

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 144 of 2013**

M/s. Shriram Transport Finance Company, 2nd Floor, Crystal Tower, Telibandha, Raipur, through Power of Attorney Holder Sanjay Tiwari, son of Shri R.P. Tiwari, aged about 33 years, R/o. Agrasen Chowk, C.G. Plaza, Bilaspur, P.S. Civil Line, Civil and Revenue District Bilaspur (CG).

---- Applicant**Versus**

1. Dayasheel Hardas, R/o. House No.108, Choteyam, Bademum, Jagdalpur, District Bastar (C.G.) (Address not written in impugned order).
2. Jeevan Das, R/o. Kakarwada, Jagdalpur, District Bastar (CG).

---- Non-applicants

For Applicant : Ms. Hamida Siddiqui, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board**01/09/2016**

(1) The short question involved in this revision is the applicability of Section 39 of the Code of Civil Procedure (henceforth 'CPC') in executing the arbitral award passed under the Arbitration & Conciliation Act, 1996 (henceforth 'the Act of 1996').

(2) The aforesaid question arises for consideration on following factual backdrop:

(2.1) Sole Arbitrator- Mr. Ashok P. Lakhnikar, Additional District Judge, Nagpur (Retired) passed an award on 28th of November, 2011 at Nagpur deciding arbitral dispute between Petitioner herein-M/s. Shriram Transport Finance Company Vs. Respondents-Mr. Dayashil Hardash & Others and directed that respondents No. 1 & 2 are jointly and severally liable to pay a sum of Rs. 2,78,750/- (Rupees Two Lakhs Seventy Eight Thousand Seven Hundred and Fifty only) towards the claims of outstanding dues to the petitioner herein along with interest @ 18% per annum from the date of filing the claim petition i.e. from 21.03.2011 till the date of realization and also directed that respondents are jointly and severally liable to pay a sum of Rs.3000/- as costs of the proceedings to the petitioner.

(2.2) In order to execute the award, the petitioner-Company filed an application under Order 21 Rule 11 of the CPC before the District Judge, Bastar at Jagdalpur.

(2.3) The District Judge, Bastar at Jagdalpur, by its impugned order dated 21.03.2013, rejected the said application holding that award has not been transferred by the Court at Chennai having jurisdiction in the matter to the Court at Jagdalpur for execution of the award.

(3) Ms. Hamida Siddiqui, learned counsel appearing for the petitioner would submit that Section 39 of the CPC is not applicable in an execution proceeding arising out of an arbitral award passed under the Act of 1996. She would further submit that arbitral award can be executed without it being transferred by the court concerned and, therefore, the learned District Judge is absolutely unjustified in holding that arbitral award cannot be executed unless it is lawfully transferred by the Court at Chennai, where the award was passed, to the Court at Jagdalpur and, therefore, the impugned order be set aside and the concerned Court be directed to entertain the petitioner's application for execution of award and proceed in accordance with law.

(4) Per contra, no one appeared on behalf of the respondents, though served.

(5) I have heard learned counsel appearing for the applicant and given thoughtful consideration to the submissions made herein by the applicant and gone through the record of the court below with utmost circumspection.

(6) In order to consider the plea raised at the bar, it would be advantageous to notice Sections 36 & 2(1)(e) of the Act of 1996 and Section 39 of the CPC, which read thus:-

“Section 36 of the Act, 1996 reads as follows:

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 (5 of 1908) in the same manner as if it were a decree of the court.”

Section 2(1)(e) of the Act, 1996 defines court:-

'Court' means that principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of small Causes.”

Section 39 of the CPC deals with transfer of decree. It reads as under:-

“39. Transfer of decree-(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction,-

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed in, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed the decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purpose of this section, a Court shall be deemed to be a Court of competent jurisdiction if at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.”

(7) A careful perusal of Section 36 of the Act of 1996 would show that arbitral award to be enforced in the same manner as if it were a decree of the Court, meaning thereby arbitral award has not been conferred with the status of decree but only it has to be executed in the same manner as if it were a decree of the Court. Likewise expression 'the court' used in Section 36 makes it clear that it is a court mentioned in Section 2(1)(e) of the Act.

(8) Considering the point in dispute, it would be appropriate to keep in mind, the object of legislature while enacting the Act of 1996. In the matter of **Bharat Sewa Sansthan Vs. Uttar Pradesh Electronics Corporation Limited**¹, it has been held by the Supreme Court that one of the main objectives of the Act is to minimize the supervisory role of courts in arbitral process. Likewise in **Union of India Vs. Singh Builders Syndicate**², the Supreme Court has further reiterated the above proposition of law and held that the object of expeditious disposal of arbitral matters would be defeated if the dispute remains pending in courts for months and years together.

(9) Object of enacting Section 39 of the CPC is very clear, it is the duty of the court which passes a decree to execute. The record of the case are maintained and available only in that court. Section 41 of the CPC makes it mandatory for the court, which has received a decree by transfer for execution, to certify to the transferee court the result of the execution.

(10) Section 39 of the CPC is not applicable in the case of execution of an arbitral award. Section 36 of the Act, 1996 only says that the award may be executed in the same manner as if it were a decree of the Court. Section 36 of the Act of 1996 does not declare that provisions in the Code of Civil Procedure which are applicable to execution of decrees, are applicable to execution of an arbitral

1 AIR 2007 SC 2961

2 (2009) 4 S.C.C. 523

award.

(11) Similar view has been taken by the High Court of Delhi in the matter of **Daelim Industrial Co. Ltd. Vs. Numaligarh Refinery Ltd³** and the High Court of Kerala in the matter of **Suresh, C. Vs. India Cements Capital and Finance Ltd. and others⁴**.

(12) The High Court of Madhya Pradesh in the matter of **Magma Fincorp Ltd. Vs. Rajbhan Singh⁵** has also taken a same view.

(13) I am in respectful agreement with the view taken by the Delhi High Court, the Kerala High Court & the M.P. High Court that Section 39 of the CPC is not applicable in execution of arbitral award.

(14) In view of preceding analysis, the impugned order dated 21.03.2013 passed by the District Judge is hereby set aside and the District Judge, Bastar at Jagdalpur is directed to proceed with the execution of the award expeditiously, in accordance with law.

(15) In the result, the Civil Revision is allowed. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-

3 2009 (3) ArbL524(Delhi)

4 I.L.R. 2016 (1) Kerala 167

5 2015 (3) M.P.H.T. 309