

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2019

DELIVERED ON : 28.01.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) Nos.4036 & 4044 of 2014
and
CMP.Nos.8072 & 8073 of 2018

1.The Chief Engineer,
Public Works Department,
Water Resources Organisation,
Chennai Region, Chepauk,
Chennai - 5.

2.The Superintending Engineer,
Public Works Department,
Water Resources Organisation,
Project Circle,
Vellore - 632 004.

3.The Executive Engineer,
Public Works Department,
Water Resources Organisation,
Upper Palar Basin Division,
Vellore - 632 004.

... Petitioners in both CRPs.

Vs.

M/s. Prakash Constructions,
Rep. by its Proprietor S.SivaPrakash,
No.343, Basement Floor,
Sampige Plaza, Sampige Road,
Mallaeswaram, Bangalore - 560 003.

... Respondent in both CRPs.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the
Constitution of India against the orders dated 05.03.2013 passed in

E.P.Nos.28 & 27 of 2011 in POCMC.Nos.4 & 2 of 2009 respectively on the file of the IInd Additional District & Sessions Court (Fast Track Court), Ranipet, Vellore District.

For Petitioners in both CRPs. ... Mr.Sri Charan Rangarajan,
Special Government Pleader
(Civil Side)

For Respondent in both CRPs. ... Mr.S.R.Raghunathan

COMMON ORDER

CMP.Nos. 8072 & 8073 of 2018 have been filed by the petitioners to restore the CRPs. which were dismissed for default on 03.02.2017 by this Court. Even though counter affidavits have been filed, the respondent has not raised any serious objection for allowing the applications. This court is also satisfied with the reasons contained in the affidavits and accordingly, CMP.Nos. 8072 & 8073 of 2018 are allowed as prayed for.

सत्यमेव जयते

2. The point for determination in these revisions is whether a party against whom an Arbitral Award has been passed having lost all avenues to challenge the Arbitral Award under the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “ the

Act, 1996) is still empowered to raise objections during execution normally available to a Civil Court decree under the provisions of the Code of Civil Procedure, 1908.

Brief facts leading to the filing of the instant revisions under Article 227 of the Constitution of India:

3. The instant Civil Revision Petitions have been filed challenging the separate orders of attachment dated 05.03.2013 passed in E.P.No.27 of 2011 & E.P.No.28 of 2011 respectively by the learned IInd Additional District and Sessions Court, (Fast Track Court), Ranipet, Vellore District. The two Arbitral Awards passed against the petitioners in favour of the respondent are in POCMC.No.4 of 2009 and POCMC.No.2 of 2009.

4. During the pendency of the Arbitration in respect of two claims, the petitioners challenged the jurisdiction of the Arbitral Tribunal under Section 16 of the Act, 1996 which was rejected by the Arbitral Tribunal on 08.07.2005. Thereafter, the petitioners contested the Arbitration claims made by the respondent on merits and ultimately, the Arbitral Tribunal passed the aforementioned awards in favour of the respondent. The petitioners did not file an application under Section 34 of the Act, 1996 within the stipulated time as prescribed under Section

34 of the Act, 1996. But filed Applications under Section 34 of the Act, 1996 along with the condone delay applications for the delay of 497 days in filing the said applications under Section 34. The learned Principal District Judge, Vellore allowed the condone delay applications filed by the petitioners seeking to condone the delay of 497 days in filing the applications under Section 34 of the Act, 1996 on 01.09.2014 in I.A.No.162 of 2013 in O.P.SR. of 2013 and in I.A.No.163 of 2013 in O.P.SR. of 2013. After the delay was condoned, the O.Ps filed under Section 34 of the Act, 1996 were numbered as O.P.No.1 of 2014 and O.P.No.2 of 2014.

5. Aggrieved by the order dated 01.09.2014 allowing the condone delay applications, the respondent preferred revisions under Article 227 of the Constitution of India before this Court in CRP.Nos.36 and 37 of 2015. This Court by its order dated 19.02.2016 allowed CRP.Nos.36 and 37 of 2015 and consequently O.P.Nos.1 and 2 of 2014 on the file of the learned Principal District Judge, Vellore stood dismissed. The petitioners have also not preferred any appeal under Section 37 of the Act, 1996 against the dismissal of Section 34 Applications filed to challenge the Arbitral Awards. Hence, the Arbitral Awards have now become final insofar as the provisions of the Act, 1996 are concerned.

