

GAHC020006512023



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

Case No. : C. REVN/15/2023

THE UNION OF INDIA AND ANR
REPRESENTED BY THE SECRETARY, MINISTRY OF DEFENCE, NEW DELHI

2: THE CHIEF ENGINEER
PROJECT SEWAK
DIMAPUR
NAGALAND-931714
C/O 99 AP

VERSUS

M/S RHINO CONSTRUCTION AND AGENCY
REPRESENTED BY MR. L. METHA, H.NO 314, PWD LOWER COLONY (NEAR
LOTHA CHURCH) KOHIMA, NAGALAND

Advocate for the Petitioner : S.K. MEDHI

Advocate for the Respondent : I. IMTI LONGCHAR

Date of Hearing & Judgment : **10.06.2024**

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

The instant application under Article 227 of the Constitution has been filed challenging the Order dated 14.07.2022, passed in Execution Case No. 01/2015, whereby

the learned Principal District Judge, Kohima, Nagaland, had dismissed the said execution application holding that the ex-parte award was not executable.

2. I have heard Mr. S.K. Medhi, learned counsel appearing on behalf of the petitioners and Mr. I. Imti Longchar, learned counsel appearing on behalf of the respondent.

3. From the materials on record one aspect is very clear, that there is an arbitration award passed on 01.09.2014. It is also an admitted fact that there is no application filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') for setting the arbitral award as for that matter there is no application filed by the respondent herein before the learned Principal District Judge, Kohima, Nagaland, that the award is a nullity. In spite of that, the learned Court of the Principal District Judge, Kohima (for short, 'the learned Court below'), have held that the execution proceedings cannot be maintained on the ground that the award dated 01.09.2014 is not executable.

4. At this stage, if this Court takes note of that Section 34 of the Act of 1996, it stipulates that the remedy is available to a party which is aggrieved with the award by filing an application for setting aside the award. It is no longer *res integra* that an award can be set aside only on the grounds enumerated in Section 34 of the Act of 1996.

5. This Court takes note of the impugned Order wherein it would be seen that the learned Court below had held that the award is not executable in as much as the appointment of the arbitrator was in accordance with law. This Court finds it very

pertinent at this stage to observe that Section 34(2)(a) stipulates grounds for setting aside the award on the ground that the Arbitral Tribunal was not constituted as per law. However, without filing of an application for setting aside the award, the learned Execution Court could not have held that the award was not executable.

6. During the course of hearing, Mr. I. Imti Longchar, learned counsel for the respondent submitted that the arbitration proceedings have not terminated in terms with Section 32 of the Act of 1996 in as much as without the delivery of the award in terms with Section 31(5) of the Act of 1996, the arbitration proceedings cannot be said to be terminated and without the arbitration proceedings being terminated, the award so passed cannot be put to execution.

7. This Court is of the opinion that if such is a plea, the respondent ought to have raised such issue before the learned Executing Court and this plea so taken herein cannot be dealt with by this Court.

8. Under such circumstances, this Court sets aside the Order dated 14.07.2022, passed in Execution Case No. 01/2015 and on the basis thereof, restores the file of the Execution Case No. 01/2015 to the Court of the Principal District Judge, Kohima, Nagaland. This Court further directs the learned Court of the Principal District Judge, Kohima, Nagaland, to proceed with the execution proceedings in accordance with law.

9. In addition to that, this Court further observes and grants liberty to the respondent herein to file such application

to the effect that the arbitration proceedings have not yet terminated the learned Court below shall duly consider the same in accordance with law. This Court, however, makes it clear that the liberty so granted be not construed to be a liberty for filing an application under Section 34 of the Act of 1996. However, in the circumstances, it is found that there is no compliance to Section 31(5) of the Act of 1996, thereupon such compliance, the respondent herein would be at liberty to file application under Section 34 of the Act of 1996.

10. Taking into account the parties are duly represented, this Court directs the parties to appear before the learned Court of the Principal District Judge, Kohima, Nagaland, on 08.07.2024. The learned Court of Principal District Judge, Kohima, Nagaland, shall proceed with the said execution proceedings in accordance with law.

11. With the above observation and directions, the instant revision petition stands disposed of.

Sd/-
JUDGE

Comparing Assistant