

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.18 of 2017

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1. Mrs. Rupa Madhav, Wife of Sri Beni Madhav,
 2. Sri Beni Madhav, Son of Late Sadanand Prasad, Both residents of Road No. 6 Rajendra Nagar, P.S. Kadam Kuan, District - Patna 16
 3. Sri Shankar Prasad Bhimsaraia, Son of Late Ramdeo Bhimsaraia, Resident of A - 502 and 503, 4th Floor Arjuna J.K. Tower, Chajjubagh, P.S. Gandhi Maidan, District - Patna 1
 4. Dr. Md. Ataur Rahman, Son of Md. Anisur Rahman, resident of flat No. A - 102, Ground floor, Arjuna J.K. Tower, P.S. Gandhi Maidan, District - Patna 1

.... Appellant/s

Versus

1. Sri Sharat Kumar, Son of Late Jai Kishore Prasad, Resident of 44, M.I.G. Kankarbagh Colony, P.S. Kankarbagh, District - Patna
2. M/S Arjuna Construction (P) Ltd. having its registered office at Arjuna Tower (Ground Floor) Shivpuri, near Mamta Apartment, Boring Road, P.S. Shastrinagar, Town and District Patna, through its Managing Director, Sri Arvind Kumar
3. Sri Arvind Kumar, Son of Sri Jagdish Thakur, Resident of Ground Floor Shivpuri, near Mamta Apartment, Boring Road, P.S. Shastrinagar, Town and District Patna, Managing Director of M/s Arjuna Construction (P) Ltd. (Decree Holder)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Syed Qaisar Hasan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 17-01-2017 Heard learned senior counsel, Mr. Anil Kumar Jha

for the petitioners, the learned counsel Mr. Manoj Kumar Sinha

for the respondent No. 1.

Perused the impugned order dated 15.09.2016 passed

by District Judge, Patna in Miscellaneous Case No. 65 of 2016,

whereby the learned District Judge permitted the respondent No. 1



to withdraw the miscellaneous case and file it before the appropriate court.

The learned senior counsel Mr. Jha for the petitioners submitted that in view of the provision as contained in Section 2 (e) of the Arbitration and Conciliation Act, 1996, the enforcement of the award can be done by the Civil Court of original jurisdiction only that is the District Judge. Therefore, the District Judge himself should have entertained the miscellaneous case but without considering this provision, the District Judge has permitted the respondent to withdraw the miscellaneous case and after withdrawal of the miscellaneous case the respondent No. 1 has filed the miscellaneous case before the Execution Munsif for enforcement of the arbitral award. According to the learned senior counsel, the miscellaneous case for enforcement of arbitral award before the Execution Munsif is not maintainable. Therefore, the order passed by the District Judge is without jurisdiction.

On the other hand, the learned counsel appearing for the respondent No. 1 submitted that there was confusion regarding the forum, therefore, it was earlier filed before the District Judge. In view of Section 36 of the Arbitration and Conciliation Act, 1996 the arbitral award can be enforced by the Civil Court under C.P.C. and not by the court defined under Section 2(e) of the



Arbitration and Conciliation Act, 1996. Therefore, the respondent No. 1 has filed the application before the Execution Munsif and the District Judge has rightly permitted the respondent No. 1 to withdraw the miscellaneous case.

It is admitted fact that arbitral award was passed in the year 2011. Admittedly, no objection under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed by the present petitioner within the period prescribed. It is also admitted fact that in the reference case, the present petitioner is not a party. The period for filing objection under Section 34 has already expired. Now, therefore, in view of Section 36 the arbitral award is to be enforced only. The question is now whether the arbitral award is to be executed by the court defined under Section 2(e) of the Conciliation Act or by the Civil Court under C.P.C. The learned senior counsel Mr. Jha relied upon a decision of the Supreme Court in the case of *M/s. Umesh Goel v. Himachal Pradesh Cooperative Group Housing Society Ltd.* reported in *A.I.R. 2016 Supreme Court 3116* and submitted that in view of paragraph 26 of the said decision, it is the court defined under Section 2(e) can only enforce the award and not by the Execution Munsif. Section 36 of the Arbitration and Conciliation Act, 1996 reads as follows:-



“36. Enforcement.-(1) Where the time for making an application to set aside the 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 the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral



award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).”

In view of this provision, it is now clear that said award shall be enforced in accordance with the provision of the Code of Civil Procedure for the same manner, as if, it were a decree of the court. The distinction of court mentioned in Section 36 is different than the court defined under Section 2(e) of the Arbitration and Conciliation Act, 1996. In the decision relied upon by the learned senior counsel itself the Supreme Court has held that an award of the Arbitrator has been equated to decree of the court for the purpose of execution. Under Section 35 of 1996 Act an arbitral award will be final and binding on the parties and persons claiming under them subject to the other provisions prescribed in the said part of the Act. Under Section 36, it is provided that where the time for making an application to set aside the arbitral award under Section 34 expired, or such application having been made and referred, the award can be enforced under the Code of Civil Procedure in the same manner, as if, it were a decree of the court vide paragraph 34 of the said judgment in the



case of *M/s. Umesh Goel* (supra). Now, therefore, in view of the decision of the Supreme Court, wherein it has clearly been held that by fiction of law the award will be deemed to be a decree of the Civil Court and, therefore, the Civil Court can enforce the award under Section 36. Thus it cannot be accepted that the court defined under Section 2(e) of the Conciliation Act for the purpose of deciding the objection under Section 34 has only the jurisdiction to enforce the arbitral award.

In view of the above facts and circumstances of the case, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction.

Accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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