

GAHC010079112023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/105/2023

M/S. ADHARSHILA AND 2 ORS.

A PARTNERSHIP FIRM HAVING ITS REGISTERED OFFICE AT R.G. BARUAH ROAD, NABINNAGAR, L.K.R. BARUAH PATH, GUWAHATI-781024, KAMRUP (M), ASSAM, REPRESENTED BY ITS MANAGING PARTNERS

2: SMTI MAMONI BARUAH
W/O LATE JAGAT PRASAD BARUAH
R/O HOUSE NO. 9
R.G. BARUAH ROAD
NABIN NAGAR
L.K.R. BARUAH PATH
GUWAHATI-781024
KAMRUP (M)
ASSAM

3: ABHIJIT BARUAH
S/O LATE JAGAT PRASAD BARUAH
R/O HOUSE NO. 9
R.G. BARUAH ROAD
NABIN NAGAR
L.K.R. BARUAH PATH
GUWAHATI-781024
KAMRUP (M)
ASSA

VERSUS

ARUN CH. CHOUDHURY AND ANR
S/O SRI GIRIN CH. CHOUDHURY, R/O FLAT NO. A-4, 4TH FLOOR,
AASHIANA APARTMENT, CHINAKI PATH, M.T. ROAD, GUWAHATI, DIST-
KAMRUP (M), ASSAM, PIN-781024

2:SMTI PRIYALAXMI CHOUDHURY
W/O SRI ARUN CH. CHOUDHURY

R/O FLAT NO. A-4
4TH FLOOR
AASHIANA APARTMENT
CHINAKI PATH
M.T. ROAD
GUWAHATI
DIST-KAMRUP (M)
ASSAM
PIN-78102

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : MR. A BISWAS (r-1,2)

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the petitioner :Mr. N Borah,Advocate

For the Respondent : Mr. R Sharma, Senior Advocate
Mr. A Biswas, Advocate

Date of Hearing : 25.04.2023

Date of Judgement : 25.04.2023

JUDGEMENT & ORDER (ORAL)

Heard Mr. N Borah, learned counsel for the petitioners. Also heard Mr. R Sharma, learned Senior counsel assisted by Mr. A Biswas, learned counsel for the respondent.

2. The present application is filed assailing orders dated 18.08.2021 and 02.09.2021 passed by the learned Executing Court in Money Execution Case No. 147/2014.

3. The background fact of the present litigation can be summarized as follows:
- I. The respondent Nos. 1 and 2 and the petitioners entered into an agreement for development of a plot of land for residential apartment by an agreement dated 03.02.1994.
 - II. Clause 7 of the said agreement provided that the owner i.e. respondent No. 1 and 2 shall be allocated, firstly, a flat of 1800 sq. ft. approximately on the top floor as per design and plans. Secondly, a portion of the terrace over the said flat and thirdly, a servants quarter subject to approval of the appropriate authorities.
 - III. Alleging that the builder had violated the aforesaid terms of the agreement and had not delivered the entitled allocation and that the petitioners/ builders have caused damage to the owners, the owners instituted an arbitral proceeding by raising a claim inasmuch as there was an arbitration clause in the agreement.
 - IV. The said arbitral proceeding was registered as Arbitration Case No. 01/2006. The petitioners/ builders contested the aforesaid arbitral proceeding. After hearing the parties and considering the evidences led by the parties, the learned Arbitrator by its arbitral award dated 15.06.2011 passed the following award:
 - A. The claimants/ land owners are entitled for the compensation of Rs. 9,45,000/- and also entitled to get interest @ 6% per annum with effect from 03.08.1997 to 15.06.2011 and a further interest of 18% per annum from the date of award till payment.
 - B. An amount of Rs. 5,00,000/- with interest of 18% as

compensation and damages for the reason of physical and mental agony for non-delivery of owner's allocation.

