the parties for all times to come. Mere filing of the objections under Section 34 in a wrong court would not clothe that court with jurisdiction.** This court does not otherwise have jurisdiction as indicated above and, therefore, the mere fact that

the petition under Section 34 has been filed here would not confer jurisdiction on this court.” (emphasis added)

15. It can thus be deduced that simply because applications under Section 27 and 37(2)(b) of the Act were filed by the judgment debtor in this Court during the pendency of the arbitral proceedings, would not confer pecuniary jurisdiction on this Court, as this Court otherwise does not have the jurisdiction in respect of matters having value below Rs.5 lakhs. Merely because this Court exercised jurisdiction in deciding the aforesaid applications, during the pendency of the arbitral proceedings *ipso facto* is not sufficient to arrive at a conclusion that this Court must exercise jurisdiction in the present petition as well. Also, as rightly pointed out by the learned counsel for the judgment debtor, it was for the decree holder to have raised objections against the exercise of jurisdiction by this Court in the aforesaid applications at that stage, if available to him in law, and only because the aforesaid applications were entertained by this Court, does not mean that this

Court is vested with the jurisdiction to entertain the present petition as well.

16. Thus, the conduct of the judgment holder, by itself, would not vest jurisdiction in this Court, which it lacks inherently in view of the pecuniary limits placed on it by virtue of the Notification dated 25.5.2003, amending the Delhi High Court Act, 1966 and enhancing the ordinary original civil jurisdiction of this Court from Rs.5 lakhs to Rs.20 lakhs. It is settled law that consent, waiver or acquiescence on the part of parties cannot vest jurisdiction in a Court that inherently lacks it. Thus, the conduct of the judgment debtor, as described above in filing the aforesaid two applications in this Court or in withdrawing the petition filed under Section 34 of the Act from the District Court with liberty to file it in an appropriate Court would not clothe this Court with jurisdiction in the present matter, as it is not the "principal Civil Court of original jurisdiction" as defined under Section 2(e) of the Act for the purpose of entertaining and deciding the present petition.

17. In light of the aforesaid discussion and the position of law as discussed above, the inevitable conclusion is that this Court does not have the pecuniary jurisdiction to entertain the present execution petition. Consequently, the Registry is directed to return the petition to the decree holder for being filed before the appropriate Court.

February 25, 2008.
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(HIMA KOHLI)
JUDGE