IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
*****

C. R. P. No. 6435 of 2018

#Between:

Indian National Centre for Ocean
Information Sciences. ...Petitioner

AND

M/s Unity Infra Projects Limited ... Respondent

DATE OF JUDGMENT PRONOUNCED: 19.12.2018

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2	Whether the copies of judgment may be marked to Law Reports/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

* **THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN**
AND
THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

+CIVIL REVISION PETITION No.6435 OF 2018

%19.12.2018

#Between:

Indian National Centre for Ocean
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AND

M/s Unity Infra Projects Limited …Respondent

!Counsel for the petitioners : Dishit Bhattacharjee,

Counsel for Respondent : Sri Resu Mahendra Reddy

<Gist :

>Head Note:

? Cases referred:

1. (2003) 10 SCC 375
2. 1967 SC 799,800
3. (1880) 6 QBD 75
4. (1889) 22 QBD 175
5. AIR 1949 FC 175
6. (1891) 1 Q.B.734.
7. (1966) 3 SCR 198
8. AIR 1980 SC 892
9. 17.04.2003 Arising Out of S.L.P. (C) No. 19030 of 2002) WITH Civil Appeal No. 3489/2003@ S.L.P.(C)No.19852/2002, Civil Appeal Nos.3494-98/2003@ S.L.P.(C)Nos.22848-22852/2002, and Civil Appeal No. 3499/2003@ S.L.P.(C) No.22009/2002]

10. (2003) 6 SCC 675
11. ILR 2004 KAR 1594: 2004(3) Karla 1
12. (1978) 1 SCC 68
13. (2003) 3 SCC 472
14. (2018) 12 SCC 210
15. C.A.No.1650 of 2018, dt.15.02.2018
16. AIR 2018 SC 965
17. 2009 159 DLT 579
18. (2011) 4 LW 745

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
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THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 6435 of 2018

ORDER: (**Per Sri Justice M. Satyanarayana Murthy**)

This Civil Revision Petition, under Section 115 of CPC, is filed questioning the Order in E.P.No.50 of 2018 passed by the III Additional District Judge, Rangareddy District at L.B.Nagar, to attach of the immovable properties of the petitioner shown in the schedule and for realization of the Award amount of Rs.4,63,00,000/-.

The respondent herein/DHR filed Execution Petition under Order XXI Rules 54, 64 and 66 of CPC for attachment of schedule property of the petitioner herein/J.Dr and sell the same for realization of the debt due under the Award of Conciliator dt. 17.05.2017, duly signed by Solomon D.B. Chenji, Conciliator, Deputy Legal Adviser and Head of Ministry of Law and Justice, Department of Legal Affairs, Bangulur.

The Conciliator by name Sri Soloman DB Chenji passed the Award by settling the dispute, against the petitioner herein/Judgment Debtor, to pay an amount of Rs.4,63,00,000/- to the respondent/D.Hr within a period of 90 days from the date of settlement and directed the petitioner herein to release a sum of Rs.75 lakhs together with a sum of Rs.16.40 lakhs and the said amounts were released and the balance amount was required to be approved and accepted by the competent authority of the petitioner herein/J.Dr. The petitioner/J.Dr mainly contended that the respondent/DHr agreed for the Award subject to acceptance by competent authority of the J.Dr and without waiting for the acceptance and approval of the competent higher authorities of the J.Dr, the Respondent/D.Hr initiated legal proceedings by issuing legal

notice dt.21.11.2017 and filed the Execution Petition against the petitioner/J.Dr.

Even according to Section 74 of the Arbitration and Conciliation Act, it has not reached finality and the competent authority not having accepted the settlement, the respondent initiated the proceedings, as per the Conciliation Award and the Execution Petition is premature.

It is further contended that the Indian National Centre for Ocean Information Services (INCOIS) is an autonomous body, which provides tsunami early warning to India and 24 countries on Indian ocean rim round the clock. The respondent/DHR attached the schedule property which may lead to closure of the institution and there is heavy risk and loss to the nation and other countries and thereby running of institution and operate the same from the property sought to be attached by the respondent is only a centre to receive communication from satellite and closing the institution in the present premises by shifting to other place shall also not be possible for various reasons, as such opposed the petition for attachment of the property of this Petitioner/JDR on the above grounds.

Upon hearing both the counsel, the Executing Court passed the Order which is impugned in this Revision, ordering attachment of the schedule mentioned property under Order XXI Rules 54 CPC.

Aggrieved by the impugned Order, the present revision is filed on various grounds, mainly on the ground that the Conciliation Award was passed subject to the appetence/approval by higher authorities and the same cannot be equated with the settlement agreed in terms of Section 73 of Arbitration and Conciliation Act and without approaching the Civil Court to make the Award as decree, the Execution Court will not have any jurisdiction to proceed under Order

XXI Rules 54,64 and 66 of CPC to attach, proclaim and sell the property. Therefore, when the Award is not enforceable as on the date, since, it was not approved by the Higher Authorities of the petitioner/J.Dr, passing an Order under Order XXI Rule 54 is an illegality, committed by the Executing Court.