6. The respondent filed execution petitions to execute the Arbitral Awards in terms of Section 36(1) of the Act, 1996. E.P.No.27 of 2011 was filed to execute the Arbitral Award dated 26.06.2009 passed in POCMC.No.2 of 2009 and E.P.No.28 of 2011 was filed to execute the Arbitral Award dated 26.06.2009 passed in POCMC.No.4 of 2009. In both the execution petitions, the respondent sought for attachment of properties owned by the petitioners. By separate orders dated 05.03.2013, in each of the execution petitions, the learned IInd Additional District and Sessions Court, Fast Track Court, Ranipet, Vellore District passed the ex parte orders of attachment of petition schedule properties as there was no representation on the side of the petitioners/judgment debtors before the execution Court.

7. Aggrieved by the separate orders dated 05.03.2013 passed in E.P.Nos.27 & 28 of 2011 by the learned IInd Additional District and Sessions Court, (Fast Track Court) Ranipet, Vellore District, the instant revisions have been filed under Article 227 of the Constitution of India by the petitioners/judgment debtors in E.P.Nos.27 & 28 of 2011.

SUBMISSIONS OF THE LEARNED COUNSELS:

8. Heard, Mr.Sri Charan Rangarajan, learned Special Government Pleader (Civil Side) appearing for the petitioners and Mr.S.R.Raghunathan learned counsel for the respondent.

9. According to the learned Special Government Pleader, both the Arbitral Awards passed in favour of the respondent against the petitioners are a nullity, since the Sole Arbitrator unilaterally appointed by the respondent vide a letter dated 31.10.2003 does not have jurisdiction to decide the dispute. According to him, since the Arbitral Awards are a nullity, the attachments passed by the Executing Court will have to be set aside.

10. According to the learned Special Government Pleader, under Section 36 of the Act, 1996, the Award is enforced in accordance with the provisions of the Code of Civil Procedure, 1908 in a same manner as if it were a decree of the Court. Therefore according to him, the provisions of the Code of Civil Procedure applicable to execution of Civil Court decree is also applicable to execution of Arbitral Award.

11. The learned Special Government Pleader would further contend that when an arbitral award becomes executable as a decree of the court, the Executing Court has the obligation to determine the

questions arising between the parties in relation to the execution, discharge or satisfaction of the decree under Section 47 of the Code of Civil Procedure, 1908. Thus according to him, the objection on the ground of lack of jurisdiction can be entertained even in the execution proceedings and the Executing Court has the duty to determine the question of jurisdiction which according to him goes to the root of the validity and executability of the Awards.

12. The learned Special Government Pleader cited the following authorities:

(a) *Srikumar Textiles (P) Ltd., v. Sundaram Finance Ltd.*, reported in *2008 (3) Raj 658 (Mad)*;

(b) *Kiran Singh & Others v. Chaman Paswan & Others* reported in *AIR 1954 SC 340*;

(c) *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and Others* reported in *AIR 1970 SC 1475*;

(d) *Union of India v. Jagat Ram Trehan & Sons* reported in *AIR 1996 Delhi 191*;

(e) *Sunder Dass v. Ram Prakash* reported in *(1977) 2 SCC 622*;

(f) *Prabartak Commercial Corporation Ltd. v. Chief Administrator, Dandakaranya Project*, reported in *(1991) 1 SCC 498*;

(g) *Saraswat Trading Agency v. Union of India*, reported in AIR 2004 Cal 267;

(h) *Bijendra Kumar v. Pradeep Kumar*, MANU/DE/4013/2014;

(i) *Khanna Traders v. Scholars Publishing House P. Ltd.* reported in 241 (2017) DLT 145;

(j) *Saraswat Trading Agency v. Union of India* reported in AIR 2004 Cal 267;

(k) *Dharma Prathishthanam v. Madhok Constructions Pt. Ltd.*, reported in AIR 2005 SC 214;

13. Per contra learned counsel for the respondent would submit that the Arbitral awards passed in favour of the respondent against the petitioners has attained finality. He submitted that the issues raised in the Arbitration proceedings by the petitioners were rejected and two separate Arbitral Awards both dated 26.06.2009 were passed in favour of the respondent. He further submitted that the petitioners challenged the Awards under Section 34 of the Act, 1996 which were dismissed by virtue of the order dated 19.02.2016 passed by this Court in CRP.Nos.36 & 37 of 2015 and no further appeal was preferred by the petitioners and hence, the Arbitral Awards have attained finality.

