

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.59/2024

Sri Nikhil Debnath, son of Late Akhil Chandra Debnath, Permanent resident of: Dhaleswar Road Number 14, Police Station-East Agartala, District-West Tripura. Presently residing at: Bidurkarta Chowmuhani, presently residing at top Floor of Gill Nation, beside Abhisekh Restaurant Bidurkarta Chowmuhani, Agartala, P.S.-West Agartala, P.O.-Agartala, PIN-799001, District-West Tripura.

..... Petitioner-Judgment Debtor(s).

V E R S U S

Sri Pranab Kumar Saha, Son of Late Jagadish Chandra Saha, C/O. Maha Laxmi Apartment, Agartala, Police Station-West Agartala, District-West Tripura.

..... Respondent-Decree Holder(s).

For Petitioner(s) : Mr. Kushal Deb, Advocate,
Mr. Dipankar Das, Advocate.

For Respondent(s) : Mr. Pranabashis Majumder, Advocate,
Mr. Dhruvajyoti Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **19th March, 2025.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Kushal Deb, learned counsel appearing for the petitioner-judgment debtor and Mr. Pranabashis Majumder, learned counsel appearing for the respondent-decree holder.

2. Petition under Section 47 of the Code of Civil Procedure, 1908 (CPC, for short) by the judgment debtor in C.M. (J) No.45 of 2022 arising out of Execution (M) No.01 of 2020 has been rejected by the impugned order dated 09.04.2024 by the Executing Court of learned Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala. Judgment debtor/petitioner herein had questioned the jurisdiction of the learned trial Court in passing the judgment

and decree as the subject matter of the case fell under Commercial Courts Act, 2015. As such, the learned trial Court lacked jurisdiction on the principle of *coram non judice*. Since the question of jurisdiction goes to the root of the matter and if the judgment and decree is a nullity in the eye of law, it could be raised at any stage including the stage of execution under Section 47 of the CPC. In support of this plea, learned counsel for the petitioner had referred to the case of **Sarwan Kumar & another vrs. Madan Lal Aggarwal** reported in **AIR 2003 SC 1475** and **M/s. National Highway Authority of India vrs. M/s. B. Seenaiah & Company (Projects) Ltd. [F.M.A. No.254 of 2012 of Calcutta High Court]**.

3. The opposite party/decreed holder filed a written objection thereto. It took a plea that the learned Executing Court cannot go beyond the decree in an application under Section 47 of the CPC. It was further pointed out by the decreed holder/respondent herein that the original judgment and decree was passed *ex parte* on 21.11.2019 in M.S. No.12 of 2019. The MFA No.03 of 2022 instituted against it was also dismissed by order dated 30.09.2022 by this Court as the connected condonation application was dismissed. The learned trial Court upon consideration of the rival submission of the parties rejected the prayer in the following manner:-

"Perused the application filed by the Jd/Petitioner U/s. 47 of CPC as well as the W/O filed by the OP/DH.

The Jd/Petitioner submitted that the decree passed in the main suit cannot be executed as the suit should have been tried by Commercial Court and not by an Ordinary Civil Court, being barred by the Commercial Courts Act, 2015.

The principle of **Section 47 of CPC** is that all the questions arising between the parties relating to execution, discharge and satisfaction of a decree in a suit shall be determined in the execution proceeding.

An Executing Court cannot go behind the decree already passed and cannot entertain the question of jurisdiction of the Trial Court, where the Trial Court has already passed judgment after considering all aspects in terms of jurisdiction. Here, in the main suit the Jd/Petitioner did not appear before the

Court even after receiving the summons and the suit proceeded ex-parte against him and judgment and decree was also passed ex-parte. He did not raise any point therein by contesting the suit.

The Executing Court does not have jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction [**V.D. Modi Vs R.A. Rehman AIR 1970 SC 1475**]. Once the decree has become final, the Executing Court cannot go behind the decree except the matter relating to execution, discharge, and satisfaction of a decree. No fresh plea can be taken by a J/d in the execution proceeding, wherein he remained absent in the main proceeding inspite of receiving the summons.