It is further contended that the Conciliation Award is subject to acceptance/approval by the higher authorities, unless, the Conciliation Award was accepted and referred to a Court to make the Award as decree, it is not executable, invoking Section 36 of the Arbitration and Conciliation Act and the Executing Court failed to appreciate the law declared by the Apex Court in *Mysore Cement Limited v. Svedala Barmac Limited*[1] and committed an error in ordering the attachment of immovable property of the petitioner invoking under Order XXI Rule 54 CPC and requested this Court to set aside the Order passed by the Executing Court.

During hearing, Sri Deeptak Bhattacharjee, learned Senior Counsel for the petitioner vehemently contended that the Conciliation Award was not accepted/approved by the higher authorities of the J.Dr as agreed and therefore, there is no Conciliation Award in the eye of law. In the absence of any enforceable Award, passing an order attaching the immovable property described in the schedule, under Order XXI Rule 54 of CPC, is a serious irregularity committed by the Executing Court. He further contended that unless the said Award is attained finality, in terms of Sections 73 and 74 and enforceable under Section 36 of the Arbitration and Conciliation Act, the execution proceedings are not maintainable and thereby the Executing Court assumed jurisdiction, which is not vested on it and consequently, passed the impugned Order and therefore, the order passed by the

[1] (2003) 10 SCC 375

Executing Court is liable to be set aside. He further demonstrated that Conciliation Award is not executable one since higher authorities of the J.Dr did not accept the Award and filed additional material papers to substantiate its contention that the Government of India, Ministry of Earth Sciences, did not accept the Conciliation Award, in view of the Letter dt. 20.03.2018 signed by Archna Srivastava, Under Secretary (ICC). In the absence of approval, the said Award is not executable, in view of the law declared by the Apex Court in *Mysore Cement's* case (1 supra) and prayed to set aside the Order passed by the Executing Court exercising power under Section 115 CPC.

Learned counsel for respondent Sri Resu Mahender Reddy would contend that Award was passed by the Conciliator duly signed by the parties to the conciliation, though it is subject to acceptance by the higher authorities, despite notice issued by the D.Hr and payment in compliance of Clause No.1 of the Conciliation Award, the petitioner did not chose to pay the balance amount covered by other clauses of Conciliation Award, thereby payment of amount itself in compliance of Clause (1) of the Conciliation Award is an implied acceptance and this Petitioner/JDR cannot contend that it was not accepted by applying the principal of estoppel by conduct, thereby the contention of the learned counsel for the petitioner/JDr is without any substance and requested to affirm the Order passed by the Executing Court.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are :

i) *Whether the Order passed under Order XXI Rule 54 is a final order, which terminates entire proceedings, if not whether revision petition under Section 115 of the CPC is maintainable, in view of the bar to proviso to Section 115 of the CPC ?*

ii) *Whether Conciliation Award is executable in the absence of approval by the higher authorities of the petitioner/JDr and whether in the absence of any approval or consent in writing for the Conciliation Award, can the Award be executed? If not, whether the Order passed under Order XXI Rule 54 CPC is liable to be set aside ?*

In Re Point No.1: The first and foremost contention of the learned counsel for the petitioner/JDR is that the Executing Court exceeded its jurisdiction, that is not vested on it, since the Conciliation Award is not executable and passing an Order under Order XXI Rue 54 CPC is an illegality committed by the Executing Court. Whereas, the respondent/DHr filed Execution Petition under Order XXI Rule 11, 54, 64, 66 of CPC for attachment of the property and sale of the same for realization of the decree debt under the Conciliation Award. When the Award is passed within two years prior to the date of filing Execution Petition before the Executing Court, a notice under Order XXI Rule 22 CPC is not necessary (i.e., Decree Notice). When an Execution Petition is filed for realization of the debt due under the Conciliation Award by attaching the immovable property and for sale of the same invoking Sections 54, 64 and 66 of Order XXI CPC, the order of attachment is step in aid to proceed further for issuing proclamation for sale of the property. Therefore, the Order passed by the Executing Court under Order XXI Rule 54 CPC is only step in aid to proceed further for realization of the debt. Only when the property was sold and realized the debt due under the Conciliation Award, it will terminate the entire proceedings. Therefore, it is the duty of this Court to examine whether the Order passed under Order XXI Rule 54 CPC is a final order which terminates the proceedings?

At this stage it is relevant to extract Section 115 of CPC for better appreciation and it is extracted hereunder:

> *115 CPC* : Revision : (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appeals:
>
> (a) To have exercised a jurisdiction not vested in it by law, or:
>
> (b) To have failed to exercise a jurisdiction so vested, or :
>
> (c) To have acted in the exercise of it jurisdiction illegally or with material irregularity.
>
> The High Court may make such order in the case as it thinks fit :
>
> Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings).
>
> (2) The High Court shall not, under this Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.
>
> (3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

As per the proviso substituted by Act 46 of 1999, which came into force with effect from 01.07.2002, which is extracted above, the High Court shall not, under Section 115 CPC vary or reverse any order made or any Order deciding an issue, in the course of a suit or other proceeding, except where the Order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. Thus, it means the Court cannot entertain a revision against an Order, which will terminate the entire proceedings. The word 'Proceedings' includes the execution proceedings. Therefore, when the Order passed under Order XXI Rule 54 CPC cannot be described as final Order as it would not terminate the entire proceedings or finally disposes of the suit or other proceedings as contained in proviso to Section 115 of CPC.

