

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 6070 of 2023

Petitioner :- Mohd. Fahad

Respondent :- Addl. District/Session Judge,P.C. - 8, Distt. Lko.
And Another

Counsel for Petitioner :- Manuvendra Singh

Hon'ble Rajnish Kumar,J.

1. Heard Sri Manuvendra Singh learned counsel for the petitioner.
2. This petition has been filed challenging the order dated 07.04.2023 passed under Order 21 Rule 30 CPC for execution of the award dated 09.12.2014 passed in arbitration case no.88/TF/October/2013.
3. Learned counsel for the petitioner submits that the execution of the arbitration award cannot be made under the Code of Civil Procedure as held by this Court in the order dated 04.04.2017 passed in Matters Under Article 227 no.1816 of of 2017 (*Ram Kishore vs M/s Shriram Transport Finance Company Ltd and another*) and the order dated 17.04.2017 passed in Matters under Article 227 no.2232 of 2017(*Usman vs Hinduja Leyland Finance Ltd. And another*) and the award can only be executed in terms of Section 36 of the Arbitration and Conciliation Act, 1996.
4. Having considered the submission of learned counsel for the petitioner and on perusal of the record, it is apparent that there is an award dated 09.12.2014 in arbitration case no.88/TF/October/2013 against the petitioner. For execution of the same, the impugned order/notice dated 07.04.2023 has been issued for attachment of the property of the petitioner till further orders of the Court, as per the provisions made in the Civil Procedure Code. This Court, in the order dated 04.04.2017 passed in Matter Under Article 227 no.1816 of of 2017 (*Ram Kishore vs M/s Shriram Transport Finance Company Ltd and another*), considering the contention of the learned counsel for the petitioner in the said case that the execution of the award can be made under Order 21 Rule 30 CPC, which provides that every decree for the payment of money, including a decree for the payment of money as an alternative to some other relief, may be executed by detention in civil prison of the judgment debtor, or by the attachment and sale of his property, or by both.

The procedure governing arrest and detention in the civil prison for execution of the decree is provided by Order 21 Rule 37 and 38 of the Code of Civil Procedure has set aside the recovery certificate on the ground that the learned counsel for the respondent no.1 in said case has not been able to show any such provision which may enable the civil court to execute a decree by issuing a recovery certificate and held that the District Judge, Muzaffarnagar shall be entitled to proceed with the execution in accordance with the provisions of the Code of Civil Procedure. The relevant portion of the order dated 04.04.2017 is extracted herein below :-

"The contention of the learned counsel for the petitioner is that under Section 36 of the Arbitration and Conciliation Act, 1996 an award is to be executed as a decree of a civil court. It has been submitted that under the circumstances, the award could be executed only as per the provisions of the Code of Civil Procedure and, therefore, issuance of recovery certificate by invoking the provisions of U.P. Z.A. & L.R. Act or Revenue Recovery Act is not legally justified. Attention of the Court has been invited to Order 21 Rule 30 CPC which provides that every decree for the payment of money, including a decree for the payment of money as an alternative to some other relief, may be executed by detention in civil prison of the judgment debtor, or by the attachment and sale of his property, or by both. The procedure governing arrest and detention in the civil prison for execution of the decree is provided by Order 21 Rules 37 and 38 of the Code of Civil Procedure. It has been submitted that the Code of Civil Procedure does not empower the executing court to issue a recovery certificate though the executing court can direct for arrest and detention in the civil prison or for attachment of the property of the judgment debtor upon furnishing a list of properties for attachment.

On the last occasion when the matter was taken up, the learned counsel for the respondent no.1 (decree holder) was granted time to search out any provision which may enable the civil court, executing a decree, to issue a recovery certificate as has been done by the court below.

The learned counsel for the respondent no.1 has not been able to show any such provision which may enable the civil court to execute a decree by issuing a recovery certificate.

Under the circumstances, the order dated 06.03.2017 passed by the District Judge, Muzaffarnagar issuing recovery certificate is hereby quashed. The District Judge, Muzaffarnagar shall be entitled to proceed with the execution in accordance with the provisions of the Code of Civil Procedure. If the petitioner has any objection to make to the execution proceeding, he may do so before the court concerned."

5. In view of above, the contention of the learned counsel for the petitioner that the provisions of CPC is not applicable on the execution of the aforesaid award is misconceived and not tenable and the impugned order has been passed for attachment in terms of the provisions made in the Code of Civil Procedure in accordance with law. There is no illegality or error in it.

6. The petition is misconceived and lacks merit.
7. It is, accordingly, **dismissed**.

(Rajnish Kumar,J.)

Order Date :- 2.12.2023
Harshita