16-19 & 21-22.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **EX.P. 41/2011 & E.A. No. 101/2011**

INDIA BULLS FINANCIAL SERVICES LTD ..... Decree Holder
Through: Mr. Anuj Jain, Adv
versus

LOYAL MOTORS PVT LTD & OTHERS ..... Judgement Debtors
Through

AND

\+ **EX.P. 42/2011 & E.A. No. 102/2011**

INDIA BULLS FINANCIAL SERVICES LTD ..... Decree Holder
Through: Mr. Anuj Jain, Adv
versus

SOUDHAMINI POTLURI & OTHERS ..... Judgement Debtors
Through

AND

\+ **EX.P. 43/2011 & E.A. No. 103/2011**

INDIA BULLS FINANCIAL SERVICES LTD ..... Decree Holder
Through: Mr. Anuj Jain, Adv
versus

SANJAY KABRA & OTHERS ..... Judgement Debtors
Through

AND

\+ **EX.P. 44/2011 & E.A. No. 104/2011**

INDIA BULLS FINANCIAL SERVICES LTD ..... Decree Holder
Through: Mr. Anuj Jain, Adv
versus

BAJRANG LAL SARDA & OTHERS ..... Judgement Debtors
Through

Signature Not Verified
Signing Date:28.08.2024 16:59:34
Certify that the digital and physical file have been compared and the digital data is as per the physical file and no page is missing.

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AND

\+ **EX.P. 46/2011 & E.A. No. 106/2011**

INDIABULLS FINANCIAL SERVICES LTD ..... Decree Holder
Through: Mr. Anuj Jain, Adv
versus

A.B FURNISHINGS PVT LTD & OTHERS ..... Judgement Debtors
Through

AND

\+ **EX.P. 47/2011 & E.A. No. 107/2011**

INDIA BULLS FINANCIAL SERVICES LTD ..... Decree Holder
Through: Mr. Anuj Jain, Adv
versus

EXCEL OILS AND CHEMICALS LTD & ORS ..... Judgement Debtors
Through

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% **08.02.2011**

These are execution petitions preferred against the judgment debtors in respect of arbitral awards made by the learned Arbitrator. The premise on which these petitions have been filed in this court is that the awards have been rendered by the learned Arbitrator within the jurisdiction of this court. Admittedly, the judgment debtors are not situated in Delhi and even the properties, by liquidation whereof the awarded amount is sought to be recovered, are also not located within the jurisdiction of this court.

The award made by an Arbitral Tribunal within the jurisdiction of this court is not the same as a decree passed by this court. Merely because the award, under Section 36 of the Arbitration & Conciliation Act, 1996, is enforced as if it is a decree of the court, it does not follow that an award made by an Arbitral Tribunal within the jurisdiction of this court becomes a decree of this court.

At this stage, it would be useful to make a reference to a decision of this Court in ***Daelim Industrial Co. Ltd. v. Numaligarh Refinery Ltd.***, *2009 (159) DLT 579* decided on 13.03.2008. The Court has held that Section 42 of the Act does not apply to enforcement proceedings. In para 16, the Court held as follows:

> *"16. ... ... Section 42 would also not apply to execution applications. The execution application is not "arbitral proceedings" within the meaning of Section 42 of the Act and is not a subsequent application arising out of the agreement and the arbitral proceedings. In fact the arbitral proceedings come to an end when the time for making an application to set aside the arbitral award expires and the execution application is an enforcement of the award. Thus the place of filing of the execution application need not be the place of the filing of the application under Section 34 of the Act for the reason of Section 42 of the Act."*

In any event, I may note that the awards in question have been made without resort to any proceedings under Section 9 or any other provision of the Act in the interregnum. Therefore, the provisions of Section 42 of the Act would not come into play, even if it were to be assumed that Section 42 has application to the post-award

proceedings for enforcement of the awards.