The word 'Final Order' is not defined anywhere, but the proviso to Section 115 CPC is equivalent to bar under Section 397(3) Cr.P.C as the language is in *pari materia*. Though the 'Final Order' was not defined in the CPC, it is appropriate to advert to the definition of Interlocutory Order or Final Order and the law laid down by the Courts.

Though the Word Interlocutory is not defined in the Code. According to Webster's New Twentieth Century Dictionary, in law 'interlocutory order' means 'an intermediate'; not final order definitive; as an interlocutory divorce decree. The Corpus Juris Secundum (Volume 60) defines 'interlocutory order' thus: the word 'interlocutory' as applied to rulings and orders by the Trial Court, has been variously defined. It refers to all Orders, rulings, and decisions made by the trial Court from the inception of an action to its final determination. It means, not that which decides the cause, but that which only settles some intervening matter relating to the cause. An interlocutory order is an order entered pending a cause, deciding some point or matter essential to the progress of the suit and collateral to the issues formed by the pleadings and not a final decision or judgment on the matter in issue. An intermediate order has been defined as one made between the commencement of an action and the entry of the Judgement.

In Central Bank of India v. Gokul Chand[2] the Apex Court while describing the incidents of an interlocutory order, observed as follows:

> "In the context of Section 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding the Controller, may pass many interlocutory orders under Ss. 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses,

[2] 1967 SC 799, 800

> inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding: they regulate the procedure, only and do not affect any right or liability of the parties. "The aforesaid decision clearly illustrates the nature and incidents of an interlocutory order and the incidents given by this Court constitute sufficient guidelines to interpret the connotation of the word "interlocutory order" as appearing in Sub-section (2) of S. 397 of the 1973 Code."

Interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding without affecting the rights and liabilities of the parties.

In Webster's Third International Dictionary (Vol. II, p. 1170) the expression 'interlocutory order' has been defined thus:

> *"not final or definitive; made or done during the progress of an action; INTERMEDIATE PROVISIONAL".*

Stroud's Judicial Dictionary (Fourth Edition, Vol. 3, p. 1410) defines the interlocutory order as " 'Interlocutory order' (Judicature Act 1873 (c.66), s. 25(8) was not confined to an order made between writ and final judgment, but means an order other than final judgment."

According to Stroud, interlocutory order means an order other than a final judgment. This was the view taken in the case of Smith v. Cowell[3] and followed in Manchester & Liverpool Bank v. Parkinson[4]. Similarly, the term 'final order' has been defined in volume 2 of the same Dictionary (p. 1037) thus:

> "The judgment of a Divisional Court on an appeal from a county court in an interpleader issue, was a 'final order" within the old R.S., Ord. 58, r. 3 (Hughes v. Little, 18 Q.B.D. 32); so was an order on further consideration (Cummins v. Herron, 4 Ch. D. 787); unless action was not thereby concluded. But an order under the old R.S.C., ord. 25, r. 3, dismissing an action on a point of

[3] (1880) 6 QBD 75
[4] (1889) 22 QBD 175

> law raised by the pleadings was not 'final" within the old Ord. 58, r. 3, because had the decisions been the other way the action would have proceeded."

Halsbury's Laws of England (Third Edition, Vol. 22, pp. 743-744) describes an interlocutory or final order thus:

> "Interlocutory judgment or order: An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed 'interlocutory'. An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals....."

In general a Judgment or Order which determines the principal matter in question is termed 'final'."

> "At page 743 of the same volume, Blackstone says thus: "Final judgments are such as at once put an end to the action by declaring that the plaintiff has either entitled himself, or has not, to recover the remedy he sues for..... Four different tests for ascertaining the finality of a judgment or order have been suggested:
>
> (1) Was the order made upon an application such that a decision in favour of either party would determine the main dispute?
>
> (2) Was it made upon an application upon which the main dispute could have been decided?
>
> (3) Does the order, as made, determine the dispute?
>
> (4) If the order in question is reversed, would the action have to go on."

Corpus Juris Secundum (Vol. 49 p. 35) defines interlocutory order thus:

> "A final judgment is one which disposes of the cause both as to the subject matter and the parties as far as the court has power to dispose of it, while an interlocutory judgment is one which reserves or leaves some further question or direction for future determination ..... Generally, however, a final judgment is one which disposes of the cause both as to the subject matter and the parties as far as the court has power to dispose of it, while an interlocutory judgment is one which does not so

> dispose of the cause, but reserves or leaves some further question or direction for future determination..... .. The term "interlocutory judgment" is, however, a convenient one to indicate the determination of steps or proceedings in a cause preliminary to final judgment, and in such sense the term is in constant and general use even in code states."

Similarly, Volume 60 of the same series at page 7 seeks to draw a distinction between an interlocutory and a final order thus:

> "The word "interlocutory", as applied to rulings and orders by the trial court, has been variously defined. It refers to all orders, rulings, and decisions made by the trial court from the inception of an action to its final determination. It means, not that which decides the cause, but that which only settles some intervening matter relating to the cause. An interlocutory order is an order entered pending a cause deciding some point or matter essential to the progress of the suit and collateral to the issues formed by the pleadings and not a final decision or judgment on the matter in issue .. An intermediate order has been defined as one made between the commencement of an action and the entry of the judgment."