Hence, considering the ambit of Sec.47 of CPC and the submissions of both sides, I am not satisfied with the application filed by the Jd/Petitioner U/s.47 of CPC and I am of the opinion that the said application is not maintainable and is hereby rejected.

Hence, the instant application is disposed of on contest.

Make necessary entry in the relevant register as well as in the CIS."

4. I have heard learned counsel for the parties and taken note of the materials placed from record. On behalf of the petitioner, it has been urged that the agreement which gave rise to the connected litigation arose out of a commercial contract and thus the suit came under the purview of the Commercial Courts Act, 2015. It is further urged that since the agreement executed on 04.05.2015 came under the purview of Commercial Courts Act, 2015 which was brought into effect from 23.10.2015, the judgment and decree dated 21.11.2019 and 22.11.2019 respectively passed by the learned Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala was hit by the principles of *coram non judice* and hence, non-executable.

5. In order to substantiate the plea, learned counsel for the petitioner has made specific reference to the definition of commercial dispute under Section 2(c) of the Act of 2015, in particular Section 2(c)(vi) and 2(c)(vii). According to him, since the agreement involved a construction contract for a multi-storied building with parking and commercial spaces, intended for sale to third parties, it inherently related to trade and commerce and fell within the definition of a "commercial dispute". The agreement was not for personal or

self use. He has also referred to the explanation to Section 2(c) which clarifies that a dispute remains "commercial" even if it involves recovery of immovable property or monetary claims (for example, unpaid dues) or if it involves public functions (for example, agreements involving the State or private entities engaged in public functions).

6. According to the petitioner, if the dispute exceeds the specified value of Rs.3,00,000/- in terms of Section 12 of the Act of 2015, the suit would only be entertained by the Commercial Court. In the instant case, the claim was for Rs.30,00,000/-. The respondent's attempt to characterize the agreement as non-commercial is misconceived since it specifically provided for construction of G+4 building, commercial arrangement for sharing of constructed flat and monetary consideration of Rs.50,00,000/- as compensation. The unregistered nature of the agreement in such a case is irrelevant to the classification of a commercial dispute under Section 2(c)(vi) of the Act. The current use of land is not determinative. The nature of the contract itself brings it within the ambit of "construction and infrastructure contracts". The agreement dated 04.05.2015 being a construction contract for the development of a G+4 apartment building, therefore, clearly fell within the definition of a "commercial dispute" under Section 2(c)(vi) of the Commercial Courts Act, 2015. He has also repudiated the contention of the respondent that the Act is inapplicable due to the agreement's pre-enactment execution date as Section 15 clearly provides that all suits and applications relating to commercial disputes above the specified value shall be transferred to the jurisdictional commercial court, irrespective of when the cause of action arose.

7. It is further submitted that if the trial Court lacks jurisdiction under the Commercial Courts Act, 2015, it strikes at the root of the decree's validity and as such, the decree is non-executable. In that regard, he has referred to the case of **Kiran Singh Vrs. Chaman Paswan** reported in **AIR 1954 SC 340**. According to the petitioner, the Executing Courts can scrutinize jurisdictional issues since a decree passed without jurisdiction is like a lifeless body that cannot be enforced. In this regard, he has referred to the decision in case of **Ramesh Chandra Sankla vrs. Vikram Cement** reported in **(2008) 14 SCC 58**. Therefore, allowing the execution of a void decree would lead to a miscarriage of justice.

8. It is further submitted that jurisdictional defects are not subject to limitations and can be challenged at any stage including during execution. Learned counsel for the petitioner has also questioned the observations of the learned Executing Court relying upon the decision in **V.D. Modi vrs. R.A. Rehman** reported in **(1970) 1 SCC 670**. He submits that the said decision has introduced a nuanced perspective on challenging jurisdictional defects during execution proceedings which creates a tension between two lines of authority which must be resolved contextually, such as the earlier judgment in **Kiran Singh** (supra).