In ***Daelim*** (supra), the Court has further held:

> *"17. Once, Section 42 is out of the way, the question arises as to whether "Court" in Section 36 is to take its colour from Section 2(1)(e). If that were to be so then it will have to be seen which was the court which was competent to pass the decree had the subject matter of the arbitration been the subject matter of the suit. On such reasoning, the court would be the court at Guwahati to whose jurisdiction the parties had agreed in matters other than the arbitration.*
>
> *18. However, in my view the expression "court" in Section 36 is not meant to be the court within the meaning of Section 2(1)(e). The definitions in Section 2(1)(e) are, "unless the context otherwise requires". The word "court" is used in Section 36 only in the context of, by a legal fiction, making the award executable as a decree of the court within the meaning of CPC. The word "court" therein is used to describe the manner of enforcement i.e., as a "decree of the court" and not in the context of providing for the court which will have territorial jurisdiction to execute/enforce the award. In this context, the contention of the counsel for the decree holder of the difference in language in Section 36 and in Section 49 is significant. The legislature has in Section 49 provided for the enforcement of foreign awards by deeming the said awards to be a decree of "that court" which would mean the decree of the court which has adjudicated on the enforcement of the award. However, the legislature in Section 36 did not use the expression "that" and which is indicative of the reference to court therein being only to describe the manner of enforcement of the award as a decree of the court. There does not appear to be a legislative mandate to the effect that arbitral award has to be treated as a decree of that court only which would have had the jurisdiction to entertain the suit."*

The expression 'court' is defined in Section 2(e) of the Act to mean *"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 <u>the questions forming the subject-matter of the arbitration</u> 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."

The making of the award cannot be said to form the subject-matter of arbitration. Therefore, in any event, this court is not a 'court' within the meaning of Section 2(e) of the Act in relation to these petitions.

In ***Daelim*** (supra), the Court further held as follows:

> *"19. Section 38 of the CPC applies only to a decree passed by the court. In the present case no court has passed the decree. What is to be the position in such cases ?, which court is empowered to execute the award, which is a decree by a legal fiction and which has not been passed by any court?*
>
> *20. I find that certain orders of the company law board are also enforceable by a court. Section 635(4) of the Companies Act, 1956 provides that where any order of the company law board is required to be enforced by a court, a certified copy of the order shall be produced to the court required to enforce the order which shall then be enforced in the same manner and to the same extent as applicable to an order made by a court.*
>
> *21. In Sindhu Chits and Trading (P.) Ltd. v. Khayirunnissa AIR 1992 Kar 281 it was held that under the aforesaid Section 635 of the Companies Act, the orders of the company court are not decrees in the strict sense of the word but may be enforced in the same manner as a decree. It was held to mean that though an order passed by the company court does not amount to a decree for the*

purpose of execution, it will be treated as though it is a decree and all the provisions of CPC relating to the execution of the decree would then apply. It was further held that since the procedure to be followed in the matter of execution of the order of the company court is different from that laid down in the CPC, it is not necessary to comply with the procedure laid down in Sections 38 and 39 of the CPC and get the order first transferred by the court which made it, to the court which is to enforce it and then make an application to execute it. It was held that a mere production of a certified copy of the order is sufficient without getting the order transferred by the court which is required to enforce the order by taking necessary steps in the same manner as if it had been made by itself.

22. The same High Court also in Rose Chit funds (P.) Ltd. v. G. Venkatachallam 70 (1991) Comp Cas 280 took the same view and also observed that the judgment debtor in that case was residing within the jurisdiction of the court where the order of the company court was sought to be executed.

23. This Court in Anand Finance (P) Ltd. v. Amrit Dasarat Kakad (1997) 90 Comp Cas 350 Delhi followed Rose Chit Funds (Supra) and held the mere production of a certified copy of the order before the court where it was sought to be enforced, to be sufficient and no certificate/order of transfer of the decree being required.

24. Thus it will be seen that where under other enactments, orders are made executable as a decree of the court, insistence has not been on following Section 38 of CPC. However, the judgments (supra) in relation to Section 635 of the Companies Act cannot be blindly followed, inasmuch as Section 635 itself provides a procedure and which is missing in Section 36 of the Arbitration Act.