Thus, while determining the order under challenge and impugned in the revision as interlocutory or final, the above tests have to be applied.

But, in the case of *Ex Parte Moore In Re Faithfull*, Lord Selborne while defining a final judgment observed as follows:

> "To constitute an order a final judgment nothing more is necessary than that there should be a proper litis contestatio, and a final adjudication between the parties to it on the merits.

Similarly, Brett, M.R. Observed as follows:

> "The question is whether in the Chancery Division there cannot be a "final judgment" when everything which has to be done by the Court itself is finished. Is that a final judgment which directs certain things to be done and certain inquiries to be made, and certain other things to be done on those inquiries being answered ? If the Court ordered the result of the inquiries to be reported to itself before the judgment was given, it would not be a final judgment. But, if the Court orders something to be done according to the answer to the inquiries,

> without any further reference to itself, the judgment is final."

Wharton's Law Lexicon (14th Edition, p. 529) defines interlocutory order thus:

> *"An interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties."*

Summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having resort to Civil Procedure Code or any other statute. If, interlocutory order in ordinary parlance is construed, it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in the Act, examine the true intent and import of an interlocutory order.

Coming to the Indian law as to the definition of interlocutory order, in *S. Kuppuswami Rao v. The King*[5], the Federal Court held that the tests which had to be applied to determine whether an order was a final order were the same both in respect of orders in civil proceedings as well as orders in criminal proceedings. The Federal Court with the approval of Salaman v. Waner[6], the following interpretation of the expression "final order" is as given:- "If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, we think that for the purposes of these rules it is

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[5] AIR 1949 FC 175
[6] (1891) 1 Q.B. 734

final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but if given in the other, will allow the action to go on, then we think it is not final, but interlocutory.

In Mohan Lal Magan Lal thacker v. State of Gujarat (referred supra), the Apex Court drawn distinction between 'final order' and 'interlocutory order' , based on the definition of Halsbury's Laws of England (3rd Edition Volume 22 pg 742-742), the following four tests are required to be applied.

> *(1) Was the order made upon an application such that a decision in favour of either party would determine the main dispute?*
>
> *(2) Was it made upon an application upon which the main dispute could have been decided?*
>
> *(3) Does the order, as made, determine the dispute?*
>
> *(4) If the order in question is reversed, would the action have to go on.*

In another judgment reported in *Ramesh v. Patni*[7], the Hon'ble Apex Court expressed similar view, where the question was whether an order passed by the Claims Officer under the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 under Section 22(1) of the Act was questioned before the High Court on the ground that the Commissioner had no jurisdiction to entertain or try the appeal, but High Court dismissed the petition, summarily holding that it was not final order and it did not decide the controversy between the parties and did not of its own force affect the rights of the parties or put an end to the controversy. Thereupon, the Apex Court observed as follows:

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[7] [1966] 3 S.C.R. 198

1. *"that the word 'proceeding' in Art. 133 was a word of a very wide import;*
2. *that the contention that the order was not final because it did not conclude the dispute between the parties would have had force if it was passed in the exercise of the appellate or revisional jurisdiction of the High Court, as an order of the High Court passed in an appeal or revision would not be final if the suit or proceeding from which there was such an appeal or revision remained still alive after the High Court's order;*
3. *but a petition under Art. 226 was a proceeding independent of the original controversy between the parties; the question therein would be whether a proceeding before a Tribunal or an authority or a court should be quashed on the ground of want of jurisdiction or on other well recognized grounds and that the decision in such a petition, whether interfering or declining to interfere, was a final decision so far as the petition was concerned and the finality of such an order could not be judged by co-relating it with the original controversy between the parties. The Court, however, observed that all such orders would not always be final and that in each case it would have to be ascertained what had the High Court decided and what was the effect of the order. If, for instance, the jurisdiction of the inferior tribunal was challenged and the High Court either upheld it or did not, its order would be final."*

The test laid down by the Constitutional Bench referred in the judgments in Mohan Lal Magan Lal thacker v. State of Gujarat (referred supra) with the approval of principle in S. Kuppuswami v. The King (referred supra), if applied to the order passed as per Order XXI Rule 54 CPC either dismissing or allowing the execution petition, it is clear that, when the order under challenge in a revision if terminates or culminates the entire proceedings, it is a final order. If not, it is only an interlocutory order and remedy available to such person aggrieved is elsewhere.

The principle of law laid down in the above judgments is only that if the order under challenge in the revision would terminate or culminates the entire proceedings, which can be described as final, otherwise it is interlocutory order. But in the facts of the present case, the Executing Court upon considering the contentions advanced for

attachment of immovable property under Order XXI Rule 54 CPC, which is a step towards proclamation, as such the Order challenged will not terminate or decide the dispute.