14. The learned counsel for the respondent further submitted that the grounds raised in the revision petitions is different from the grounds raised by the learned Special Government Pleader while submitting his oral submissions before this Court and it was further contended by the learned counsel that the issue of jurisdiction was raised and rejected by the Arbitral Tribunal under Section 16 of the Act, 1996. He would further submit that under Section 16(6) of the Act, 1996, when the preliminary issue of jurisdiction was raised and rejected, the Arbitral Awards can be challenged only under Section 34 of the Act, 1996, but in the instant case, according to him, the petitions under Section 34 of the Act, 1996 having been rejected, it is not now open to the petitioners to re-agitate the same during execution under Section 47 of the Code of Civil Procedure, 1908.

15. According to the learned counsel for the respondent, Section 47 of the Code of Civil Procedure is inapplicable for an Arbitral Award and does not entitle a party having lost on the issue of jurisdiction before the Arbitration as well as in a petition filed under Section 34 of the Act, 1996 to re-agitate the jurisdiction issue during execution and it amounts

to an estoppel of record. For this proposition, he relied upon the following authorities:

(a) *Krishna Kumar Mundra v. Narendra Kumar Anchalia* reported in **2003 SCC Online Cal 381**

(b) *M/s. Fingertips Solutions Pvt. Ltd., v. Dhanashree Electronics Ltd.*, reported in **2016 SCC Online Cal 681**

16. The learned counsel for the respondent further contended that a decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof. According to him, only in cases where a decree is void abinitio and is a nullity, the Executing Court can allow objections to the executability of the decree under Section 47 of the Code of Civil Procedure. For this proposition, he relied upon the decision of the Hon'ble Supreme Court in the case of *Brakewel Automotive Components (India) Private Limited v. P.R.Selvam Alagappan* reported in **(2017) 5 SCC 371**. Further according to him, the Judgment cited supra is also not applicable for an Arbitral Award and applies only to a Civil

Court decree.

17. The learned counsel for the respondent also relied upon the decision of the Hon'ble Supreme Court in the case of ***Jaya Chandra Mohapatra v. Land Acquisition Officer, Rayagada*** reported in **(2005) 9 SCC 123** for the proposition that when an order has reached finality, the Executing Court cannot permit any party to re agitate the same issue under Section 47 of the Code of Civil Procedure. According to him, as held by the Hon'ble Supreme Court, the principle of estoppel by records shall come into play.

18. The learned counsel for the respondent also relied upon the decision of the Hon'ble Supreme Court in the case of ***Sundaram Finance Limited v. Abdul Samad and Another*** reported in **(2018) 3 SCC 622** for the proposition that an Arbitral Award under Section 36 of the Act, 1996 is equated to a decree of the Court only for the purpose of execution and it cannot be held that the Court within whose jurisdiction the Arbitral Award has passed should be taken to be the Court, which passed the decree.

19. The learned counsel for the respondent also relied upon the decision of the Hon'ble Supreme Court in the case of ***Lion Engineering Consultants v. State of M.P.*** reported in ***2018 SCC Online SC 327*** for the proposition that all objections to jurisdiction of whatever nature must be taken at the stage of the submission of the statement of defence and must be dealt with under Section 16 of the Act, 1996. However, if one of the parties seeks to contend that the subject matter of the dispute cannot be dealt with by arbitration, it will have to be dealt with under Section 34 of the Act, 1996 by the Court. According to the learned counsel for the respondent, since the petitioner has already raised the question of jurisdiction before the Arbitral Tribunal under Section 16 of the Act, 1996 and has also challenged the findings of the Arbitrator regarding jurisdiction and other aspects under Section 34 of the Act, 1996 which has also been dismissed by virtue of the order passed by this Court in CRP.Nos. 36 & 37 of 2015, the awards having attained finality and binding on the petitioners, there is no question of raising the same defence in the execution petition.

