

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 16TH DAY OF OCTOBER 2020

THE HON'BLE MS. JUSTICE P.T.ASHA

A.No.5929 OF 2019
IN
E.P.SR.No.57332 of 2019

In the matter of Arbitration and
Conciliation Act, 1996
and
In the matter of Arbitration Award
dated 26.07.2008.

M/S.BALAJI RELATORS
REP.BY ITS PARTNER MR.B.V.V.PRASAD
NO.9 BEEMA SENA GARDEN STREET,
MYLAPORE,
CHENNAI - 600 004.

..Decree Holder/Applicant

-Vs-

MANGALORE REFINERY AND PETROCHEMICALS LTD.
REP.BY ITS MANAGING DIRECTOR
KUTHETHUR P.O.
KATIPALLA VIA
MANGALORE - 575 030.

..Judgment Debtor/Respondent

This application praying that this Hon'ble court be pleased to set
aside the order dated 01/08/2019 passed by the Learned Master in
E.P.D.NO.57332 of 2019 and number the Execution Petition on the

GROUND

A. The order of the Learned Master dated 1.8.2019 made in E.P.Diary No.57332 of 2019 is against the dictum laid down by the Hon'ble Apex Court reported in 2018(3) SCC Page No.622 and equally against Article 141 of the Constitution of India.

b. The Learned Master ought to have seen that the office has raised an objection with respect to the non filing of the award and insisted the transmission order by citing the judgment reported in 2011 (6) CTC page 11. The office of the Registry has miserably failed to tag the first execution petition filed before this Hon'ble Court in E.P.No.692 of 2001 in which the deficit of the stamps in the award has also been remitted by the petitioner and the transmission order is not required in view of the judgment rendered by this Hon'ble Court reported in 2011 (6) CTC Page 11. The Learned Master without considering the scope of maintainability and misconstrued himself that the award is a decree and require transmission and rejected the execution petition as not maintainable is highly erroneous, non application of mind, perverse which warrants interference by this Hon'ble Court.

c. That the Learned Master has wrongly holds that the execution petition in E.P.Diary No.57332 of 2019 is not maintainable by sustaining the objection of the office made in the return dated 26.06.2019 by

completely ignoring the judgment of the Hon'ble Apex Court Reported in 2018 (3) SCC Page 622 is highly perverse, irregular and incompetent.

d. That the order of the Learned Master dated 1.8.2019 is totally against the very object of the Arbitration and Conciliation Act 1996 and also against Section 35 and 36 of the said Act.

e. That the Learned Master has miserably failed to understand the court as defined in Section 2(e) of the Arbitration and Conciliation Act and it cannot be equated with the definition of the court defined under C.P.C. But the Learned Master misconstrued and misinterpreted the definition of the court and came to an erroneous conclusion that the property is situated outside the jurisdiction of court by ignoring Section 42 of the Arbitration and Conciliation Act and rejected the execution petition as not maintainable is totally incorrect and contrary to the settled preposition of law.

f. That the Learned Master misunderstood and misinterpreted Section 42 of the Arbitration and Conciliation Act and treated the award and it has to be executed in accordance with Order 21 Rule 11 of C.P.C. But admittedly the execution petition has been filed under Section 36 of the Arbitration and Conciliation Act before this Court in view of Section 42 of the Arbitration and Conciliation Act. The Learned Master without considering the legal position and the substantial law laid down under the

totally mischievous perverse and illegal warrant interference by this Hon'ble Court.

g. That the Learned Master is not in correct in holding that the applicant has to file the execution petition other than this Hon'ble Court i.e. Where the property situated is contrary to Section 36 and 42 of the Arbitration and Conciliation Act.

h. The various other reasons assigned by the Learned Master in rejecting the execution petition is not maintainable is equally perverse and unsustainable in the eyes of law.

i. The applicant reserves his right to file additional grounds after the receipt of the copy of the order.

This Application coming on this day before this court for hearing the court made the following order:

The decree holder is the applicant before this Court challenging the dismissal of the execution petition by the learned Master on the ground of maintainability. The brief resume of the facts which has culminated in the filing of this application is narrated herein below.

2. The applicant and the respondent had invoked the arbitration clause in the agreement between themselves and ultimately the dispute was compromised and a compromise award was passed on 26.07.2008. Under the compromise award a sum of Rs.29.28 Lakhs was to be paid by the respondent to the applicant on the applicant executing the sale deeds in respect of the approach road on 15.07.2008. The sale deeds as undertaken was executed by the applicant. However the agreed sum of Rs.29.28 lakhs was not paid to the applicant.