By applying the principle laid down in the above judgments referred supra, including the definition of 'Interlocutory', the Order passed by the Executing Court under Order 21 Rule 54 CPC is only an Interlocutory Order to proceed further for disposal of the main petition i.e., the main Execution Petition and the proceedings are deemed to have terminated only when the property is sold and realized the amount due under Conciliation Award.

A similar question came up before the Apex Court in a Judgment reported in *Vinesh Kumar v. Santhi Prasad*[8].

In *Shiv Shakti Coop. Housing Limited vs M/S. Swaraj Developers & Ors*[9], the Apex Court held that against an Interlocutory Order, revision under Section 115 of CPC is not maintainable since revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied.

In *Surya Dev Rai vs Ram Chander Rai & Ors*[10], the Apex Court held that the effect of erstwhile Clause B of the proviso being deleted and new proviso have been inserted and the revisional jurisdiction in respect of Interlocutory Order passed in a trial Court or other proceedings is substantially curtailed and the revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied.

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[8] AIR 1980 SC 892
[9] 17.04.2003 Arising Out of S.L.P. (C) No. 19030 of 2002) WITH Civil Appeal No. 3489/2003@ S.L.P.(C)No.19852/2002, Civil Appeal Nos.3494-98/2003@ S.L.P.(C)Nos.22848-22852/2002, and Civil Appeal No. 3499/2003@ S.L.P.(C) No.22009/2002]
[10] [(2003) 6 SCC 675]

The Division Bench of the Karnataka High Court has considered the judgment in *Siva Sakthi's's case and Suryadevarai's case* in *K.M. Aliulla Khan v. R. Sarvesh Murthy(W.A. No. 824 of 2004, Dt:12.2.2004),* came to the conclusion that a writ petition can only be entertained if the impugned order caused grave injustice or failure of justice. The same principle is reiterated in *Nagawwa v. Mallapa*[11] *where* similar question came up before the High Court was that whether a revision against an interlocutory was maintainable and the Court concluded that unless the order resulted in injustice or failure of justice, such order is not amenable for revisional jurisdiction under Section 115 of CPC.

In the present case, the Court ordered attachment of immovable property under Order XXI Rule 54 CPC and when immovable property was attached, the property cannot be taken away like any immovable property and that the property will remain as it is, but subject to other orders to be passed under Order XXI Rules 64 and sale as per Rule 66 CPC, but on account of attachment, no substantial injustice would be caused to this petitioner and thereby revision is not maintainable against the Order under challenge, in this revision and consequently, no revision is maintainable against the order impugned in this revision, in view of the bar under the proviso to Section 115 of CPC, as the order would not terminate or culminate the entire proceedings, but it is only step in aid to proceed further in termination of the proceedings by invoking Rules 64 and 66 of Order XXI of CPC.

One of the contentions of the learned counsel for the petitioner is that when the Court assumed jurisdiction which is not vested on it, in view of Clause (1) of Section 115 CPC, a revision can be maintained. No doubt, this Court can exercise power of Revision under Section 115

[11] ILR 2004 KAR 1594: 2004 (3) Karla 1

CPC when the Court Subordinate Court to the High Court appears to have exercised its jurisdiction not vested on it by law or to have failed to exercise its jurisdiction so vested or to have acted in exercise of its jurisdiction illegality or with material irregularity. But, here the counsel contended that it would fall under Clause (a) of Sub Section 1 of Section 115 of CPC i.e., exercise of jurisdiction not vested on it by law. but, the bar under Sub Section 1 of Section 115 of CPC is subject to proviso and proviso is an exception to exercise power under Sub Section 1 of Section 115 of CPC. Even if, the Court appears to have exercised its jurisdiction, which is not vested on it by law, unless such order passed exercising such jurisdiction dispose off the suit or proceedings or terminates or culminate the entire proceedings, revision cannot be maintained under Section 115 of CPC. In view of foregoing discussion, we hold that the Order under challenge is only Interlocutory in nature and not final order and consequently, revision under Section 115 CPC is not maintainable and the Point is answered against the Petitioner and in favour of respondent.

In Re Point No.2: The main contention of the learned counsel for the petitioner is that in this case the Conciliation Award was passed subject to consent/approval by the higher authorities of the petitioner. But, this fact is not disputed by the respondent/D.Hr also and though the Award passed by the Conciliator long back, the petitioner neither obtained consent nor rejected the Award, intimated the same to the respondent. In the absence of any rejection and intimation of the same in writing to the respondent and more particularly when Clause (1) of the Conciliation Award is complied with, it shall be deemed that the Award is accepted by *Tacit Consent* due to payment of Rs.75 Lakhs and Rs.16.40 Lakhs as final RA bill within a period of one month from the date of signing on the settlement.

