

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4474 of 2012
and M.P.No.1 of 2012

George Amalraj

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Petitioner

Vs.

M/s.Kotak Mahindra Bank
Kotak Towers 5th Floor,
Building No.21, Infinity Park,
Off Western Express Highway
Gorgegaon Mulund Link Road Malad (E)
Mumbai – 400 097.

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Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order in EP No.3340 of 2011 dt.28.03.2012 on the file of X Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Subramanian

For Respondent : Mr.S.Namasivayam

ORDER

This Civil Revision Petition has been filed against the order in EP No.3340 of 2011 dt.28.03.2012 on the file of X Assistant Judge,

City Civil Court, Chennai.

2. The petitioner is the respondent in EP No.3340 of 2011. Respondent filed the said EP to execute the Arbitration Award passed at Mumbai dated 26.02.2011 to recover the amounts as per the Arbitration Award. The petitioner filed counter and prayed for dismissal of the EP on the following grounds.

- (i) Arbitrator has no territorial jurisdiction to conduct the proceedings at Mumbai ;
- (ii) No notice of Arbitration Proceedings was served on the petitioner. Without notice, an ex parte award was passed.
- (iii) Arbitration award was not served on the petitioner. Arbitration award is deemed to be a civil decree and it can be executed as per the provisions of CPC. Award having been passed at Mumbai, the award cannot be executed in the present Executing Court, without being transmitted to the Executing Court.

3. The Executing Court rejected all the contentions of the petitioner. The Executing Court ordered attachment of movables on the ground that the petitioner has not obtained any stay at this Court.

4. Against the said order dated 28.03.2012 made in EP No.3340 of 2011, present Civil Revision Petition is filed.

5. The learned counsel for the petitioner reiterated the same averments made in the counter. The learned counsel for the petitioner mainly contended that without award being transmitted by a competent Civil Court from Mumbai, the present Executing Court has no power to execute the award.

6. The learned counsel for the respondent submitted that award has been passed following all the procedures and petitioner is liable to pay the amounts as per the award. Executing Court has rightly rejected the contention and objection of the petitioner and ordered attachment stating that the impugned order passed in the E.P is valid.

7. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

8. The question to be decided in the Civil Revision Petition is whether, without the award being transmitted from Mumbai, whether the Executing Court has power to execute the award. To decide this issue, Section 36 of Arbitration and Conciliation Act 1966 is relevant. The said section 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 (5 of 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.

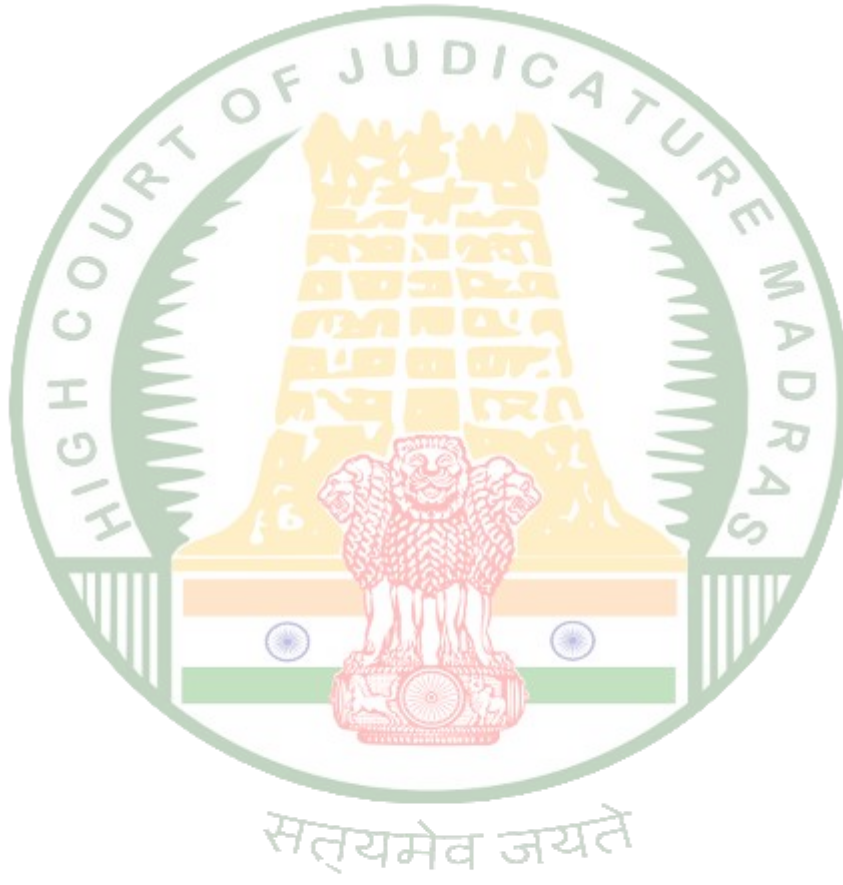
Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedures, 1908 (5 of 1908).