9. It is submitted that questions relating to territorial or pecuniary jurisdiction may be raised at the earliest stage of the suit which, if not raised, cannot be challenged later under Section 47 of the CPC during execution, unless the jurisdictional defect is so glaring that it constitutes an "error apparent on the face of the record". However, the issue of subject matter jurisdiction is

not one which cannot be raised in later stages of the proceedings. As such, the impugned decree cannot be executed.

10. On behalf of the respondent, it is urged that the impugned order may not be set aside and this Court may hold that the judgment and decree dated 21.11.2019 and 22.11.2019 respectively passed by the learned Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala is executable not hit by the principles of *coram non judice*.

11. On the part of the respondent, it has been contended that the definition of commercial dispute under Section 2(1)(c) of the Act of 2015 must depend upon a strict construction of the provision of Commercial Courts Act, otherwise it would defeat the very object and purpose of the said Act, i.e. speedy disposal of high value commercial disputes.

12. In this regard, he has relied upon the decision of the Apex Court in the case of ***Ambalal Sarabhai Enterprises Limited vrs. K.S. Infraspace LLP & another*** reported in ***(2020) 15 SCC 585*** where the provisions under Section 2(1)(c)(vii) of the Act were under consideration. It is submitted that the Apex Court held that for a dispute to be a commercial dispute under Section 2(1)(c)(vii), the agreement between the parties must refer to immovable property used or being used exclusively in trade or commerce. The word "used" occurring in Section 2(1)(c)(vii) denotes "actually used" and it cannot be either "ready for use" or "likely to be used" or "to be used". Merely because the property is likely to be used in relation to trade and commerce, the same cannot be a ground to attract jurisdiction of a Commercial Court. Such a wide

interpretation would defeat the object of the Commercial Courts Act with regard to speedy disposal of commercial disputes thereunder.

13. It is further urged that merely because the plot of land, i.e. the immovable property is likely to be used in relation to construction as mentioned in Section 2(1)(c)(vi), i.e. "construction and infrastructure contracts including tenders", the same cannot be a ground to attract the jurisdiction of Commercial Court. In the instant case, neither the agreement between the parties refers to the nature of the immovable property being exclusively used in trade or commerce as on the date of agreement, i.e. 04.05.2015 nor the relief prayed for by the plaintiff was in relation to the construction and infrastructure contracts. The agreement provided for paying Rs.50 lakhs for compensation in respect of the immovable property which would be put for development/ construction of flats or car parking or for commercial use in future. The said compensation amount was just in respect of the use of owner's property for such construction by demolishing the pre-existing old building which was kept unused for prolonged years.

14. Compensation is the amount of money a party is entitled to receive when the other party breaks the contract, when a penalty is specified or when a loss or damage occurs. The compensation mentioned in the agreement dated 04.05.2015 denotes General Damages which can be contemplated by the parties to a contract at the time of entries into a contract. Therefore, the impugned order dated 09.04.2024 passed by the learned Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala in connection with case No. C.M.(J) 45 of 2022 arising out of Execution(M) No.01 of 2020 is proper. The

decree is not hit by the principles of *coram non judice* as the main suit, i.e. M.S. 12 of 2019 was a simple money recovery suit in respect of breach of the terms of contract for non payment of Rs.10 lakhs as compensation out of total Rs.50 lakhs of compensation as clearly indicated in the agreement. There is no dispute resolution clause or any jurisdiction clause in the agreement for the parties to contest it as a suit of commercial nature. The petitioner has failed to understand the actual position in law. Petitioner has sought to introduce the agreement dated 04.05.2015 though the same was never indicated in the prayer portion of the main money recovery suit, i.e. M.S. 12 of 2019. The judgment debtor never contested the money suit in the Court below even after receipt of summons. It reflects the *mala fide* intention of the petitioner/judgment debtor just to harass the respondent-decree holder and defeat the fruits of decree by one or the other means.

15. It is further submitted that the appeal bearing No.MFA 03 of 2022 preferred by the judgment debtor before this Court against the impugned judgment and decree dated 21.11.2019 and 22.11.2019 respectively was dismissed on 30.09.2022 on the ground that petitioner had not approached the Court with clean hands. This creates doubt about the *bona fide* of the petitioner. Therefore, learned counsel for the respondent submits that the instant revision petition is not maintainable. The civil suit for recovery of money would not fall within the category of cases covered within the scope and ambit of the Commercial Courts Act, 2015. It may, therefore, be dismissed.