At this stage, it is apposite to extract the Award passed by the Conciliator and it is extracted hereunder:

> *"As a total amount of Rs.4.63 cr (including refund of LD Rs.1.48 Cr) is payable by INCOIS to UNITY, an amount of Rs.75.00 Lakhs and amount of Rs.16.40 Lakhs pending as Final RA Bill may be released within a period of one month from the date of signing of this statement.*
>
> *(2) In case the net amount of Rs.4.63 Cr is not released within 90 days of signing of the statements, it will attract interest at the rate of 12% per annum as per Section 3 of Indian Interest Act."*

A bare look at the conditions in Clause (1) of the Conciliation Award, it is clear that total amount of Rs.4.63 crs including the refund of LD Rs.1.48 crores is payable by INCOIS to UNITY and an amount of Rs.75.00 lakhs and Rs.16.40 lakhs pending as final RA Bill shall be released within a period of one month from the date of signing on the statement. The second Clause deals with the net amount payable to the UNITY within 90 days of signing on the settlement and it will attract interest at the rate of 12% per annum as per Section 3 of Indian Interest Act. But, while signing K.K.V.Chary, Deputy Chief Administrative Officer, it is written with pen above signature "*subject to acceptance by competent authority*." When the settlement is subject to acceptance by the competent authority, compliance of part of the Award and payment of Rs.75.00 lakhs and Rs.16.40 lakhs towards final payment of RA Bill due within a month is an implied acceptance of the Award of Conciliator. Payment of Rs.75.00 and Rs.16.40 Lakhs is not in dispute and in the Counter filed by the petitioner in the Execution Petition made a categorical admission in para No.4 and it is as follows:

> " I respectfully submit that, the conciliation settlement reached between the parties was signed by decree holder and judgment debtor accepting the settlement. The Deputy Chief Administrative Officer of the Judgment debtor institution signed the settlement stating that 'Subject to acceptance by the Competent Authority' which is also signed and accepted by the degree holder. The initial amounts of Rs.75,00,000/- and Rs.16,40,000/- were released immediately as per the settlement as the release of said amounts was within the ambit of judgment debtor. The balance amount was required to be

> approved and accepted by the competent authority after the same has been concurred by the Finance Division. The decree holder accepted for the same by signing the conciliation settlement. The decree holder without waiting for the approval of higher authorities and Ministry initiated legal proceedings by issuing legal notice to the judgment debtor on 21.11.2017 and filed the present execution petition……"

This admission relating to release of an amount of Rs.75 lakhs and 16.45 lakhs is suffice to conclude that the Award passed by the Conciliator was impliedly accepted and the petitioner having accepted and complied with the Clause No.1 of the Award, now, the petitioner cannot contend that the Award was not accepted, by applying the principle of estoppel by conduct. The petitioner being the Central Government Institution by its act i.e., payment of Rs.75.00 lakhs and Rs.16.40 lakhs in terms of the Clause No.1 of the Award passed by the Conciliator, cannot go back saying that it was not accepted by the higher authorities. More curiously, in the entire Counter filed on 28.06.2018, the petitioner did not contend that the Award was not accepted. For the first time, it was contended before this Court that the Award passed by the Conciliator was not accepted by the competent authority and placed on record the correspondence between the parties to contend that the Award was not accepted on 20.03.2018. A Letter dt. 20.03.2018 in file No.ES/2016/2017-ICC, Government of India, Ministry of Earth Sciences, is placed on record to substantiate his contention i.e., the proposal of INCOIS in agreeing for conciliation for settlement of dispute, is not agreed by the Higher Authorities. The Counter Affidavit was duly singed by Sri S.S.C Shenol, Director of this Petitioner company. In the entire counter, there was no allegation that by Letter dt. 20.03.2018, under Secretary to ICC, Government of India, Ministry of Earth Sciences, rejected the Conciliation Award. Even otherwise, a bare look at the Letter, it is evident that the authorities did not agree for mode of settlement of dispute by conciliation, but not the Award passed by the Conciliator. If

really, this Letter was sent to Director, INCOIS i.e., Shenol, who filed Counter affidavit, it would have been mentioned in the Counter itself. The petitioner is having accepted for the terms, released Rs.75.00 lakhs and Rs.16.40 lakhs in compliance of Clause No.(1) of the Conciliation Award, now contending that the Award was not accepted. But, In view of the payment of the amount in compliance of the Clause No.1 of Award of Conciliator and failure to refer in the Counter alleged rejection by Under Secretary to Ministry of Earth Sciences, creates any amount of suspicion on the contention of this Petitioner/JDr about rejection of the Conciliation Award. In fact, Conciliation Award was passed on 17.05.2017, whereas, the Letter was issued by the Under Secretary on 20.03.2018 though an amount of Rs.75 Lakhs and Rs.16.04 Lakhs was released by the petitioner within the time stipulated in terms of Clause No.1 of the Conciliation Award. Now the petitioner cannot be permitted to *approbate and reprobate* and they are estopped to raise such contention that the Award was not accepted at this stage even without any pleading in the Counter.