20. The learned counsel for the respondent also relied upon a single Bench judgment of Calcutta High Court in the case of ***Krishna Kumar Mundhra vs. Narendra Kumar Anchalia*** reported in ***(2004) 2 Arb LR 469*** and submitted that the petitioners are debarred in law to challenge the validity or legality of the awards at the execution stage as their attempt to question the jurisdiction of the arbitral tribunal under section 16 of the Act, 1996 was rejected by the arbitral tribunal and the arbitral awards also attained finality. Further, learned counsel would contend that for the frivolous revisions filed before this Court seeking to stall the validly initiated execution proceedings, the petitioners are liable to pay costs to the respondent as held by the Calcutta High Court judgment referred to supra.

21. The learned counsel for the respondent finally contended that the Act, 1996 is a special law providing a separate procedure for challenging Arbitral Awards. According to him, being a special law, it overrides the general laws like that of the Code of Civil Procedure, 1908, if the special law provides for a mechanism to challenge the Arbitral Awards.

DISCUSSION:

22. The issues for consideration by this Court are as follows:

(a) Whether the question of jurisdiction of the Arbitral Tribunal can be raised during the execution after the Arbitral Awards have attained finality ?

(b) Whether the Arbitral Awards can be equated to a decree passed by a Civil Court and whether all objections available to a judgment debtor of a Civil Court decree are also available to the judgment debtor under an Arbitral Award ?

(c) Whether during execution of an Arbitral Award after having challenged the jurisdiction of the arbitral tribunal under section 16 of the Act, 1996 and after the awards have attained finality, the provisions of Section 47 of the Code of Civil Procedure are applicable ?

23. The object for the legislation of the Act, 1996 is for the speedy dispensation of justice. It was modelled on the lines of the widely adopted UNCITRAL model law on International Commercial Arbitration and was designed on four core principles which were (a) to minimise the supervisory role of the courts (b) narrow the basis on which awards could be challenged (c) ensure the finality of Arbitral Awards and (d) expedite

the arbitration process.

24. The Act, 1996 is a self-contained code and is a special law on matters pertaining to arbitration. It is settled law as laid down by various decisions of the Hon'ble Supreme Court that when the special law sets out a self-contained code, the applicability of the general law would be impliedly excluded. In the instant case, the Arbitral Awards having attained finality under the provisions of the Act, 1996, the petitioners who have raised the issue of jurisdiction of the Arbitrator under Section 16 of the Act, 1996 in the arbitration which was also rejected by the Arbitrator, are once again in these revisions under Article 227 of the Constitution of India have attempted to raise objections in the execution petitions on the Arbitral Tribunal's jurisdiction.

25. Section 5 of the Act, 1996 which commences with a non obstante clause clearly stipulates that no judicial authority shall interfere except where so provided in part I of the Act, 1996. In comparison to Arbitration Act, 1940 (The Old Act), the legislature has intentionally not kept any provision pertaining to the applicability of the Code of Civil Procedure, under the Act, 1996. Ever since the inception of

the Act, 1996, the Hon'ble Supreme Court right from the decision in the case of *Sundaram Finance Limited vs. NEPC India Ltd.*, reported in *(1999) 2 SCC 479*, has held that the Act, 1996 is very different from the Arbitration Act, 1940 and provisions of the Act, 1996 will have to be interpreted and construed independently and in fact, reference to the Arbitration Act, 1940 may actually lead to misconstruction.

26. In the instant case, during the pendency of the Arbitrations, the petitioners filed applications under Section 16 of the Act, 1996 questioning the jurisdiction of the Arbitrator to decide the dispute. The said applications were rejected by the Arbitrator in both the Arbitration cases on 08.07.2005. Thereafter, the petitioners contested the respective claims on merits before the Arbitrator. Subsequently, two separate Arbitral Awards both dated 26.06.2009 came to be passed against the petitioners in favour of the respondent.

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27. It is an admitted fact that the petitioners did not challenge the Arbitral Awards under Section 34 of the Act, 1996 within the stipulated time prescribed under Section 34(3) of the Act, 1996. Instead they filed

applications to condone the delay of 497 days in filing an application to set aside the Arbitral Awards. The condone delay applications were allowed by the learned Principal District Judge, Vellore and Section 34 applications filed by the petitioners were numbered as O.P.No.1 of 2014 and O.P.No.2 of 2014 respectively.

