

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 502 of 2016**

1. Hajari Lal Katendra S/o Late Bihari Lal Katendra, Aged About 42 Years R/o Chinnauree, Tahsil Charama, District U.B. Kanker Chhattisgarh
2. Chandra Devi W/o Rameshu Bhai Katendra Aged About 48 Years (Wrongly Mention As W/o Hajarilal, R/o Chinnauree, Tahsil Charama, District U.B. Kanker Chhattisgarh

---- Petitioners**Versus**

M/s Cholamandalam Investment And Finance Company Limited
S/o (Formerly Known As Cholamandalam D.B.S. Finance Ltd.
Dare House No 2 N.S. C. Bose Road, Parrys, Chennai, 600001

---- Respondent

For Petitioners : Mr. Parag Kotecha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****08/02/2017**

(1) Learned counsel appearing for the petitioner would submit that award passed by the Arbitrator at Chennai (Tamilnadu) is sought to be executed at Kanker Court without transferring of the said award in the Kanker Court and the said award was *ex parte* in which the petitioner has not been heard.

(2) The award has been passed by the Arbitrator on 22.07.2011 at Chennai Court and the application has been filed for execution of the award under Section 36 of the Arbitration & Conciliation Act, 1996 (henceforth 'the Act of 1996') at Kanker Court.

(3) The first question is whether award passed by Chennai Court

under the Act of 1996 can be executed at Kanker (South Bastar).

(4) This Court in Civil Revision 142 of 2013 {Cholamandalam Investment & Finance Company Limited Vs. Hem Singh & others} has held as under:-

(8) 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.

(9) 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 minimise 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.

(10) 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

1 AIR 2007 SC 2961

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

execution, to certify to the transferee court the result of the execution.

(11) 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 award.”

(5) In view of the aforesaid legal position, this Court is of the opinion that award was not required to be transferred in the Executing Court i.e. at Kanker (South Bastar). Likewise, as the *ex parte* award has been passed in which the petitioner claims that he has not been heard, the remedy of the petitioner is to file application for setting aside award under Section 34 of the Act, 1996 and, therefore, I do not find any illegality in the impugned order warranting interference by this Court under Article 227 of the Constitution of India.

(6) Accordingly, the writ petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