The Government is expected to be model litigant maintaining ethical standards in prosecuting the litigation being a compulsive litigant. The Government of India in view of certain observations made in various Judgments by the Apex Court in *State Of Punjab vs M/S. Geeta Iron & Brass Works Ltd*[12] and *Chief Conservator of Forest v. Collector* [13] adopted National Litigation Policy, but it did not yield fruitful results and it totally failed. But, the Government of India being a model litigant is under obligation as common law has not always been clear, but the written policies seek to provide clarity and guidance on what conduct is required of a model litigant. Behind each of the duties is an overarching duty to act honestly, fairly, with

[12] (1978) 1 SCC 68
[13] (2003) 3 SCC 472

complete propriety and in accordance with the highest professional standards. It goes beyond the requirement for lawyers to act in accordance with their ethical obligations and merely acting honestly or in accordance with the law and court rules. The policies all variously refer to the following specific duties, some of which have long been recognised by the Courts.

a) Dealing with claims promptly;
b) Minimising delay in proceedings'
c) Making an early assessment of the prospects of success and potential liability in claims;
d) Paying legitimate claims without litigation ;
e) Acting consistently in the handling of claims and litigation;
f) Endeavouring to avoid, prevent or limit the scope of litigation and participating in alternative dispute resolution where appropriate;
g) Missing costs in proceedings;
h) Not taking advantage of a claimant who lacks the resources to litigate a legitimate claim;
i) Not taking technical points unless the agencies interests would be compromised;
j) Not understanding and pursuing appeals unless there are reasonable prospects for success or the appeal is otherwise justified in the public interest; and
k) Apologising when the government or its lawyers have acted wrongfully or improperly.

These guidelines as recognised by Common Wealth Governments by model litigation policy of Common Wealth countries. The litigation in the Courts would be minimised though the Government of India adopted the National Litigation Policy, it did not serve any useful purpose. Therefore, the Government being litigant is at least expected to follow the ethical issues and practical considerations while dealing with a citizen in litigation before the Court. The Government being litigant is expected to be honest litigant to minimise the litigation, instead of it, the petitioner herein being the Government Organization as a litigant not acting fairly and prosecuting

the proceedings without placing all the facts before the Court, incorporating those facts in the Counter. Therefore, the way in which the proceedings are being prosecuted by the petitioner being a litigant i.e., Government Organization is dishonest and taking the Court respondent to a ride without maintaining transparency in their functioning. When the petitioner is acting in such manner, the Court cannot accept such contention, more particularly, when the petitioner complied part of the Award passed by the Conciliator, in view of the principle of estoppel contained in Section 115 of Indian Evidence Act, on the basis of principle of approbate and reprobate. When the petitioner having accepted Clause No.1 of the Conciliation Award and complied the same in toto, now cannot contend that the Award was not accepted by the higher authorities and therefore, the petitioner is debarred from raising such contention by applying the principle of estoppel by conduct. An identical question came up before the Apex Court in *Vishnu Bhagwan Agarwal and another v National Insurance Company Limited*[14] wherein the Insurance Company having accepted the changes in the policy of insurance and limit being raised over Rs.25 lakhs, now cannot contend that the insurance company did not accept the policy and insurance company would be estopped by conduct, because of encashing and adjusting the enhanced insurance premium, which would lead to the limit being raised to over Rs.25 lakhs. The same principle is applicable to the present facts of the case. Therefore, on this ground, the petitioner is not entitled to claim relief. The conduct of the petitioner, more particularly, about the suppression of certain facts before the Court by the Director, INCOIS, who filed Counter Affidavit made a desperate attempt, suppressing certain facts, more particularly, about the correspondence and passing an order. But, on account of failure to

[14] (2018) 12 SCC 210

mention about the Letter dt. 20.03.2018 not accepting the mode of settlement of the dispute, creates any amount of suspension on the conduct of the Director, who filed the affidavit before the Executing Court. In any view of the matter, the conduct of the Director of Petitioner is highly reprehensible as he did not approach with clean hands and suppressed important facts, seeking relief from the Court to raise attachment setting aside the Order passed by the Execution Court under Order XXI Rules 54 CPC.

The core contention urged before this Court is that in view of the Judgment in *Mysore Cements Limited* referred supra, when the Award passed by the Conciliator was not referred and the decree was passed in terms of the Award of the Conciliator, it is not executable under Section 36 of the Arbitration and Conciliation Act.

In view of the contention urged before this Court, it is relevant to advert to the Arbitration and Conciliation Act from Sections 61 to 63 mentioned in Part No.3 of the Act. Section 61 deals with application and scope of conciliation of disputes arising out the local relationship whether contractual or not. Section No.62 of the Act deals with the commencement of conciliation proceedings. Sections 63, 64, 65, 66,67 and 68 to 72 of the Act deals with the procedure to be followed in conciliation proceedings, role of Conciliator and Communication, disclosure or non cooperation of the parties to the Conciliator etc.,

Section 73 deals with the Settlement Agreement, it reads thus:

> (1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
> (2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If

> requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.
> (3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.
> (4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

In the present facts of the case, the parties to the settlement signed and authenticated the settlement agreement by the Conciliator furnishing a copy to each of the party in strict compliance of Section 73 of the Act. But Section 74 deals with Status and effect of settlement agreement and according to it, the settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30 of the Act..

Section 76 deals with Termination of conciliation proceedings.— The conciliation proceedings shall be terminated—

> (a) by the signing of the settlement agreement by the parties on the date of the agreement; or
> (b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
> (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
> (d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

In the present case, the parties to the settlement signed on the agreement on the date of preparing settlement agreement and when they signed on the agreement, Conciliation Proceedings are deemed to have terminated. But, none of the provisions of the Act permitted the parties to sign on the agreement, subject to approval by the competent Authority without fixing time. More so, in view of Section 74 of the Act, such Award of Conciliator is deemed to be on par with

an Arbitral Award passed by an Arbitral tribunal under Section 30 of the Act.