- C. Another amount of compensation of Rs. 50,000/- with an interest of 18% from the date of the award against cost of the proceeding.
- D. To allocate in writing the terrace meant for the claimants.
- E. Issue a proper letter of possession of Flat No. A4 in the Aashiana Apartment in term of Clause 7.2 of the Article 9 of the agreement within one month from the date of award.
- V. Being aggrieved by the aforesaid award, the petitioners/ builders preferred an appeal under Section 34 of the Arbitration and Conciliation Act, 1996, which was registered as Misc. Arbitration Case No. 412/2011.
- VI. The learned Additional District Judge, FTC No. 3 under its judgment dated 18.03.2014 upheld the award and dismissed the appeal.
- VII. Being aggrieved by the aforesaid decision, the petitioners/ builders approached this court by filling an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, which was registered as Arbitration Appeal No. 23/2015. The appeal was closed on a settlement by the parties under its order dtd.06.09.2019.
- VIII. As interpretation of such settlement was the bone of contention before the learned Executing Court below, the relevant portion of the said order is quoted herein below:

“2. Without going into the details of the factual background of the dispute at hand, we take note of that an arbitral dispute was raised by

the respondents herein claiming certain compensation for the delay in handing over the apartments by the appellants builder. By the arbitral award dated 15.06.2011, an amount of Rs.19,95,000/- was awarded against the present appellants.

3. Being aggrieved, the appellants preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the learned Additional District Judge, FTC No.3, Kamrup(M), which was registered as Misc Arbitration Case No.412/2011. By the judgment dated 18.03.2014, the petition preferred by the appellants under Section 34 stood rejected, meaning thereby that the awarded amount by the arbitrator is required to be paid by the appellants. Being aggrieved by the judgment dated 18.03.2014, by which their petition under Section 34 was rejected, the present appeal has been preferred.

4. In course of the appeal, the parties had arrived at a settlement between themselves and have agreed that the payments would be made by the appellants to the respondents in the following manner:-

**PROPOSED TIME SCHEDULE FOR PAYMENT OF THE SETTLEMENT
AMOUNT BY THE APPELLANT**

<i>Instalment No.</i>	<i>Date on or before which the instalment amount is to be paid</i>	<i>Instalment amount (in Rs.</i>
<i>1.</i>	<i>20.10.2019</i>	<i>4,00,000/-</i>
<i>2.</i>	<i>15.11.2019</i>	<i>2,00,000/-</i>
<i>3.</i>	<i>08.12.2019</i>	<i>2,00,000/-</i>
<i>4.</i>	<i>29.12.2019</i>	<i>2,00,000/-</i>
<i>5.</i>	<i>20.01.2020</i>	<i>2,00,000/-</i>
	<i>Total</i>	<i>12,00,000/-</i>

6. Accordingly, we closed this appeal by incorporating the settlement arrived at by the parties. As it is agreed upon that the payment would be

made as per the schedule of payments provided herein above, it is directed that the appellants shall scrupulously follow the said proposed time schedule and pay the required amount stated therein within the time frame provided for the purpose.”

- IX. Prior to filing of such appeal by the petitioners/ builders, the land owners/ claimants had already instituted the execution proceeding for execution of the award in question, which was registered as Money Execution Case No. 147/2014.
- X. Thereafter, the respondents/ land owners by a petition, registered as Petition No. 333/2020 filed before the Executing Court prayed for restarting the execution proceeding, alleging non-compliance of the Award.
- XI. The basic grievance raised in that petition was that the terrace has not been handed over and the proper letter of possession has not been issued.
- XII. The petitioners/ builders objected such petition on the ground that the arbitral award has merged with the order of this court dated 06.09.2019 passed in Arbitration Appeal No. 23/2015 and therefore, no further execution can be proceeded and full and final settlement is the Rs. 12,00,000/- against the award and the same has already been satisfied.
- XIII. Such contention was rejected by the learned Executing Court on the ground that the settlement was in respect of the monetary compensation and there is no finding regarding restraining the decree in respect of delivery of possession of the terrace over the Flat No. 4A in the Aashiana Apartment. Accordingly, the executing

Court directed the petitioners/ judgment debtors to execute the remaining portion of the award dated 15.06.2011.

XIV. Thereafter, on 02.09.2021 when the matter was fixed for furnishing of draft possession letter, the respondents/ builders after receiving the draft possession letter raised an issue that the decree holders had unilaterally claimed an area of 1800 sq. ft. although the quantum of area of allotment is not specified in the development agreement.

