A.Nos.3335, 3528, 5784 to 5786,
6016, 6017, 6019, 6020 and 6102 of 2019

**PUSHPA SATHYANARAYANA, J.**

These applications are taken out under Section 27(5) of the Arbitration and Conciliation Act, 1996 by the Arbitrators appointed in individual cases as per the respective clause contained in the individual loan agreements entered into between the first respondent / financial institution and the concerned respondent(s)/borrower(s) to decide the dispute between them.

2. In all the cases, the borrower(s) had approached the first respondent for loan facilities for the business development and the first respondent also had provided the loan facilities based on the individual loan agreements entered with the parties. As there were defaults, dispute(s) were raised and the applicants / Arbitrators were appointed. Based on the claim petitions filed before the Tribunal(s) in all these cases, the applications for grant of exparte prohibitory orders prohibiting the Garnishees/respondents from making payment to the borrower(s)/ respondents were sought for. Accordingly, The Tribunal(s) also had passed ex-parte prohibitory orders directing the Garnishees to remit the amounts, as indicated in individual cases and deposit to the credit of the concerned Arbitration Claim Petition before the Arbitral

Tribunals. In none of the matters, the Garnishees had complied with the directions of the Tribunal. As there were flagrant violations of the ex-parte prohibitory orders, despite service of notice on them, the contempt notices were issued calling upon them to comply with the directions. Despite service of the contempt of notice also, the respondents/Garnishees had not complied with the orders of the Arbitral Tribunals. Therefore, these applications are filed under Section 27(5) of the Arbitration and Conciliation Act, 1996 (in short, "the Act") by the Arbitrators appointed seeking directions from this Court to punish the Garnishee respondents for having committed contempt of the orders passed prohibiting them from releasing the amounts payable to the borrower(s).

3. The question that now arises for consideration is whether the Garnishees can be punished for contempt of Court for their willful disobedience of the orders.

4. Before delving into the said question, it is apt to quote Section 17 and 27(5) of the Act, which are as follows :

> "**17. Interim measures ordered by arbitral tribunal.**—
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> (2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this

section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.

**27. Court assistance in taking evidence.**—

(5) Persons failing to attend in accordance with such process, or making any other fault, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

5. The above issue is no longer a *res integra,* as the Hon'ble Supreme Court has already discussed and decided on this issue.

6. In the decision in **Ashoka v. Hamsul Ishrah Khan, 2017 10 SCC 119**, relied on by the learned counsel for the applicant, the Sole Arbitrator appointed had passed an interim order under Section 17 of the Act on 07.10.2010 that no further flats were to be disposed without the leave of the Arbitral Tribunal. However, on 14.10.2010, the respondent had transferred five such flats. On 22.03.2012, the learned Arbitrator held that the order dated 07.10.2010 was breached by the respondent and passed certain interim directions. Ultimately, on 05.05.2014, the learned Arbitrator referred the above said contempt of

the order dated 07.10.2010 to the High Court to pass necessary orders under Section 27(5) of the Act. After elaborately considering Sections 9, 17 and 27 of the Act and also adverting to the 246th Report of the Law Commission, the Hon'ble Supreme Court had held in paragraph 9 as follows :

> "9. Pursuant to this 246th Report, sub-section (2) to Section 17 was added by the 2015 Amendment Act, so that the cumbersome procedure of an Arbitral Tribunal having to apply every time to the High Court for contempt of its orders would no longer be necessary. Such orders would now be deemed to be orders of the court for all purposes and would be enforced under the Civil Procedure Code, 1908 in the same manner as if they were orders of the court. Thus, we do not find Shri Rana Mukherjee's submission to be of any substance in view of the fact that Section 17(2) was enacted for the purpose of providing a "complete solution" to the problem."

7. Section 17(2) of the Act, which was introduced by the Amendment Act, 2015, provides for necessary remedy against violation or breach of any interim orders passed by the Tribunal. Prior to the said amendment, any person found to be guilty of any contempt of the order passed by the Arbitral Tribunal, would initially apply to the Arbitral Tribunal for punishing contemnor. Thereafter, the Tribunal would refer the same to the Court either under the provisions of the Contempt of Courts Act or under the provision of Order 39, Rule 2 of the Code of

Civil Procedure, (in short "CPC"). Further, as per the recommendations of the 246th Law Commission, Section 17(2) of the Act was added by the Amendment Act, 2015, which reduced the cumbersome procedure of going through the Arbitral Tribunal to reach the High Court for contempt of its orders. Thus, the Hon'ble Supreme Court has also reiterated that the interim prohibitory orders passed by the Tribunal would be deemed to be the orders of the Court for all purposes and they may be enforced under the CPC in the same manner as if they were the orders of the Court.

8. In view of the law laid down by the Hon'ble Supreme Court, it is unnecessary for the applicants to have moved this Court, when the Tribunal itself has been conferred with the power to deal with the contempt.

