

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NO.2103 OF 2017

M/s.Cholamandalam Investment and
Finance Company Limited
Rep. by its Authorised Signatory
"Dare House"
No.2, N.S.C.Bose Road, Parrys,
Chennai - 600 001.

... Petitioner

Vs.

1.Prabhu Nath Choudhary
2.Sunila Devi

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order of return dated 29.04.2017 made in E.A.S.R.No.37087 of 2016 in Arbitration Case No.PD136/15 on the file of the X Assistant City Civil Court, Chennai.

For Petitioner : Mr.D.Pradeep Kumar

ORDER

This Civil Revision Petition is directed against the order of return dated 29.04.2017 made in E.A.SR.No.37087 of 2016 in Arbitration Case No.PD136/15 on the file of X Assistant Judge, City Civil Court, Chennai.

2. According to the revision petitioner, an award was passed in their favour in Arbitration Case No.PD136/15 on 27.10.2015. As per the award, the respondents / judgment debtors have to pay a sum of Rs.15,20,286/- together with interest at the rate of 18% from 22.01.2015 till date of realization along with cost of Rs.1,400/-. In view of Section 36 of the Arbitration and Conciliation Act, 1996, the award shall be enforced under the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the Court. Therefore, they filed an application under Order XXI Rule 10 of the Code of Civil Procedure, for transmitting the decree to the Competent Court within the jurisdiction of Jharkhand State, as the award was passed within the jurisdiction of Principal Judge, City Civil Court. Unless the decree is transmitted, the revision petitioner claims that they will not be in a position to execute the decree. The learned Judge

relying on a judgment of this Court in **KOTAK MAHINDRA BANK LIMITED., VS. SIVAKKAMMA SUNDARI NARAYANA S.B.MURTHY [2011 (7) MLJ 1267]** has held that the award passed by the Tribunal can be enforced at any Court where it is sought to be executed. Aggrieved over the same, the revision petitioner is before this Court.

3. I have given my consideration to the issue.

4. Section 36 of the Arbitration and Conciliation Act, 1996, reads as under:

"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."

5. Section 2(e) of the Arbitration and Conciliation Act, 1996, defines "Court" as under:

"2.(2) "Court" means -

(i) *in the case of an arbitration other than international commercial arbitration, the 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 a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;*

(ii) *in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject - matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court."*

6. An award, as per Section 36 of the Arbitration and Conciliation Act, 1996, is construed as a decree for the purpose of execution. In such circumstances, the award has to be executed within the jurisdiction of the Court where the defendants resides or carrying on

profession or business or where the property situates. It is not necessary to present the award within the jurisdiction of the Court where the arbitration proceedings had taken place. The award passed does not have any jurisdictional bar, for, one party may reside in Delhi and the other party reside in Mumbai. But the arbitration can be fixed at Chennai, being a neutral place. For the purpose of interlocutory orders and for regulating the proceedings, till they are terminated, the Court having territorial jurisdiction over the arbitral seat will have jurisdiction. Once arbitration proceedings are terminated, the award, which is deemed to be a decree, can be executed at the appropriate place, where it is sought to be executed, irrespective of the place or jurisdiction of the Court, where it came to be passed.

7. This Court in **KOTAK MAHINDRA BANK LIMITED., VS. SIVAKKAMMA SUNDARI NARAYANA S.B.MURTHY [2011 (7) MLJ 1267]** has held as under:

"19. While the award passed by an arbitral tribunal is deemed to be a decree of a civil court under [section 36](#) of

the 1996 Act, there is no deeming fiction anywhere to hold that the court within whose jurisdiction the arbitral award was passed, should be taken to be the court which passed the decree. Therefore, the whole procedure of filing an execution petition before the court within whose jurisdiction the arbitral award was passed, as though it is the court which passed the decree, is pathetically misconceived.

.... Therefore, it is clear that no Court to which an application for execution of an award is presented, can insist on the filing of the execution petition first before the Court which had jurisdiction at the time of passing the award and to have it transmitted to it later.

8. The ratio that the award must be presented to the Court within whose jurisdiction the arbitral award was passed is misconceived and the arbitral award can be presented before any Court which has jurisdiction, where it is sought to be executed. Therefore, I do not find any infirmity in the order passed by the Execution Court. Since the award could be executed before any Court, it does not require that the award should be presented only before the Court within whose jurisdiction the

award was originally passed. The award can be presented where it is sought to be executed. In view of the judgment reported in 2011 (7) MLJ 1267, the learned Judge has rightly returned the papers to be presented before appropriate Court. I do not find any infirmity in the order passed. The Civil Revision Petition merits no consideration. Accordingly, the Civil Revision Petition stands dismissed. No costs.

23.02.2018

Index : Yes/No

Internet : Yes/No

TK

To

The X Assistant Judge
City Civil Court
Chennai.



WEB COPY

M.GOVINDARAJ, J.

TK



C.R.P.(NPD) NO.2103 OF 2017

WEB COPY

23.02.2018