Section 30 of the Act deals with Settlement by different modes, including the mode of Conciliation, Arbitration and other procedure, which is on par with Section 89 of CPC. But Section 35 of the Arbitration and Conciliation Act deals with finality of arbitral awards. Section 36 of the Act deals with Enforcement of Arbitral Awards. According to Section 35, Arbitral Award shall be final and binding on the parties and the persons claiming their respective rights, subject to the part of the Act. According to Section 36 of the Act, where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

A co-joint reading of Sections 74,30,35 and 36 of the Act, the Award of Conciliator is as good as an order passed by Arbitral Tribunal and such Award is final, subject to the provisions of the Chapter and enforceable under Section 36 of the Act after expiry of time permitted to set aside such Award under Section 34 of the Act. But, in the Judgment of the Apex Court in *Mysore Cement's case* referred supra, the Court considered the scope of Section 73,30,76 of the Arbitration and Conciliation Act and in para No.16 of the Judgment held that even a compromise petition signed by both the parties and filed in the court *per se* cannot be enforced restoring to execution proceedings unless such a compromise petition is accepted by the court and the court puts seal of approval for drawing a decree on the basis of compromise petition. In the present case, looking to the Memorandum of Conciliation Proceedings and Letter of Comfort, it is

true that parties have agreed to certain terms, but Award cannot be straightaway enforced by taking up execution proceedings.

It appears from the facts of the above Judgment that the case pending before the Court appears to have been referred to conciliation and the Conciliator passed the said Award, based on the agreement arrived by the parties. But, the Conciliation Award was not referred to the Court where the proceedings, if any, are pending. Therefore, the Apex Court concluded that it is not an Award, unless, the Conciliation Award is produced before the Civil Court to pass decree in terms of the arbitral award, it cannot be executed. But, the trial Court by following the principle in *Sundaram Finance Limited v Abdul Samad and others*[15] held that the Award need not be placed to make a decree by the Civil Court.

The Apex Court adverted to the earlier judgment of the Apex Court in *Dr. S.C. Jain vs Sahny Securities Pvt. Ltd*[16] a vague reference is made regarding the finality of the Award and termination of the proceedings. In para No.20 of the Judgment, the Apex Court placing reliance in *Daelim Industrial Co Ltd vs Numaligarh Refinery Ltd*[17] referred that Section 42 of the Act would apply to the execution of the Award, which is not arbitral proceedings and Section 38 of the Code would apply to the decree passed by the Court prescribing that the decree may be executed by the Court which passed it, or by the Court to which it was sent for execution. In case of an award, no court passes the decree.

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[15] CIVIL APPEAL No.1650 of 2018, dt.15.02.2018
[16] AIR 2018 SC 965
[17] 2009 159 DLT 579

The Madras High Court in *Kotak Mahindra Bank Limited v. Sivakama Sundari and Others*[18] referred to Section 46 of the Code which speaks about the precepts but it is not applicable. However, the observations made therein are clear that an Award passed outside the Court need not be referred to a Civil Court for passing a decree in terms of the Award when the reference were not made by the Civil Court. In para No.19 of the Judgment, the Court made it clear while Award passed by an arbitral tribunal is deemed to be a decree of a civil court under Section 36 of the 1996 of the 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, there is little controversy with regard to the matters referred to the Arbitrator or mediator or conciliator by the Civil Court in exercise of their power under Section 89 of CPC and the awards passed by the Conciliator or Mediator directly without reference of the Court. But, the Awards passed by such Arbitrator or Conciliator or Mediator is deemed to be a decree within Section 73 and it is executable.

In view of the recent judgment of the Apex Court in *Sundaram Finance*'s case and persuaded by Madras High Court judgment in *Sivakama Sundrai and others*(18 supra), the contention of the petitioner based on *Mysore Cement*'s case cannot be accepted.

On overall consideration of entire material on record, it is difficult to sustain the contention of the learned counsel for the petitioners as the Order under challenge is only interlocutory in nature, which is not amenable revisional jurisdiction, in view of the proviso to Section 115 of CPC and that too the Award passed by the Conciliator is

[18] (2011) 4 LW 745

deemed decree within Section 73, consequently such award can straight away be executed. Though the Award was passed subject to approval by the higher authorities of the petitioner in view of the subsequent conduct accepting the terms of the Conciliation Award by complying clause No.1 of the Conciliation Award, the petitioners are estopped to raise such contention that the Award was not accepted by the higher authorities when it was not even referred in the Counter before the Executing Court. Therefore, we find no merit in the contention of petitioner and the revision petition is liable to be dismissed, while, unhesitatingly affirming the Order of Executing Court.

In view of the above discussion, we find no ground to set aside the Order in E.P.No.50 of 2018 passed by III Additional District Judge, Rangareddy District at L.B.Nagar.

Accordingly, this Civil Revision Petition is dismissed.

As a sequel, miscellaneous Petitions, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, J

M. SATYANARAYANA MURTHY, J

Date: 19-12-2018

Note: L.R. Copy to be marked

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THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

Dt. 19-12-2018

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