236

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.5722 of 2017 (O&M)
Date of Decision: 15.11.2019

Jogi Ram ......Petitioner

Vs

M/s Indusind Bank Ltd. and another ....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. R.S. Chahal, Advocate
for the petitioner.

Mr. Ashwani Talwar, Advocate
for respondent No.1.

****

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 24.07.2017 passed by the Addl. District Judge, Jind, vide which the objections filed by judgment debtor No.2 were dismissed.

[2]. Perusal of the record would show judgment debtors were proceeded against *ex parte* and arbitration award was passed ex parte on 01.09.2009 by the Arbitrator at Chennai. Petitioner is a guarantor/judgment debtor No.2. Decree holder filed execution under Section 36 of the Arbitration & Conciliation Act (hereinafter to be referred as 'the Act'). Judgment debtors

did not file any petition under Section 34 of the Act.

[3]. Right to file petition under Section 34 of the Act was not availed by the judgment debtors and the arbitration award was not challenged under Section 34(3) of the Act within a period of three months. Filing of application was *sine qua non* for setting aside the arbitral award, as this course was the only course available to a person against the arbitral award. The word 'only' appearing in sub-section(1) of Section 34 of the Act makes it clear that no other procedure is available to the judgment debtor against the arbitral award.

[4]. The award dated 01.09.2009 passed by the Arbitrator has gone unchallenged. No application in terms of Section 34(2) of the Act was ever filed by the judgment debtors in the competent Court, assailing the award. The award having attained finality is binding on the parties. Under Section 36 of the Act, the award is enforceable like a decree under Civil Procedure Code.

[5]. Petitioner being a guarantor has co-extensive joint liability to answer the award. In ***United Bank of India vs. Satyawati Tondon and others, (2010) 8 Supreme Court Cases 110***, the Hon'ble Apex Court by referring to ***SBI vs. Indexport Registered, (1992) 3 SCC 159*** and ***Industrial Investment Bank of India Ltd. vs. Biswanath Jhunjhunwala,***

(2009) 9 SCC 478 has held that the decree holder can execute the decree against the guarantor, even without proceeding against the principal borrower as the liability of the guarantor is co-extensive with principal borrower and the execution of money decree is not dependent upon first applying the execution against the principal borrower. It is a choice of the decree holder to proceed against any of the parties. The liability of the guarantor and the principal borrower is co-extensive and not in alternative. The decree holder has a right to proceed against either for the recovery of dues or realization of the decretal amount.

[6]. In ***Sundaram Finance Limited vs. Abdul Samad & Anr., 2018(1) R.C.R. (Civil) 994***, the Hon'ble Apex Court while interpreting Sections 36, 37, 39 and 42 of the Act has held that enforcement of the award for the execution can be filed anywhere in the country where such decree can be executed and there is no requirement of obtaining transfer of decree from the Court.

[7]. In the light of aforesaid legal position, there is no scope for interference in this revision petition. This revision petition is accordingly dismissed.

November 15, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**
Whether speaking/reasoned Yes/No