

GAHC010042642017



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

Case No. : WP(C)/6106/2017

THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, DEPTT.OF PUBLIC
HEALTH ENGINEERING, DISPUR, GUWAHATI-6.

VERSUS

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL AND ANR
PUNJAB AT CHANDIGARH, REP. BY ITS CHAIRMAN, 17-BAYS BUILDING,
SECTOR-17, CHANDIGARH, PIN-160003.

2:M/S NIDHI PIPES LTD.

SCO-44
FIRST FLOOR
SECTOR-26
MADHYA MARG
CHANDIGARH
PIN-160003

Advocate for the petitioner(s): Mr. I Borthakur, Government Advocate,
Assam

Advocate for the respondent(s): Mr. PK Roy, Senior Advocate

Mr. SK Chakraborty for respondent No.2

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

06.11.2024

Heard Mr. I Borthakur, the learned Government Advocate appearing on behalf of the writ petitioner being the State of Assam. Also heard Mr. PK Roy, the learned senior counsel assisted by Mr. SK Chakraborty, the learned counsel appearing on behalf of the respondent No.2.

2. The present writ petition has been filed challenging the award dated 10.03.2014 passed by the respondent No.1 in terms with Section 18 of the Micro Small and Medium Enterprise Development Act, 2006 (for short, 'the Act of 2006') and further seeking setting aside and quashing of the execution proceedings being Money Execution No.06/2016 pending before the Court of the learned Additional District Judge No.1, Kamrup(M) along with the orders passed in the said proceedings.

3. This Court has duly taken note of Section 18 of the Act of 2006 whereby the award passed by the respondent No.1 would be an award in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'). In other words, the challenge to the said award, therefore, has to

be made within the four corners of Section 34 of the said Act of 1996. This Court has also taken due note of that in terms with Section 34(3) of the Act of 1996, the maximum period for challenging an award is 120 days, as has been well settled by various judgments of the Supreme Court. Taking into account the said aspect of the matter, the filing of the instant writ petition to challenge the said award dated 10.03.2014, that too, in the year 2017, not only is contrary to the provisions of Section 34 of the Act of 1996, but also amounts to circumventing the provisions of Section 34(3) of the Act of 1996. Accordingly, this Court is of the opinion that the challenge to the award dated 10.03.2014 passed by the respondent No.1 cannot be sustained in the present writ petition.

4. Now coming to the execution proceedings being numbered as Money Execution No.06/2016 which is pending before the learned Additional District Judge No.1, Kamrup(M), it is seen that an award so passed in terms with the provisions of the Act of 1996 would be deemed to be a decree in terms with Section 36 of the Act of 1996. Considering the same, the said award can be put to execution. Under such circumstances, there is no jurisdictional error in the initiation of the proceedings for execution being Money Execution No.06/2016. Further, it is also well settled that proceedings pending before the Civil Court as well as the order(s) passed therein cannot be put to challenge in a proceedings under Article 226 of the Constitution, taking into account the settled proposition of law as held by the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath & Ors*, reported in (2015) 5 SCC 423. Under such circumstances, the present writ petition being devoid of any merit is, accordingly, dismissed.

5. Be that as it may, it has also been brought to the notice of this Court that

in the meantime, the execution proceedings had proceeded and certain payments have also been made by the petitioner in pursuance to the award dated 10.03.2014 as could be seen from the instruction so placed by Mr. I Borthakur, the learned counsel appearing on behalf the writ petitioner during the course of the hearing.

6. The instruction so placed is kept on record and marked with the letter 'X'.

7. This Court observes that the dismissal of the instant writ petition shall not preclude the writ petitioner herein, who is the judgment debtor in the execution proceedings being Money Execution No.06/2016 to take such pleas and defences as permissible under the law.

JUDGE

Comparing Assistant