XV. However, it was conceded by the petitioners/builders that they have no objection in giving possession of the Flat No. 4A of the Aashiana Apartment.

XVI. Another plea was taken that the Flat Owners Society is having right over the terrace and therefore, the terrace cannot be handed over.

XVII. The learned Executing Court while dealing with such issue came to a conclusion that the Flat Owners Society is stranger in the case and the builders/ judgment debtors are having no locus standi to raise unnecessary issue during execution of decree taking a cause of third party. Accordingly, such application was rejected by the impugned order on the ground that it is the cardinal principle of civil law that the Executing Court cannot go beyond the decree.

XVIII. It was also directed by the Executing Court to hand over the Flat No. 4A measuring 2039 sq. ft. along with a terrace measuring 1800 sq. ft. exactly over the Flat No. 4A of Aashiana Apartment. Such order is also under challenge before this court.

4. Mr. N. Borah, learned counsel for the petitioners submits that as the award was compromised and settled and settlement was also endorsed by this

court in its appellate stage therefore, the award passed by the learned Arbitrator and affirmed by the learned First Appellate Court has merged with the appellate decision of this court. Thus, the builders are now required to pay only Rs.12,000,00/- as a full and final settlement of the Award. The settled amount has already been paid to the land owner and therefore, no jurisdiction is vested with the Executing Court to proceed further with the execution.

5. It is the further contention Mr. Bora, learned Counsel that the Executing Court is not conferred with any jurisdiction to further continue with the execution proceeding moment the award was settled and the same attained finality and the Arbitral award merged with the order of this court dated 06.09.2019 passed in Arbitral Appeal No. 23/2015. In support of his contention, Mr. Borah relies upon the judgment of the Hon'ble Apex Court in the case of **A.V. Papayya Sastry vs State of Andhra Pradesh** reported in **(2007) 4 SCC 221**, **Khoday Distilleries vs Sri Mahedeshwara Sahakara Sakkare Karkhane Ltd.** reported in **(2019) 4 SCC 376** and **Kunhayammed and Others vs State of Kerala and Another** reported in **(2000) 6 SCC 359**.
6. Per contra, Mr. R. Sarma, learned Senior counsel representing the respondents/ land owners submits that bare perusal of the order of this court passed in the Arbitral Appeal will show that the settlement relates only to the quantum of compensation inasmuch as submissions were made relating to the quantum of compensation only and settlement was also arrived at regarding the amount of compensation and it doesn't relate to the original entitlement of the flat and terrace in term of the agreement and the award. In fact the settlement relates to time frame of payment of

compensation against the delayed handing over of the possession.

7. Mr. Sarma, learned Senior Counsel further contends that it cannot be conceived that a party will settle an award consisting of Rs.19,00000/- and interest thereupon, a flat measuring approximately 2000 square feet, a terrace over such flat for Rs. 12,00,000/- inasmuch as the flat is constructed over 2 kathas of land belonging to the respondents situated at a prime locality of Guwahati City.
8. The learned Senior Counsel submits that such plea cannot be allowed to be raised in this court once again inasmuch as in the order dated 02.09.2021, it was clearly reflected that the judgment debtor has got no objection in giving possession of the Flat No. 4A in the Aashiana Apartment. Such admission will clearly show that the petitioners are also aware that the compromise relates to the compensation part only. Accordingly, Mr. Sarma submits that there is no illegality, not to say any patent illegality in passing the orders under challenge. Therefore, the present revision petition is liable to be dismissed.
9. This court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
10. The basic bone of contention is that the award being already satisfied, has become non executable.
11. The paragraph 2 of the order dated 06.09.2019 reflects that the Court has not gone to the factual background of the dispute and took note that the dispute was raised claiming certain compensation for the delay in handing over the apartments by the appellant builder. The Court also took note of

the fact that by the arbitral award dated 15.06.2011, an amount of Rs. 19,95,000/- was awarded against the present appellants. In this paragraph, no discussion is made regarding other part of the award, except the monetary part.

