

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.288 of 2016

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Magma ITL Finance Ltd. a Public Limited Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at Magma House 24 Park Street Kolkata through its lawful Attorney Holder namely Lav Kush Kumar, Son of Sri Mithlesh Sharma, Resident of Magma Fincop Ltd. 2nd Floor, Shiv Laxmi Plaza, Near Rajendra Nagar Terminal, Main Road, Kankarbagh, Patna-20, posted as Law Officer at Magma ITL Pincop Finance Ltd. having its Regional Office

... .. Petitioner/s

Versus

1. Manju Devi, W/o Sri Ram Narayan Sahni, Resident of Village Hirapur, P.O. Hardi, P.S. & Block Paru, District Muzaffarpur
2. Sri Ram Narayan Sahni, Son of Late Asheshwar Sahni, Resident of Village – Hirapur, P.O. Hardi, P.S. & Block Paru, District Muzaffarpur
3. Manohar Sahni, Son of Sri Deonandan Sahni, Resident of Village Hirapur, P.O. Hardi, P.S. & Block Paru, District Muzaffarpur

... .. Respondent/s

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with
CIVIL REVISION No. 293 of 2016

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Magma Fincorp Ltd. a Public Limited Company incorporated under the Companies Act, 1956 and having its Registered Office at Magma House 24 Park Street Kolkata, PIN 843109 through its lawful Attorney namely Lav Kush Kumar, Son of Sri Mithlesh Sharma, Resident of Magma Fincorp Ltd. 2nd Floor, Shiv Laxmi Plaza, Near Rajendra Nagar Terminal, Main Road, Kankarbagh, Patna-20, posted as Law Officer at Magma ITL Pincorp Finance Ltd. having its Regional Office

... .. Petitioner/s

Versus

1. Kedar Choudhary, Son of Khomari Choudhary, Resident of H. No. 63, Village - Narsihpur, P.O. Narsihpur, District - Muzaffarpur 843109.
2. Rajesh Kumar (Guarantor), S/o Manvendra Pandey, Resident of Village Baghi Narsingpur, P.O. Dholi, District - Muzaffarpur 843109

... .. Respondent/s

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with
CIVIL REVISION No. 292 of 2016

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Magma Fincorp Ltd. a Public Limited Company incorporated under the Companies Act, 1956 and having its Registered Office at Magma House 24 Park Street Kolkata, PIN 843109 through its lawful Attorney namely Lav Kush Kumar, Son of Sri Mithlesh Sharma, Resident of Magma Fincorp Ltd. 2nd Floor, Shiv Laxmi Plaza, Near Rajendra Nagar Terminal, Main Road, Kankarbagh, Patna-20, posted as Law Officer at Magma ITL Pincorp Finance Ltd. having its Regional Office



... .. Petitioner/s

Versus

1. Manauvar Raja, S/o Md. Jafar, Resident of Village - Jhaulia, P.O. Jhapaha, P.S. - Ahiayapur, District Muzaffarpur 843109
2. Virendra Kumar (Guarantor), S/o Yugal Kishor Ray, Resident of Village- Raudhan, P.O. Adigopalpur, P.S. - Boachaha, District Muzaffarpur 843109

... .. Respondent/s

with

CIVIL REVISION No. 291 of 2016

Magma Fincorp Ltd. a Public Limited Company incorporated under the Companies Act, 1956 and having its Registered Office at Magma House 24 Park Street Kolkata, PIN 843109 through its lawful Attorney namely Lav Kush Kumar, Son of Sri Mithlesh Sharma, Resident of Magma Fincorp Ltd. 2nd Floor, Shiv Laxmi Plaza, Near Rajendra Nagar Terminal, Main Road, Kankarbagh, Patna-20, posted as Law Officer at Magma ITL Pincorp Finance Ltd. having its Regional Office

... .. Petitioner/s

Versus

1. Rajiv Kumar, Son of Tapeswar Thakur, Resident of H. No. 97, Village Dumri, P.O. - Dumri, District - Muzaffarpur 844124
2. Bhagwandatt Sah (Guarantor), S/o Ramu Shah, Resident of H. No. 40, Village - Bngara Jagannth, District Muzaffarpur 844124.

... .. Respondent/s

Appearance :

For the Petitioners : Mr. Surender Kishore Thakur, Advocate
(In all the four civil revision applications)

Mr. Brajesh Kumar Singh, Advocate

For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 27-02-2019

Heard learned counsel for the petitioners.