28. Aggrieved by the allowing of the condone delay applications, the respondent preferred revisions under Article 227 of the Constitution of India before this Court in CRP.Nos.36 and 37 of 2015 on the ground that there cannot be any extension of time beyond the period stipulated under Section 34(3) of the Act, 1996 and its proviso. CRP.Nos.36 and 37 of 2015 were allowed by this Court and by virtue of the said order, Section 34 applications namely O.P.No.1 of 2014 and O.P.No.2 of 2014 stood automatically dismissed. Against the dismissal of Section 34 applications, no appeals have been filed under Section 37 of the Act, 1996 by the petitioners and the Arbitral Awards passed against them have become final insofar as the provisions of the Act, 1996 are concerned.

29. After the Arbitral Awards attained finality, the respondent filed execution petitions namely E.P.Nos.28 & 27 of 2011 before the learned

IInd Additional District and Sessions Court, Fast Track Court, Ranipet, Vellore District Court to enforce the respective Arbitral Awards against the petitioners in accordance with Section 36(1) of the Act, 1996. By separate orders dated 05.03.2013 in each of the execution petitions, the learned IInd Additional District and Sessions Court, Fast Track Court, Ranipet, Vellore District passed the ex parte orders of attachment of the petition schedule properties as there was no representation on the side of the petitioners before the Executing Court. Aggrieved by the order dated 05.03.2013 passed in E.P.Nos.28 & 27 of 2011, the judgment debtors have preferred these revisions under Article 227 of the Constitution of India.

30. Even though the grounds of challenge to the impugned order raised in these revision petitions are different from the oral submissions made by the learned Special Government Pleader in which he has raised new grounds, this Court will be dealing with all the issues raised by the petitioners as this Court is now dealing with revisions filed under Article 227 of the Constitution of India and the plea raised by the petitioners is a legal plea.

31. The Hon'ble Supreme Court has held in the case of ***Fuerst Day Lawson Limited vs. Jindal Exports Limited*** reported in **2011 (8) SCC 333** that only such Acts as are mentioned in Act, 1996 are permissible to be done and acts or things not mentioned therein are not permissible to be done. The relevant paragraph of the said judgment is extracted hereunder:

“89. It is, thus, to be seen that Arbitration Act, 1940, from its inception and right through to 2004 (in P.S. Sathappan v. Andhra Bank Ltd., (2004) 11 SCC 672) was held to be a self-contained code. Now, if the Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the UNCITRAL Model must be held only to be more so. Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carries with it “a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done”. In other words, a letters patent appeal would be excluded by the application of one of the general principles that where the

special Act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded.”

It is clear from the above judgment that the Act, 1996 excludes the petitioners against whom arbitral awards have been passed from raising objections during execution normally available to a judgment debtor of a Civil Court decree.

32. The Hon'ble Supreme Court in the case of ***Sundaram Finance Limited and Another v. T.Thankam*** reported in (2015) 14 SCC 444 has held when there is ouster of jurisdiction of the Civil Courts in terms of the procedure under the special statute, the general law should yield to the special law. The Hon'ble Supreme Court has held as follows:

“ Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law - generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches

would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court.”

33. The Hon'ble Supreme Court in the case of ***Sundaram Finance Limited v. Abdul Samad and Another*** reported in **(2018) 3 SCC 622** has held that an arbitral award under Section 36 of the Act, 1996 is equated to a decree of the court only for the purpose of execution and it cannot be equated to a court decree. The relevant paragraph of the said judgment is extracted hereunder:

“ 19. *The Madras High Court in Kotak Mahindra Bank Ltd. v. Sivakama Sundari, 2011 SCC OnLine Mad 1290 referred to Section 46 of the said Code, which spoke of precepts but stopped at that. In the context of the Code, thus, the view adopted is that the decree of a civil court is liable to be executed primarily by the court, which passes the decree where an execution application has to be filed at the first instance. An award under Section 36 of the said Act, is equated to a decree of the court for the purposes of execution and only for that purpose. Thus, it was rightly observed that while an award passed by the Arbitral Tribunal is deemed to be a decree under Section 36 of the said*

Act, there was 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. The said Act actually transcends all territorial barriers.”