12. At paragraph 3 of the order, it was the finding of the Court that appeal preferred by the appellants stood rejected and that the awarded amount by the arbitrator is required to be paid by the appellants. Here also, there is no mention regarding the other component of the award consisting of Flat and Terrace.
13. At paragraph 4 of the order, the Court took note of the fact that the parties had arrived at a settlement between themselves and have agreed that the payments would be made by the appellants to the respondents in a manner. Accordingly, the appeal was closed by incorporating the settlement arrived at by the parties. In this paragraph also discussion is made regarding the monetary component and payment schedule and not the other part.
14. From the aforesaid, it is clear that the issue raised on 06.09.2019 and settled on that day was relating to the component of the awarded amount which involves Compensation of money amounting of Rs. 19,95,000/-. Such component was reduced and settled at Rs. 12,00,000/- with a stipulation that payment be made with a specific time frame settled by the parties.
15. Thus, paragraph 6 of the order dated 06.09.2019 for all meaning and purport, is a settlement regarding the monetary component of the Award,

which was reduced from Rs. 19,95,000/- to Rs. 12,00,000/- through the mutual settlement to be full and final compensation.

16. It is apparent from the aforesaid order that the parties have not raised nor the Court had dealt with the other part of the award inasmuch as the award contains two parts, one is direction of handing over the allocated area i.e. the Flat and the Terrace and other part is amount of money against the damages and compensation and interest thereon, which is discussed at paragraphs 11 to 14 of this order.
17. After perusal of the paragraph 2, 3, 4 and 6 of the order dated 06.09.2019 passed in Arb. Appeal No.23/2015 and as discussed herein above, this Court is of unhesitant view that the settlement was as regard the second part of the award i.e. the compensation part which was quantified at Rs. 19,95,000/- and settled at Rs. 12,00,000/-.
18. Coming to the judgments relied on by Mr. N. Bora, learned counsel a ratio has been laid down that when a decree or order passed by a Court, tribunal or any other authority subject to a remedy available under law before a superior forum, then though decree or order under challenge continue to be effective and binding nevertheless, its finality is put into jeopardy. Once superior court dispossess the dispute before it, in any manner, either by affirming the decree or order or by setting aside and modifying the same, it is the decree of the superior Court, tribunal or authority which is the final binding and operative decree and decree or order of the lower Court.
19. The said judgments also clarify that the doctrine is not universal or of

unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject matter of challenge laid or which would have been laid will have to keep in mind.

20. In the case in hand, In view of the decision recorded herein above the, it is clear that the settlement was made as regards the monetary compensation component. Thus, Rs.19,95,000/- awarded against damages and compensations now merged with the Order dtd. 06.09.2019 and such compensation now to be read as Rs.12,000,00/-.
21. Therefore, the findings of the Executing Court that the settlement was as regard money and payment of compensation and not as regard other part of the award, cannot be faulted with more particularly in exercise of revisional power under Article 227 of the Constitution of India.
22. It is by now well settled that a High Court in exercise of a revisional power is not competent to correct errors of fact, however gross they may be or even errors of law unless such errors of law have relations to the jurisdiction of the Court to try the dispute itself. It is only in cases where a subordinate Court has exercised a jurisdiction not vested by law or has failed to exercise of jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with materials irregularity, then only revisional jurisdiction of High Court can properly be invoked.
23. Another aspect of the matter is that the builder respondent though has raised that the award has merged with the order of the appellate Court, however, it is reflected in the order dated 02.09.2021 passed by the Executing Court that the Builder had submitted that they have got no any

objection in giving possession of the Flat No. 4A of the Aashiana Apartment. Such conduct of the petitioner also shows the intention of settlement that has arrived under order dated 06.09.2019 passed by this Court.

24. The other objection relates to handing over the terrace and such objection relates to the grievance of other flat owners. Accordingly, the learned executing Court held that the petitioner don't have any locus to raise grievances on behalf of strangers and to obstruct execution of the award. Such findings also cannot be faulted with inasmuch as strangers to a decree are also given opportunities under different provisions of law to obstruct a decree, provided certain conditions are fulfilled. Therefore, such strangers/third parties shall always have right to do so but such obstruction cannot be allowed through the judgment debtor.
25. In the aforesaid view of the matter, this Court finds no merit in this case. Accordingly this Revision Petition is dismissed.

JUDGE

Comparing Assistant