2. Since common question is involved in all the four civil revision applications, hence, they are heard analogous.

3. Civil Revision No. 288 of 2016 has been preferred against order dated 14.09.2016 passed by the learned District Judge, Muzaffarpur in Execution Case No. 54 of 2016 filed under



Section 36 of the Arbitration and Conciliation Act, 1996 (in short the “Act”) to execute the award dated 27.10.2015 made in Arbitration Case No. 142768 by the sole Arbitrator at Kolkata.

4. Civil Revision No. 293 of 2016 has been filed against order dated 14.09.2016 passed by the learned District Judge, Muzaffarpur in Execution Case No. 51 of 2016 brought under Section 36 of the Act for execution of the award dated 13.01.2016 made in Arbitration Case No. 150593 by the sole Arbitrator at Kolkata.

5. Civil Revision No. 292 of 2016 has been preferred against order dated 14.09.2016 passed by the learned District Judge, Muzaffarpur in Execution Case No. 52 of 2016 filed under Section 36 of the Act for enforcement of award dated 17.12.2015 in Arbitration Case No. 150597 by the sole Arbitrator at Kolkata.

6. Civil Revision No. 291 of 2016 has been preferred against order dated 14.09.2016 passed by the learned District Judge, Muzaffarpur in Execution Case No. 53 of 2016 brought under Section 36 of the Act whereby the learned District Judge, Muzaffarpur has refused to execute the award dated 01.03.2016 made in Arbitration Case No. 42375/154940/2015.

7. All the awards were made against the respective opposite parties of the civil revision applications for payment of



money due. The recovery was to be secured by the sale of movable property mentioned in the schedule to the petition filed before the learned District Judge under Section 36 of the Act. A copy of the same are available on the record as Annexure-2. In some of the cases, the mode of assistance of the Execution Court, is mentioned in the petition itself.

8. All the execution cases have been rejected on common ground that the award was made and signed at Kolkata, subject matter of arbitration was sum of money with interest and not immovable property situated within the local limits of the Court. The properties which are said to be sold situated within the territorial jurisdiction of Hazaribagh Court. Hence, only for the reason that the award debtors are residing within the local limits of the Court, the execution case is not maintainable.

9. Contention of learned counsel for the petitioners is that the learned Execution Court has failed to exercise jurisdiction vested in it and has acted with material irregularity and illegality in dismissing the execution cases without properly considering the provisions of Section 36 of the Act as well as Sections 38 and 39 of the Code of Civil Procedure (in short the “C.P.C.”). The aforesaid provisions are being reproduced below:

“**Section 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 Procedure, 1908 (5 of 1908).”

“**Section 38** of the Code of Civil Procedure provides that a decree may be



executed either by the Court which passed it, or by the Court to which it is sent for execution.”

“**Section 39.** Transfer of decree.-- (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction--

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of



decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.”

10. In view of the statutory provisions above, the award of the Arbitrator is to be executed as a decree of the Court. The provisions of Section 38 of the C.P.C. says that the decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

11. In Sundaram Finance Limited Represented By J. Thilak, Senior Manager (Legal) Versus Abdul Samad And Another reported in **2018(3) SCC 622** wherein the Hon’ble Supreme Court has held in para 20 of the judgment as follows:

“We are, thus, unhesitatingly of the view that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the court, which would jurisdiction over the arbitral proceedings.”

12. Thus, it is evident that there is no need to transfer the decree for execution. The award holder can directly approach the



forum for its execution anywhere in the country where the decree can be executed.

13. Section 39 of the C.P.C. as reproduced above makes it clear regarding the places where the decree can be executed and the Court which cannot execute the decree. As per the provisions of Section 39 of the C.P.C., the decree can be executed where the judgment-debtor actually or voluntarily resides or carries on business.

14. In the cases before this Court, the judgment-debtors are residing within the territorial jurisdiction of Muzaffarpur Court which would be evident from the award of the Arbitrator also as well as the address of the respondents given in the revision application. In none of the execution cases, the petitioners prayed for sale of any immovable property, rather some movable property are to be sold away or other assistance of the Court has been sought for. Moreover, if the prayer would be to sell any immovable property situated beyond the jurisdiction of Execution Court, the Court may direct that execution proceeding be prosecuted before the Court having territorial jurisdiction over the immovable property.