9. In the above said decision of the Hon'ble Supreme Court, the respondent was injuncted by an order of the Tribunal from selling the flats, whereas, in the instant applications, the contempt has been alleged against the Garnishees/respondents, who had suffered prohibitory orders, most of which, ex-parte. It is to be seen that there is a difference between the principal respondent and the Garnishee

respondent. P.Ramanatha Aiyar's Advanced Law Lexicon, Volume 2, page No.2017, states that Garnishee is a person in whose hands a debt is attached, i.e., who is warned not to pay money which he owes to another person when the latter is indebted to the person warning or giving notice.

10. In all the cases, the order passed by the Arbitral Tribunal, at the instance of the claimants ordering the Garnishees, who owe money to the borrowers to pay the amount. If the said order of the Tribunal or Court is complied with, the Garnishee is discharged. Though the Garnishee order, which is a prohibitory order, is not equivalent to an order of injunction, it is a restraint order. The prohibitory order or a direction to pay money, though not, may be an order of injunction. It amounts to a seizure of money in the hands of the Garnishee, which is payable to the borrower. Any diligent creditor can legally obtain such a prohibitory order in preference over the other unknown creditors. It may also be deemed as an order of Attachment Before Judgment (ABJ). Therefore, in the strict sense, it is not an order of injunction passed under Order 39, Rule 1 of the CPC, the violation of which invites punishment under Order 39, Rule 2A.

11. It is appropriate to quote the judgment of the Apex Court in **Food Corporation of India V. Sukh Deo Prasad, 2009 (5) SCC 665**, wherein, the Hon'ble Apex Court has discussed about the various provisions governing the Garnishee proceedings and how the failure of the same could be dealt with. It is relevant to quote the following paragraphs in this regard :

> "27. The garnishee proceedings are governed by Rules 46 and 46-A to 46-F of Order 21 of the Code. Sub-para (1) of Rule 46-A provides that in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under Rule 46, upon the application of the attaching creditor, the court may issue notice to the garnishee liable to pay such debt, calling upon him either to pay into court the debt due from debtor or to appear and show cause why he should not do so.
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> 28. Rule 46-B provides that where the garnishee does not forthwith pay into court the amount due from him to the debtor and does not appear and show cause in answer to the notice, the court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.
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> 29. Rule 46-C provides that:
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> > "*Trial of disputed questions*.—Where the garnishee disputes liability, the court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:"
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> It would thus be seen that the amount due by a garnishee, if disputed has to be determined as if it was an issue in the suit

and the court can by appropriate order determine the extent of liability of the garnishee.

30. In this case, there was no adjudication of the amount payable by FCI. Whatever amount that was due in pursuance of the order dated 27-5-1996 in regard to one godown taken on lease in June 1994 was deposited by FCI and the plaintiff Bank at whose instance the order was made has no complaint or grievance.

31. At all events, if a garnishee, or a defendant, who is directed to pay any sum of money, does not pay the amount, the remedy is to levy execution and not in an action for contempt or disobedience/breach under Order 39 Rule 2-A. This is evident from Rule 46-B of Order 21 read with Rule 11-A of Order 38 of the Code. Contempt jurisdiction, either under the Contempt of Courts Act, 1971, or under Order 39 Rule 2-A of the Code, is not intended to be used for enforcement of money decrees or directions/orders for payment of money. The process and concept of execution is different from the process and concept of action for disobedience/contempt."

12. From the reading of the above paragraphs it is very clear that the Garnishee orders issued by the Tribunal or by the Court are only for securing the amounts in the hands of the Garnishee payable to the respondent in discharge of the claim. The object behind such order prohibiting the garnishee is only an assurance to the applicants that in the event of award being made, the same would be satisfied. Section 9 of the Arbitration and Conciliation Act, 1996 provides for securing the amount in dispute in the arbitration before, during or after the making

of the arbitral award. Therefore, once the garnishee is prohibited from making any payment, it is deemed to continue till the satisfaction of the award or the garnishee order is vacated. The disobedience of such an order cannot be brought under the contempt jurisdiction and used for enforcement of the award for payment of money.

13. In some of the above matters, the financial institutions have secured awards in their favour, which can only be put in execution and the money be recovered. Before a Garnishee order is passed, the quantum of money is not assessed in the hands of the Garnishee. In most of the cases, it is only based on the claim, such interim prohibitory orders were issued. Even here in some of the cases, the Garnishees have got no connection at all with the claimant ; the Garnishee does not have any money payable as on the date of passing of the order to the borrower. Therefore, these questions have to be examined in an Execution petition and the contempt jurisdiction cannot be used for recovery of money for executing the award. The Garnishee proceedings itself are only for the benefit of the claimant.

PUSHPA SATHYANARAYANA, J.

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14. In view of the foregoing discussion, these applications fail and the same are liable to be dismissed as not maintainable. Accordingly, all these applications shall stand dismissed.

22.11.2019

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A.Nos.3335 of 2019, etc. batch