

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAO) NO.437 OF 2017
IN
MISC. CIVIL APPLICATION NO.1319 OF 2015

Integrated Sales Service Ltd.

-vs-

DMC Management Consultants Ltd. and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri D. V. Chauhan, Advocate for applicant.
Shri A. G. Gharote, Advocate for respondent
No.3/applicant in CAO No. 437/17.
Shri S. D. Dewani, Advocate for respondent No.4.

CORAM : A.S.CHANDURKAR, J.
DATE : February 05, 2018

This application has been filed seeking stay of the present proceedings by which the foreign award passed in favour of the applicant is sought to be executed. The judgment debtor No.3 by relying upon provisions of Order XXI Rule 29 of the Code of Civil Procedure, 1908 (for short, the Code) contends that Special Civil Suit No.1035/2009 has been filed by the said judgment-debtor seeking a declaration that the arbitration award which is the basis of foreign award is not binding on the said judgment-debtor and therefore the defendant Nos.1 and 2-decree holders cannot execute the same. Other ancillary reliefs have also been sought in that suit. Reliance is sought to be placed on the judgment of the Honourable Supreme Court in *Shaukat Hussain alias Ali Akram And ors. vs. Bhuneshwari Devi (dead) by*

L.Rs. and ors. (1972) 2 SCC 731 for said purpose. It is further submitted that though the suit was filed on 26/10/2009 and is still pending, the foreign award has been passed after filing of the suit. Hence in terms of provisions of Order XXI Rule 29 of the Code all the proceedings in execution be stayed till the suit is decided.

Reply has been filed to the aforesaid application by the decree-holder contending that the requirements of Order XXI Rule 29 of the Code are not satisfied. The suit though infructuous has been kept pending. Reference is also made to the order passed by the Honorable Supreme Court in SLP Nos.8347-8348/2017 permitting the execution proceedings to continue.

Heard the respective counsel. Special Civil Suit No.1035/2009 is pending before the Court of learned 4th Joint Civil Judge (S.D.), Nagpur. The foreign award is sought to be executed by filing Miscellaneous Civil Application No.1319/2015 under Section 49 of the Arbitration and Conciliation Act, 1996. As per provisions of Order XXI Rule 29 of the Code, the proceedings contemplated in execution as well as in the suit must be pending before the same Court. In ***Shaukat Hussain*** (supra) the words “such Court” were held to mean that the Court in which a suit is pending. In other words the judgment-debtor's suit must be pending in the Court which passed the decree.

Similarly, in *Sri Krishna Singh vs. Mathura Ahir (1981) 4 SCC 421* it has been held that under Order XXI Rule 29 of the Code, jurisdiction is vested only in the Court that passed the decree to stay its execution.

As noted above Special Civil Suit No.1035/2009 is pending in the Court of 4th Joint Civil Judge (S.D.) Nagpur and therefore one of the requirements of provisions of Order XXI Rule 29 of the Code has not been satisfied. On this count the prayer made in the civil application cannot be granted.

Civil Application therefore stands rejected.

Misc. Civil Application No.1319/2015

Stand over **09/02/2018.**

JUDGE