15. Therefore, in my view, the learned District Judge has taken erroneous view of the matter that execution proceeding is



not maintainable at Muzaffarpur for the reason that the award was signed at Kolkata and no immovable property situates within the territorial jurisdiction of the Court. The Court was conscious that the defendants of the execution proceeding were residing within its territorial jurisdiction where execution case is maintainable in view of the provisions of Section 39 of the C.P.C. which is applicable in the matter of execution of the award made under the Act. Therefore, the impugned orders are not sustainable on this score and, accordingly, stand set aside.

16. One more question arises for consideration as to whether a execution proceeding will be maintainable before the principal Civil Court as defined under Section 2(1)(e) of the Act which is the Court of the learned District or before the Execution Court having jurisdiction under Section 38 read with Section 39 of the C.P.C.

17. Learned counsel for the petitioners submits that the petitioners had filed the referred execution cases under Section 36 read with Section 2(e) of the Act. His contention is that execution proceeding is also maintainable before the “Court” defined under Section 2(1)(e) of the Act. Learned counsel has relied upon the judgment of the Hon’ble Supreme Court in the case of **Punjab State Civil Supplies Corporation Limited & Anr. Versus Atwal**



Rice And General Mills represented by its partners reported in **2017(8) SCC 116** for his submission that the Execution Court would be the principal Civil Court of original jurisdiction as defined under Section 2(1)(e) i.e. the Court of the learned District Judge.

18. Though in the aforesaid case before the Hon'ble Supreme Court, the execution proceeding was going on before the learned Additional District Judge, Jalandhar for enforcement of award of the Arbitrator. However, this was not the issue before the Hon'ble Supreme Court whether the award would be executed by the designated Execution Court or by the "Court" defined under Section 2(1)(e) of the Act. In Atwal Rice Mills' case (**supra**), the Execution Court had upheld the objection of the respondent and dismissed the execution case on merit. That was under challenge before the Hon'ble Supreme Court.

19. Now let us examine the statutory provisions for enforcement of the arbitral award. Sub-section (1), (2) and (3) of Section 36 of the Act reads as follows:

"Section 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 Procedure, 1908 (5 of 1908).”

20. A perusal of the aforesaid provisions would make it clear that award is to be enforced in accordance with the provisions of the C.P.C. The word “Court” has not appeared in sub-section (1) of Section 36 of the Act, rather it is there in



Section 34 of the Act which relates to setting aside of the award and in sub-section (2), (3) and proviso to sub-section (3) of Section 36 of the Act above which relates to power of the Court to stay the operation of the award etc. For enforcement of the award provisions of the C.P.C. is to be followed.

21. Thus, in my view, except execution proceeding, other proceedings might be brought before the Court as defined under Section 2(1)(e) of the Act wherever the provision allows filing of such application before the “Court”. A reading of the provisions of Section 38 and 39 of the C.P.C. referred above makes to understand that execution proceeding is maintainable before the Court which passed the decree or where the decree was transferred for execution. There is forum of execution Munsif everywhere in the District Head Quarter for execution of the decree of different Courts on receipt on transfer. Moreover, in the case of **Mrs. Rupa Madhav & Ors. Vs. Sri Sharat Kumar & Ors.** vide Civil Miscellaneous Jurisdiction Case No. 18 of 2017 decided on 17.01.2017 by a Coordinate Bench of this Court, the award holder filed application before the learned District Judge, Patna vide Miscellaneous Case No. 65 of 2016 for execution of the decree. The learned District Judge disposed of the application with liberty to the award holder to file execution proceeding



before the Execution Munsif on the ground that execution of the award is not maintainable before the “Court” defined under the provisions of the Act. The said order was challenged before this Court in the civil miscellaneous jurisdiction case above referred and this Court upheld the order of the learned District Judge considering the provisions of Section 36(1) of the Act.

22. Therefore, in my view, the execution proceeding for execution of the award of the Arbitrator passed under the provisions of the Act shall lie before the Court of Execution Munsif and not the Court defined under Section 2(1)(e) of the Act. The petitioners may bring execution proceeding for execution of the referred award before the Execution Munsif where the award can be executed under Section 39 of the C.P.C. Accordingly, all the four civil revision application stands allowed with the aforesaid observation.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	AFR
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