9. As per the above section, award of the Arbitrator is deemed to be a decree and can be executed as per the provisions of CPC. When it is provided as per Section 36 of Arbitration and Conciliation Act, the award can be executed as per the provisions of CPC when an award which is a decree has to be transmitted by a competent Civil Court at Mumbai to the present Executing Court. When an award is passed, a party who wants to challenge the said award has to file a petition in the competent Civil Court where the award was passed. In view of the said settled position, an award without being transmitted by a competent Civil Court where the award was passed, the same cannot be executed in any other court according to the *whims and fancies* of the person in whose favour the award stands.

10. In the present case, there is nothing on record to show that the award was transmitted by the Civil Court at Mumbai to present Executing Court. Even though the petitioner has raised a specific plea that without transmission, the award cannot be executed, the Executing Court did not consider this plea and did not give a finding.

11. When the Civil Revision Petition was taken up for hearing on 15.09.2017, the learned counsel for the respondent sought time to produce document to show whether the award has been transmitted to the Executing Court or not. Today, the learned counsel for the respondent submitted that the award has not been transmitted and it is not necessary to be transmitted from Mumbai to the Executing Court.

12. In view of the fact that the Executing Court failed to consider the above contention of the petitioner and ordered attachment, Executing Court has committed an irregularity which is liable to be set aside and it is hereby set aside.



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13. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.09.2017

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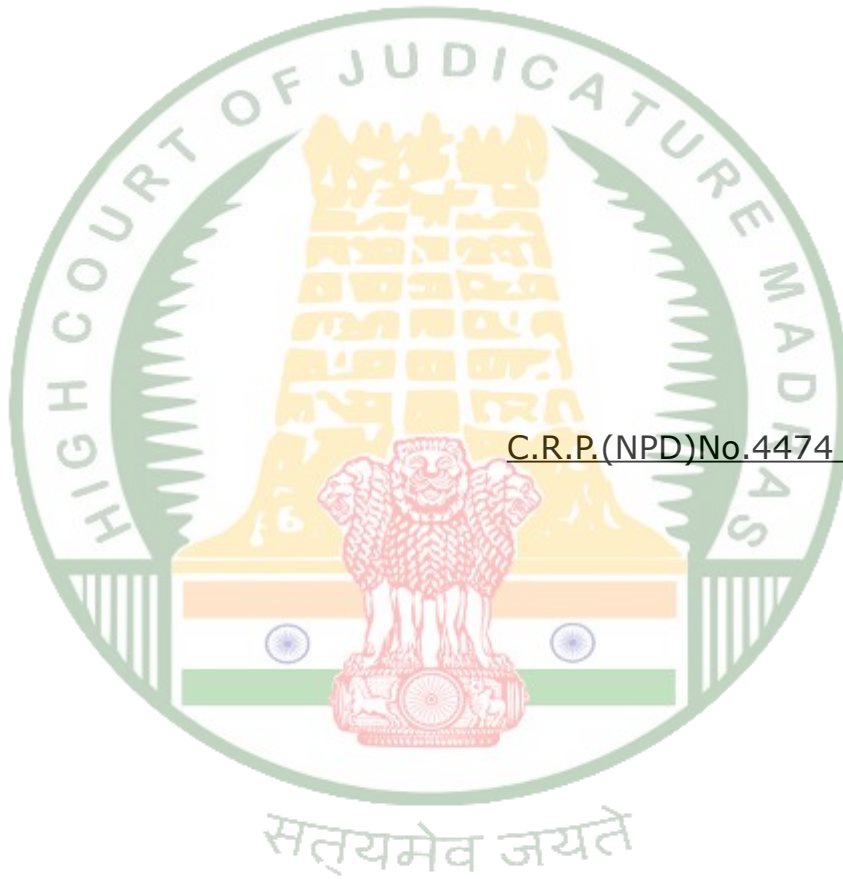
The X Assistant Judge,
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V.M.VELUMANI,J.

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