34. The Hon'ble Supreme Court has also held in the case of ***Paramjeet Singh Patheja v. ICDS Limited*** reported in (2006) 13 SCC 322 that an arbitral award does not satisfy any of the requirements of a court decree and the words “ as if it is a decree” found in Section 36 of the Act, 1996 is only for the limited purpose of enforcement as a decree. The relevant portions of the said judgment are extracted hereunder:

“ 42. The words “ as if” demonstrate that award and decree or order are two different things. The legal fiction created is for the limited purpose of enforcement as a decree. The fiction is not intended to make it a decree for all purposes under all statutes, whether State or Central.

.....
 43. (iv) An arbitration award is neither a decree nor an order for payment within the meaning of Section 9(2). The expression “decree” in the Court Fees Act, 1870 is liable to be construed with reference to its definition in CPC and hold that

there are essential conditions for a “decree”:

(a) that the adjudication must be given in a suit,

(b) that the suit must start with a plaint and culminate in a decree, and

(c) that the adjudication must be formal and final and must be given by a civil or Revenue Court.

An award does not satisfy any of the requirement of a decree. It is not rendered in a suit nor is an arbitral proceeding commenced by the institution of a plaint.”

35. A learned Single Judge of this Court has also followed the Judgment of **Paramjeet Singh Patheja** referred to supra in the case of **Hindustan life care v. N.Ramesh** reported in **2008 (5) CTC 481** and held that the arbitrator is not a court and cannot exercise all the powers vested with the civil courts. The relevant portion of the said judgment is extracted hereunder:

“ The fact that arbitration is like a Civil Court proceedings, does not mean that an Arbitrator, for all practical purposes, sits as a Civil Court to try the Suit. Even as a matter of speaking that an arbitration

proceedings can be guided by the Rules of evidence or procedure under The Civil Procedure Code, it does not mean that the Arbitrator sits as a Court to decide the dispute. It must be kept in mind that arbitration is a chosen forum of the partners in terms of the contract; whereas, the Court is not a forum chosen by the parties as matter of contract, even though the jurisdiction or the place of filing the Suit may be a matter of contract.”

36. In the light of the above referred judgments of the Hon'ble Supreme Court, an arbitral award cannot be equated to a civil court decree, even though Section 36(i) of the Act, 1996 says that the arbitral award shall be enforced as if it is a decree. The said connotation under Section 36(i) is only for the purpose of execution and not for other purposes. It is also settled law as held by the Hon'ble Supreme Court in the case of **Paramjeet Singh Patheja** reported in **(2006) 13 SCC 322** referred to supra that a provision of law must be construed in a manner which would give effect to its purpose and to cure the mischief in the light of which it was enacted. The Act, 1996 being a special law and a self-contained code was enacted only for speedy dispensation of justice. Therefore, if all the remedies available to a judgment debtor of a civil court decree are to be made available to a judgment debtor under an

arbitral award, the very object of the special enactment namely the Act, 1996 would be defeated.

37. The learned Special Government Pleader relied upon a decision of a learned Single Judge of the Delhi High court in the case of ***Khanna Traders v. Scholar Publishing House P. Ltd. And Ors*** reported in ***MANU/DE/0862/2017*** and submitted that the question of jurisdiction of the arbitral Tribunal can be raised under Section 47 of the Code of Civil Procedure. The facts of that reported decision and the facts of the case on hand are totally different. In that case, against the judgment debtors who challenged the execution, there was no arbitration reference made by the decree holder as they were not parties to the arbitration agreement. But the Arbitral Tribunal passed an arbitral award against them also along with the judgment debtor who is actually liable and with whom alone there was an arbitration agreement. On the ground that the award is a nullity against the judgment debtors who were not parties to the arbitration agreement, the execution petition was dismissed against them. But in the case on hand, the existence of the arbitration agreement between the parties is not in dispute, but only the jurisdiction of the arbitrator to hear and decide the dispute is challenged. Further, in the case on hand, the petitioners have also raised the jurisdiction issue

under Section 16(1) of the Act, 1996 before the Arbitrator which was also rejected by the Arbitrator on 08.07.2005. Section 16 of the Act, 1996 reads as follows:

“16. Competence of arbitral tribunal to rule on its jurisdictional. -

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose, -

(a) An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or subsection (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.”

