

CR No.3961 of 2018(O&M)
Date of Decision: 24.09.2019

.....Petitioners

M/s Trehan Construction Engineer and Government ContractorsRespondents

Mr. Dheeraj Mahajan, Advocate
for the respondents.

[2]. The award was passed by the Arbitrator (Retired District Judge) at Jalandhar for the work of construction of washable apron at platform No.2 along with drain between line Nos.1 and 2 and other ancillary work in replacement of existing

washable apron at Jalandhar City Station. The seat of the Arbitrator was at Jalandhar. Objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') were filed at Jalandhar.

[3]. The execution was filed at Amritsar where the property is situated. Objections were filed by the judgment debtors on the ground that execution under Section 36 of the Act in the Court at Amritsar is not maintainable as the award was passed at Jalandhar and objections under Section 34 of the Act were also filed at Jalandhar.

[4]. In my considered opinion, the controversy is not *res integra* on the strength of ratio laid down in **Sundaram Finance Limited Vs. Abdul Samad and another, 2018(1) RCR (Civil) 994 (SC)**, wherein it has been held that enforcement of award through its execution can be filed anywhere in the country where such decree can be executed and there is no such requirement for obtaining a transfer of decree from the Court which would have jurisdiction over the arbitral proceedings. The Hon'ble Apex Court while answering the question has held that passing of award itself amounts to decree and there is no requirement of making the award Rule of the Court as was required under the old Act. The conflicting views of different Courts were set at naught by holding that an award can be enforced in accordance

with provisions of the Act in the same manner as if it was a decree of the Court as per Section 36 of the Act which does not imply that the award is a decree of a particular Court and it is only a fiction. The award can be executed before the Court where the assets of the judgment debtor are situated/located. Section 42 of the Act is applicable during currency of arbitral proceedings. The jurisdiction under Section 42 of the Act, requiring an application under Section 34 of the Act to be filed in the Court would not extend to the execution of a decree/award under Section 36 of the Act. The execution of an award is not an arbitral proceedings. Section 38 of the Act applies to a 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.

[5]. The view expressed by the Delhi High Court in **Daelim Industrial Co. Ltd. Vs. Numaligarh Refinery Ltd., (2009) 159 DLT 579** was relied by the Punjab and Haryana High Court in **CR No.7592 of 2010** titled **IndusInd Bank Ltd. Bhullar Transporty Company and another** decided on 15.11.2012 and both the judgments were upheld by the Hon'ble Apex Court in **Sundaram Finance Ltd. case (supra)**. Arbitral proceedings are to be terminated by the final arbitral award. When an award is

already made and execution of the same is sought, then it can be seen that the arbitral proceedings have already been terminated on making of the final award, therefore, it cannot be appreciated, how Section 42 of the Act would come into play which purely deals with the issue of jurisdiction in respect of arbitral proceedings. Section 42 of the Act would not apply to an execution petition which is not an arbitral proceedings. Section 38 of the Act would apply in case of a decree passed by the Court, whereas in case of an award, no decree has been passed by any Court.

[6]. For the reasons recorded hereinabove, I unhesitatingly hold that the enforcement of an award through its execution in the Court at Amritsar is a lawful exercise under Section 36 of the Act and there is no requirement of obtaining any transfer of decree from the Court at Jalandhar, where arbitral proceedings were concluded and objections under Section 34 of the Act were filed. The ratios laid down in **BALCO Vs. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552**, **Emkay Global Financial Services Limited Vs. Girdhar Sondhi, (2018) 9 Supreme Court Cases 49** and **Indus Mobile Distribution (P) Ltd. Vs. Datawind Innovations (P) Ltd. and others, (2017) 7 Supreme Court Cases 678** have no application to the facts and circumstances of the present case as the aforesaid cases relate

to the arbitral proceedings.

[7]. For the reasons recorded hereinabove, I find no error of jurisdiction in the impugned order. This revision petition is accordingly dismissed.

24.09.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No