

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No.275 of 2015

Yatish Gandhi S/o Late Mahendra Gandhi, Aged About 35 years Occupation-Transporter, R/o Beside Nagrik Sahkari Bank, Daroga Para, Raigarh, District Raigarh, (Chhattisgarh), Pin Code- 496001 (**Judgment Debtor**)

---- Petitioner

Versus

1. M/s Shriram Transport Finance Company Limited (Incorporated Under Indian Companies Act, 1956), Head Office: Third Floor, Mukabila Complex, No.4, Lady Desika Road, Maylopor, Cheenai- 600004 Branch Office, M/s Shriram Transport Fianance Company Limited, Branch Raigarh, Krishna Shopping Mall, Second Floor, Dhimrapur Road, Raigarh, (Chhattisgarh). Through Sr. Branch Manager (**Decree Holder**)
2. Shri Amit Popat S/o Shri Pravin Bhai Popat, Occupation Business, R/o Ward No. 16, Civil Lines, Raigarh, District Raigarh, (Chhattisgarh)

---- Respondents

And

WP227 No.276 Of 2015

Yatish Gandhi S/o Late Mahendra Gandhi, Aged About 35 years Occupation-Transporter, R/o Beside Nagrik Sahkari Bank, Daroga Para, Raigarh, District Raigarh, (Chhattisgarh) Pin Code- 496001

Petitioner

Vs

1. M/s Shriram Transport Finance Company Limited (Incorporated Under Indian Companies Act, 1956), Head Office: Third Floor, Mukabila Complex, No.4, Lady Desika Road, Maylopor, Chennai-600004 Branch Office, M/s Shriram Transport Finance Company Limited, Branch Raigarh, Krishna Shopping Mall, Second Floor, Dhimrapur Road, Raigarh (Chhattisgarh) Through Sr. Branch Manager (**Decree Holder**)
2. Shri Amit Popat S/o Shri Pravin Bhai Popat, Occupation Business, R/o Ward No. 16, Civil Lines, Raigarh, District Raigarh, (Chhattisgarh) (**Judgment Debtor**)

---- Respondents

And

WP227 No. 277 Of 2015

Yatish Gandhi S/o Late Mahendra Gandhi Aged About 35 years Occupation-Transporter, R/o Beside Nagrik Sahkari Bank, Daroga Para, Raigarh District Raigarh (Chhattisgarh) Pin Code- 496001 (**Judgment Debtor**)

---- Petitioner

Vs

1. M/s Shriram Transport Finance Company Limited (Incorporated Under Indian Companies Act, 1956), Head Office: Thrird Floor, Mukabila Complex, No. 4, Lady Desika Road, Maylopor, Chennai- 600004 Branch Office, M/s Shriram Transport Finance Company Limited, Branch Raigarh, Krishna Shopping Mall, Second Floor, Dhimrapur Road, Raigarh (Chhattisgarh) Through Sr. Branch Manager (**Decree Holder**)
2. Shri Amit Papat S/o Shri Pravin Bhai Papat Occupation- Business, R/o Ward No. 16, Civil Lines, Raigarh, District Raigarh (Chhattisgarh) (**Judgment Debtor**)

---- Respondent

And

WP227 No.278 Of 2015

Yatish Gandhi S/o Late Mahendra Gandhi Aged About 35 years Occupation- Transporter, R/o Beside Nagrik Sahkari Bank, Daroga Para, Raigarh District Raigarh (Chhattisgarh) Pin Code- 496001 (**Judgment Debtor**)

---- Petitioner

Vs

1. M/s Shriram Transport Finance Company Limited (Incorporated Under Indian Companies Act, 1956), Head Office: Thrird Floor, Mukabila Complex, No. 4, Lady Desika Road, Maylopor, Chennai- 600004 Branch Office, M/s Shriram Transport Finance Company Limited, Branch Raigarh, Krishna Shopping Mall, Second Floor, Dhimrapur Road, Raigarh (Chhattisgarh) Through Sr. Branch Manager (**Decree Holder**)
2. Shri Amit Papat S/o Shri Pravin Bhai Papat Occupation- Business, R/o Ward No. 16, Civil Lines, Raigarh, District Raigarh (Chhattisgarh) (**Judgment Debtor**)

Respondents

For Petitioner/s	:	Shri S. S. Rajput, Advocate
For Respondent	:	Shri Ratnesh Agrawal, Advocate

Order On Board

10/07/2015

All the aforesaid connected matters are being disposed off by a common order as the issue involved in all these matters are common.

2. The petitioners have filed these petitions challenging the jurisdiction of the

executing Court to execute the award passed in favour of the respondent No.1.

3. The sole ground of challenge to the execution proceedings in respective cases and passing of order of attachment towards execution of decree is that the execution proceedings in the matter of execution of award passed under the provisions of Arbitration and Conciliation Act, 1996 (In short “the Act”) could be initiated only in accordance with the statutory scheme of enforcement of award, engrafted under Section 36 of the Act. It is submitted that the petitioners have already taken recourse to the remedy of moving an application for setting aside award, as provided under Section 34 of the Act. Once the proceedings are initiated under Section 34 of the Act for setting aside the award, no execution proceedings are maintainable unless the application is refused.

4. On the other hand, learned counsel for the respondent submits that the power under Section 34 of the Act is absolute in nature. He submits that mere filing of an application does not entitle the petitioner to seek automatic stay of the execution proceedings.

5. Submission of learned counsel for the petitioner with regard to maintainability of execution proceedings stands answered by a specific and express provision contained under Section 36 of the Act which is extracted herein below:

36. Enforcement.—Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (V of 1908) in the same manner as if it were a decree of the Court.

6. A bare reading of the provision makes it clear that the award can be enforced under provisions of the Civil Procedure Code only, in the eventuality, where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused.

7. It is beyond dispute that the petitioners have already invoked remedy by moving

application under Section 34 of the Act for setting aside arbitral award. Where these proceedings are initiated, the provision under Section 36 of the Act would come into play and operate as bar against the execution of proceedings for execution of award until such application is refused.

8. In the result, it has to be held that the institution of execution proceedings are against the spirit of the provisions contained under Section 36 of the Act and therefore, such proceedings cannot be allowed to be continued.

9. Accordingly, the petition is allowed. Execution proceedings in respective cases are set aside and all the order s of attachment are set aside. However, liberty is reserved to the respondent to take steps for enforcement in the eventuality as provided under Section 36 of the Act.

Sd/-

Manindra Mohan Shrivastava

Judge