38. Since the jurisdiction issue was rejected by the Arbitrator, a party aggrieved by the said rejection under Section 16 of the Act, 1996 will have to wait for the outcome of the award and thereafter, challenge the award under Section 34 of the Act, 1996. In the instant case, the petitioners have also challenged the awards under Section 34 of the Act, 1996 which finally came to be dismissed by Orders of this Court in CRP.Nos.36 & 37 of 2015. No further appeals were preferred against the dismissal of Section 34 applications and the Arbitral Awards attained finality and binding on the petitioners. Therefore, the decision of the learned Single Judge of the Delhi High Court referred to supra are not applicable to the facts of the instant case.

39. The learned counsel also referred to a decision of the Hon'ble Supreme Court in the case of *Lion Engineering Consultants v. State of M.P.* reported in **2018 SCC OnLine SC 327** and submitted that being a legal plea, the petitioner is entitled to raise the plea of jurisdiction of the Arbitral Tribunal even without a formal pleading. The facts of the reported decision referred to supra are different from the facts of the instant case. That was a case where a party who challenged the Arbitral Award under Section 34 of the Act, 1996 wanted to amend its objections after three years which was rejected by the Trial Court and on a petition under Article 227 of the Constitution of India, the High Court allowed the said amendment. The Hon'ble Supreme Court set aside the order of the High Court, as amendment application was not pressed by the party who had filed the application under Section 34 of the Act, 1996. But the facts of the case on hand are different as the petitioners have challenged the jurisdiction of the Arbitral Tribunal during the execution having failed in their attempt before the Arbitrator under Section 16(1) of the Act, 1996 and thereafter the Arbitral Awards also reached finality by virtue of the orders passed by this Court in CRP.Nos.36 & 37 of 2015. Therefore, the judgment relied upon by the learned Special Government Pleader reported in **2018 SCC Online SC 327** referred to supra is not applicable

to the facts of the instant case.

40. The Hon'ble Supreme Court has repeatedly held that the exercise of power under Section 47 of the Code of Civil Procedure for a Civil Court decree is very limited. In the case of ***Brakewel Automotive Components (India) Private Limited v. P.R.Selvam Alagappan*** reported in (2017) 5 SCC 371, the Hon'ble Supreme Court while considering the scope of Section 47 of the Code has held as follows:

“21. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.

....

23. It was reiterated that the exercise of power under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity,....”

41. The Hon'ble Supreme Court in the case of ***Jaya Chandra Mohapatra v. Land Acquisition Officer, Rayagada*** reported in (2005) 9 SCC 123 has held as follows:

“12. ... The executing court keeping in view its limited jurisdiction could not have gone into the question as to whether the Reference Court was correct in passing the order dated 8-10-1996 amending the decree or not. If the State was aggrieved by and dissatisfied therewith, it could have taken the matter by filing an appropriate application before the High Court. But keeping in view the fact that the said order was allowed to attain finality, the court could not have permitted the State to reagitate the said question before the executing court by filing an application under Section 47 of the Code of Civil Procedure or otherwise. In a case of this nature, the principle of estoppel by records shall come into play.”

42. Considering the narrow scope of Section 47 of the Code of Civil Procedure even for a civil court decree, it would never have been the intention of the legislature to expand the scope for arbitral awards as the main object of arbitration is for speedy dispensation of justice and to minimise the role of courts intervention over arbitral awards.

43. The judgments relied upon by the learned Special Government Pleader in the case of (a) **Kiran Singh & Others v. Chaman Paswan & Others** reported in **AIR 1954 SC 340**; (b) **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and Others** reported in **AIR 1970 SC 1475**; (c) **Sunder Dass v. Ram Prakash** reported in **(1977) 2 SCC 622** all pertain to Civil Court decrees and not arbitral awards passed under a special law namely the Arbitration and Conciliation Act, 1996 which overrides the general law when the special act provides for a challenge procedure.

44. The judgment of the learned Single Judge of this Court relied upon by the learned Special Government Pleader in **Srikumar Textiles (P) Ltd., v. Sundaram Finance Ltd.**, reported in **2008 (3) Raj 658 (Mad)** was not a case of execution of arbitral awards and therefore, the judgment is also not applicable for the facts of the instant case.

