

Item-
42. 18-08-2026

sg Ct. 6

CO 2593 of 2026

Kish Engineering Pvt. Ltd.
Versus
M/s. Cosmos Engineering Works

Mr. Koushik Dey
Ms. Arunima Lala
Mr. Nilkanta Banerjee
Mr. Ansuman Bhattacharya
...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the award debtor and is directed against orders dated 14th May, 2026 and 18th May, 2026 both passed by the learned Additional District Judge, 18th Court, Alipore in Misc. Case no. 16 of 2018 arising out of Arbitration Execution Case no. 20 of 2017.

By the impugned order, the application under Section 47 of the Code of Civil Procedure stood rejected on the ground the petitioner/award debtor has failed to avail of the remedies under Section 34 of the Arbitration and Conciliation Act within the prescribed statutory period.

Mr. Dey, learned advocate appearing for the petitioner places reliance upon the decision of the Hon'ble Supreme Court in the case of ***Electrosteel Steel Ltd. vs. Ispat Carrier Pvt. Ltd.*** reported in **(2025) 7 SCC 773** in support of his contention that objection to execution of an award under Section 47 of the Code of Civil Procedure is not dependent upon filing a petition under Section 34 of the 1996 Act. He thus submits that the impugned order is liable to be set aside on that ground alone.

Heard the learned advocate for the opposite party on such submission.

The Hon'ble Supreme Court in *Electrosteel Steel Ltd.* (supra), after noticing the provisions of Section 35 and 36 of the 1996 Act and Section 47 of the Code, held that objection to execution of an award under Section 47 of the Code of Civil Procedure is not dependent or contingent upon filing a petition under Section 34 of the 1996 Act. The Hon'ble Supreme Court held thus:

67. The High Court is correct in answering the first issue that a plea of nullity qua an arbitral award can be raised in a proceeding under Section 47 CPC but such a challenge would lie within a very narrow compass.

68. Section 36 of the 1996 Act deals with enforcement of arbitral awards. Sub-section (1) says that where the time for making any application to set aside an arbitral award under Section 34 has expired, then subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of CPC in the same manner as if it were a decree of the court. As per sub-section (2), where an application to set aside an arbitral award has been filed under Section 34, the filing of such an application shall not by itself render an award unenforceable unless an order of stay is granted by the court. Therefore, in terms of Section 36 of the 1996 Act, an award can be enforced in accordance with the provisions of CPC in the same manner as if it were a decree of a civil court.

69. Section 47 CPC deals with questions to be determined by the court executing decree. As per sub-section (1), all questions arising between the parties to the suit in which the decree was passed 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. Execution of decrees and orders is provided for in Order 21 CPC. The law is

well settled that at the stage of execution, an objection as to executability of the decree can be raised but such objection is limited to the ground of jurisdictional infirmity or voidness. The law laid down by this Court in Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman is that only a decree which is a nullity can be the subject-matter of objection under Section 47 CPC and not one which is erroneous either in law or on facts. The aforesaid proposition of law continues to hold the field.

70. Objection to execution of an award under Section 47 CPC is not dependent or contingent upon filing a petition under Section 34 of the 1996 Act. The High Court was not justified in taking the view that since the appellant did not file a petition under Section 34 of the 1996 Act, therefore, it was precluded from filing an application before the executing court to declare the award as void and hence non-executable.

The learned Additional District Judge, Fast Track, 8th Court at Alipore, rejected the application under Section 47 of the Code of Civil Procedure on the ground that the petitioner failed to avail of the recourses under Sections 34 of the 1996 Act within the prescribed statutory period. The impugned order suffers from infirmity as observed hereinbefore.

For the reasons as aforesaid, the impugned orders are set aside.

The application under Section 47 of the Code of Civil Procedure is restored to the file of the learned Additional District Judge, 18th Court at Alipore, South 24 Parganas.

The learned Additional District Judge, 18th Court at

Alipore or the learned Judge-in-Charge is requested to consider the said application under Section 47 of the Code of Civil Procedure afresh and dispose of the same by passing a reasoned order after affording an opportunity of hearing to the respective parties, as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)