16. I have considered the submissions of learned counsel for the parties and also taken note of the relevant materials placed from record.

17. The narration of facts recorded above, at the outset, indicates that the money suit being M.S. 12 of 2019 was decided *ex parte* vide judgment and decree dated 21.11.2019 and 22.11.2019 respectively. The first appeal MFA No.03 of 2022 preferred by the aggrieved judgment debtor was also dismissed by this Court vide order dated 30.09.2022 on the grounds of limitation. In the present revision petition, the judgment debtor/plaintiff has failed to bring on record the plaint which is a very vital document to examine the plea raised by him at the stage of execution of the proceedings under Section 47 of the CPC. However, the judgment and decree passed by the learned Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala dated 21.11.2019 and 22.11.2019 respectively in Money Suit No.12 of 2019 (Annexure-3) shows that the suit was for declaration and for recovery/ realization of money amounting to Rs.30,00,000/- only along with up to date interest from the defendant.

18. According to the plaintiff, as per the terms and conditions of the agreement dated 04.05.2015 entered into with the defendant who is a promoter/ developer for construction of multi-storied residential complex on the land of the plaintiff, the defendant was supposed to pay Rs.50 lakhs in total to the plaintiff within a certain period and that period had expired in September, 2016. The defendant had paid Rs.40 lakhs to the plaintiff and the remaining amount of Rs.10 lakhs had become outstanding. Plaintiff issued notice to the defendant on 17.08.2017 which remained unresponded. The plaintiff instituted the suit seeking recovery of Rs.10 lakhs and compensation of Rs.20 lakhs from the defendant. The following issues were raised for determination by the

learned trial Court on the basis of the pleadings in the plaint since the defendant did not appear and file any written statement:

(i) Whether, the suit is maintainable in its present form and nature?

(ii) Whether, the plaintiff is entitled to recovery of money amounting to Rs.30,00,000/- along with interest from the defendant?

(iii) To what other relief or reliefs the parties are entitled?

19. The plaintiff examined 3(three) witnesses and proved 9(nine) number of documents. The learned trial Court answered the issue No.(i) in favour of the plaintiff as the plaintiff had a valid cause of action which was supported by evidence. As regards the issue No.(ii), the learned trial Court upon perusal of the exhibits and the oral evidence held that as per the agreement, Exbt. 1(a) to 1(d), it was agreed between the plaintiff and the defendant that the defendant shall pay compensation of Rs.50 lakhs to the plaintiff out of which Rs.5 lakhs had to be paid on the date of signing the developer's agreement and the balance amount of Rs.45 lakhs had to be paid in five equal installments of Rs.9 lakhs each in the interval of two months from the third month from the date of undertaking the construction of the proposed new building. Despite notices issued upon the defendant, he failed to pay the remaining amount. As such, the learned trial Court held that the plaintiff is entitled to realization of Rs.10 lakhs along with interest from the defendant. However, it refused to allow compensation of Rs.20 lakhs as there were no pleadings and supporting evidence to satisfy the Court as to how the said amount of compensation has been ascertained. This issue was partly decided in favour of the plaintiff. The third issue was accordingly answered in affirmative.

The plaintiff was held entitled to recovery of Rs.10 lakhs only from the defendant along with interest @12% per annum from the date of the decree till its realization. The suit was accordingly decreed *ex parte*.