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45. The judgment of the learned Single Judge of the Delhi high court in the case of **Bijendra Kumar v. Pradeep Kumar**, reported in **MANU/DE/4013/2014** is also not applicable to the facts of the instant

case. As in that case before the Delhi High Court, the objects and consideration of the contract was per se illegal and void ab initio in terms of sections 23 & 24 of Indian Contract Act, 1972 and consequently the arbitral award was declared to be a nullity. In the instant case, the contract is a valid contract and the petitioners having failed in their attempt to question the jurisdiction of the arbitral tribunal and the arbitral awards having attained finality as per the provisions of the Act, 1996, the single Judge judgment of the Delhi High Court referred to supra is also not applicable.

46. The judgment relied upon by the learned counsel for the petitioners in the case of (a) ***Saraswat Trading Agency v. Union of India*** reported in ***AIR 2004 Cal 267***; (b) ***Dharma Prathishthanam v. Madhok Constructions Pt. Ltd.***, reported in ***AIR 2005 SC 214***; and (c) ***Prabartak Commercial Corporation Ltd. v. Chief Administrator, Dandakaranya Project***, reported in ***(1991) 1 SCC 498*** are all not applicable to the facts of the instant case since those judgments deal with Arbitration Act, 1940 and not the Arbitration and Conciliation Act, 1996. As repeatedly held by the Hon'ble Supreme Court, the Act, 1996 is very different from the Arbitration Act, 1940 and the provisions of the Act, 1996 will have to be interpreted and construed independently and

reference to the Arbitration Act, 1940 may actually lead to misconstruction.

47. In the light of the above observations recorded by this Court, the points for consideration referred to in paragraph No.22 are answered in the following manner:

(a) The question of jurisdiction of the arbitral tribunal cannot be raised during the execution after the arbitral awards have attained finality.

(b) Arbitral award under section 36 of the Act, 1996 is equated to a decree of the Court only for the purpose of execution and it cannot be equated to a Civil Court decree. The objections available to a judgment debtor of a Civil Court decree are not available to the judgment debtor under an arbitral award.

(c) Only in extraordinary cases when the award itself is per se illegal and is a nullity, section 47 of the Code of Civil Procedure may be made applicable to prevent miscarriage of justice. In the instant case, no such inference can ever be imagined as the arbitral awards have attained finality and the jurisdiction issue raised by the petitioners

before the arbitral tribunal was also rejected by the arbitral tribunal. Therefore, during execution of Arbitral Awards after having challenged the jurisdiction of the arbitral tribunal under section 16 of the Act, 1996 and after the awards have attained finality, the provisions of Section 47 of the Code of Civil Procedure are not applicable.

CONCLUSION:

48. In the result, there is no merit in these revisions filed under Article 227 of the Constitution of India and the Civil Revision petitions are dismissed. No costs.

49. This Court was tempted to impose costs but the petitioners being organs of the state and considering the fact that the arbitral awards carries sufficient interest component, this Court desists from awarding costs in these revisions. Before parting with this case, this Court is compelled to make certain observations as the petitioners are an organ of the state. The state is the largest litigant in the Courts involving financial strain on public exchequer. The state is justified in fighting litigations if there is a semblance of merit. But the case on hand which does not have any merit and where financial implications are

involved, it is better for the state to settle the dispute amicably as the arbitral awards have attained finality and the possibility of challenging the awards have become impossible under law. In the instant case, the arbitral awards are money awards and the more it is prolonged, that too, when the awards have attained finality, further delay in complying with the arbitral awards will only cause further financial strain in the public exchequer in the form of payment of additional interest and costs which is not in public interest. Even though, litigation policies were formulated by the state earlier, the effective implementation of those policies will reduce the avoidable financial strain in the public exchequer. This Court fervently hopes that the state formulates an effective litigation policy

ABDUL QUDDHOSE. J.,

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which is properly and effectively implemented in order to avoid unnecessary financial strain to the public exchequer.

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To
The IInd Additional District & Sessions Court (Fast Track Court),
Ranipet, Vellore District

Pre-Delivery order in
CRP (NPD) Nos.4036 & 4044 of 2014



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