25. In this regard the addition of Sub-section (4) to Section 39 vide CPC Amendment Act 2002 is relevant. It provides that nothing in Section 39 shall be deemed to authorize the court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction. The legislative intent appears to be that the

decree should be executed by the court within whose territorial jurisdiction the person or the property of the judgment debtor is situated. That is logical also. The purpose of execution is realization of money from the property or the property of the judgment debtor. Thus while territorial jurisdiction for suits is determined by place of occurrence of cause of action, residence of defendant, locus of property etc, the territorial jurisdiction for execution is determined only by locus of judgment debtor or the property. The agreement between the parties restricting jurisdiction of one, amongst many courts also does not extend to execution and is applicable to the court which will adjudicate the lis. I do not see any reason, why where an award has been made executable as a decree, the execution cannot lie at a place where the property against which the decree is sought to be enforced is situated. That court in my view would have inherent jurisdiction to execute the decree and in the absence of applicability of mandate of Section 38 of CPC, pedantic insistence on first applying for execution to one court, merely to obtain transfer would be also contrary to intent of expedition in the 1996 Act.

26. The senior counsel for the judgment debtor also does not dispute that the award would be executable by this Court by attachment of the properties/monies of the judgment debtor at Delhi. However, he insists upon the same being done only after obtaining a transfer of the decree from the courts at Guwahati /Golaghat to this Court. But what will that court transfer. There is no decree of that court which it can transfer. The court after disposing of application/petition under Section 34 is not required to and does not pass any decree in terms of the award, as under the 1940 Act. Moreover, the question of such transfer would arise only if it were to be held that the power to execute and transfer is of that court only. Such power as aforesaid is only in relation to decrees passed by that court and no in relation to the arbitral awards which are deemed to be decree for the purpose of enforcement/execution. Without the fetter of Section 38 the courts of the place where the property/money against which the decree is sought to be enforced is situated would have inherent jurisdiction to entertain the execution.

> *27. A money award, as in the present case, can be enforced through courts of the place wheresoever the money or any property of the party liable to pay is situated."*

The arbitral award once made, can be executed in the same manner as a decree of a court. Therefore, the same can be executed by preferring an execution petition before a competent court, either at the place where the award debtors are located or where their properties are located, attachment and sale whereof is sought.

Learned counsel for the decree holder submits that the aforesaid decision in ***Daelim*** (supra) has been stayed by the Division Bench in EFA (OS) No.31/2009. He relies on the order dated 14.09.2009 passed in the aforesaid appeal.

I have called for the record of EFA (OS) No.31/2009. I find that the said appeal is directed against the orders dated 29.07.2009 passed in Ex. Pet. No.242/2008, and dated 07.08.2009 passed in E.A. No.415/2009 in Ex. Pet. No.242/2009. The said appeal is not even directed against the order dated 13.03.2009 passed in E.A. No.105/2009 in Ex. Pet. No.242/2008, on which I am placing reliance. Learned counsel should have been careful in relying upon the order dated 14.09.2009 and should have verified if the same pertains to the order dated 13.03.2009 passed in E.A. No.105/2009 in Ex. Pet. No.242/2008. The said order dated 14.09.2009 has no concern with

the order in ***Daelim*** (supra) which still holds the field.

Learned counsel for the petitioner also places reliance on the decision of the Supreme Court in ***Khaleel Ahmed Dakhani Vs. Hatti Gold Mines Co. Ltd.,*** *(2000) 3 SCC 755.* In my view, this decision has no application to the facts of the present case. In this case, the Karnataka High Court had entertained an application under Section 9 of the Act. Objections to the award were also preferred before the court of Principal City Civil Judge, Bangalore. Execution Petition had been preferred by the award holder before the court of the Principal District Judge, Raichur. The court of the Principal District Judge, Raichur held that the Karnataka Court did not have jurisdiction to entertain the objections to the award. The Supreme Court held that though District Judge, Raichur had jurisdiction to entertain the execution petition, it could not be said that the court in Bangalore did not have jurisdiction to entertain the objections to the award. As aforesaid, in the present case, neither the appointment of the Arbitrator was made by the Chief Justice of this court (which, in any event, does not trigger section 42 of the Act), nor objections to the award were preferred before this court. This court does not even qualify as 'court' within the meaning of Section 2(e) so far as the present petitions are concerned, even if it were to be assumed that the definition of "Court" contained in Section 2(e) of the Act is relevant for enforcement of the award.

For the aforesaid reasons, I am of the view that all these execution petitions, whereby the decree holder seeks transfer of the petitions to the respective courts where the judgment debtors/their properties are located, are not maintainable. The same are, accordingly, dismissed. It shall be open to the decree holder to prefer execution petitions before the competent courts to seek enforcement of the awards in question.

VIPIN SANGHI, J

FEBRUARY 08, 2011
'BSR'