20. What transpires on a bare perusal of the judgment of the learned trial Court that the relief prayed for by the plaintiff was simple recovery of money undertaken to be paid as compensation by the defendant under the agreement dated 04.05.2015 whereby the defendant had agreed to pay compensation of Rs.50 lakhs to the plaintiff for using his private land for the purposes of construction of a multi-storied apartment. The claim of Rs.50 lakhs agreed between the parties obviously did not involve any interpretation of construction and infrastructure contracts or was contemplated as compensation in lieu of construction of the multi-storied building on the part of the defendant. The agreement may have contained several terms in relation to the construction of the multi-storied apartment on the private land of the plaintiff but the term relating to the payment of compensation of Rs.50 lakhs to the plaintiff was apparently in lieu of use of the private land of the plaintiff. The learned trial Court was not called upon to examine any other terms and conditions of the development agreement which could have been interpreted in a manner as being commercial dispute in relation to construction and infrastructure contracts as sought to be projected on behalf of the judgment debtor at the stage of execution proceedings. Moreover, since none of the other terms of the agreement dated 04.05.2015 were required to be called upon for interpretation as to whether the agreement relating to the immovable property of the plaintiff was to be used exclusively in trade or commerce, there was no basis for the learned trial Court to refuse to entertain the suit as a pure money suit over

which the learned Court of Civil Judge (Sr. Division) had ordinary jurisdiction to decide. These issues were neither raised by the defendant nor required to be decided by the learned trial Court. However, since at the stage of execution proceedings such an issue has been raised under Section 47 of the CPC by the judgment debtor and has been squarely rejected by the learned Executing Court, this Court has endeavoured to examine it to test the plea of lack of jurisdiction raised by the judgment debtor at the stage of execution of the judgment and decree passed *ex parte* against him as it goes to the root of the matter.

21. The Apex Court in the case of ***Ambalal Sarabhai Enterprises Limited vs. KS Infraspace LLP and Anr.*** (supra) on the question of whether a dispute falls in the category of commercial dispute in terms of Section 2(1)(c)(vii) of the Act categorically observed as under:

“37. A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act viz. “the agreements relating to immovable property used exclusively in trade or commerce”. The words “used exclusively in trade or commerce” are to be interpreted purposefully. The word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”. It should be “actually used”. Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.”

22. The discussion made hereinabove would also show that the plea raised by the petitioner is not one of patent lack of jurisdiction. It is not one where the terms and conditions of the agreement required construction in the light of the provisions of Commercial Courts Act to come to a finding that the dispute or claim raised by the plaintiff fell under the category of commercial disputes. The claim was pure and simple money claim on failure of the defendant to pay compensation in lieu of use of the private land of the petitioner though for the purposes of construction of a multi-storied building. Since the other terms and conditions of the agreement are not at all required to

be gone into in view of the limited relief of compensation raised by the plaintiff on the basis of the cause of action that had arisen in his favour on failure of the defendant to pay the compensation within time, the endeavour of the judgment debtor to raise such a plea by drawing the Court into construction of the other terms and conditions of the agreement dated 04.05.2015 is not only wholly unnecessary but untenable on facts also. The learned Executing Court, therefore, rightly refused to entertain such a plea at the behest of the judgment debtor under Section 47 of the CPC.

23. Section 47 of the CPC reads as under:

"47. Questions to be determined by the Court executing decree.— (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) * * * *

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation I.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]"

It provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. The learned Executing Court has apparently not committed any error in deciding the objection raised by the judgment debtor on the question of jurisdiction of the learned trial Court.

24. The Executing Court is obliged to execute the decree in a time bound manner as has been held in the case of **Rahul S Shah vrs. Jinendra Kumar Gandhi & others** reported in **(2021) 6 SCC 418**. If the Executing Court fails to execute the decree within a period of six months, it has to record reasons in writing.

The execution case is pending since the year 2022. There is an obligation upon the judgment debtor to satisfy the decree which has attained finality. The defendant/judgment debtor had not contested the suit despite service of notice which led to passing of the *ex parte* judgment and decree against him which was affirmed by the appellate Court. Though at the stage of execution the judgment debtor sought to raise a novel plea that the learned trial Court lacks jurisdiction and, therefore, the decree is inexecutable, in view of the reasons recorded hereinabove, this Court is of the view that such a plea is not sustainable in law or on facts.

25. Therefore, this Court does not find any reason to interfere in the impugned order dated 09.04.2024 passed by the learned Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala in C.M. (J) No.45 of 2022 arising out of Execution (M) No.01 of 2020. The learned Executing Court would endeavour to execute the decree without further delay.

26. The instant revision petition is dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

Pulak