3. The applicant had therefore filed E.P.No.692 of 2009 for issue of precept under Section 46 of the Code of Civil Procedure in respect of two bank accounts. Originally, the said application was not numbered and after the same was posted for maintainability, the learned Master had directed the Execution Petition to be numbered. The learned Master had passed the order granting the precept. The respondent had challenged the said order by filing the application Nos.4343 and 4344 of 2009 on the file of this Court. By order dated 14.09.2010 these applications were dismissed.

4. Thereafter, the applicant has come forward with the present Execution Petition which is the subject matter of this application. The Execution Petition was filed in E.P.Sr.No.57332 of 2019. The Registry had raised an issue about the maintainability of the Execution Petition since the execution was filed for attachment of the immovable property situate outside the Jurisdiction of this Court. The Registry had also stated that the award could be executed directly in the Court within whose jurisdiction the immovable property was situate and therefore the petitioner may elaborate as to how the execution petition was maintainable. The applicant had represented the same with the following endorsement:

“The original award passed by the Sole Arbitrator was already filed before this Hon’ble Court in E.P.692/2009 which was closed on 22.12.2014. In view of the judgment rendered by the Hon’ble High Court reported in 2011 (6) CTC Page 11 the provision of Section 38 and Order XXI Rule 5, 6 and 10 of C.P.C. cannot be applied to the Arbitral Tribunal and the Award passed by the Arbitral Tribunal is deemed to be decree of Civil Court under Section 35 of the Arbitration Act which was confirmed by the Supreme Court in 2018 (3) SCC page 622. The office misinterpret the said judgment and returned the Execution

transmission has been obtained from any court. The demand of office contrary to the judgment of the Apex Court. E.P. is very well maintainable. Still office is not satisfied with this explanation it may be posted before the learned Master for maintainability.”

5. The matter was thereafter posted before the learned Master. The learned Master by order dated 01.08.2019 rejected the said application. The learned Master has stated that the object of precept under Section 46 of the Code of Civil Procedure Code is only to obtain an interim attachment when the Court is of the view that the decree holder would be deprived of his enjoying the fruits of the decree by reason of delay in filing the execution proceedings. Further, the precept would be in force for a period of two months. In the case on hand the award has been passed as early as in the year 2008 therefore the learned Master observed that there is no urgency in the matter.

6. The learned Master had also observed that since there was no necessity for seeking a transmission of the award to the Executing Court within whose jurisdiction the property is situate, there was no explanation as to why the decree holder was reluctant to file execution

petition before the Sub Court Ponneri. Therefore, the learned Master had refused to number the execution petition. It is this order that now the subject matter of challenge before this Court in the instant application.

7. The main ground on which the application has been filed is on the ground that the order of the learned Master is against the dicta laid down in the Judgement reported in *2018 (3) SCC 622*. The application also challenges the order of the Registry raising objections regarding the non filing of the award and insisting on the transmission order. The applicant has also raised the ground that the learned Master by misconstruing the decree has wrongly ordered its transmission and consequently rejected the execution petition as not maintainable.

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8. The learned counsel appearing on behalf of the applicant would lay stress on the fact that an earlier execution petition in E.P.No.692 of 2009 had been entertained by this Court and further

Section 42 of the Arbitration and Conciliation Act has clearly held that the Court to which any application under this part had been first filed

would alone be the Court to which all subsequent applications has to be moved and in this application since the original Execution Petition was filed before this Court the learned Master has erred in rejecting the application.

9. The learned counsel for the respondent would submit that they have not questioned the Jurisdiction of this Court to entertain application. However, the present execution petition is filed for attaching immovable property which does not come within the jurisdiction of this Court.

10. Heard the counsels and perused the records.

11. The application which has now been filed in respect of the impugned order in Execution Petition which is filed for the following relief:

“to pass of attachment of immovable properties sin the hands of judgement debtor namely Mangalore Refinery and Petrochemicals Ltd (MRPL) Post Kuthethur via Katipulla Moodapduavu. Mangalore 575030 which is morefully described in the schedule under Order 21 Rule 54 and rule 64 of CPC

and read with Sec.46 of CPC by issue precept through Hon'ble Subordinate Judge at Ponneri, Thiruvallure District."

12. Section 46 of the Code deals with precepts. Section 46 would read as follows:

"(1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an Order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an Order for the sale of such property."

13. A reading of Section 46 of the Code would make it clear

that the said attachment order was only in the form of interim

arrangement before the decree holder takes out an execution petition in its usual form. From the records it is seen that earlier the decree holder had obtained a precept with reference to the bank accounts of the respondent / Judgement debtor to the tune of Rs.30,00,000/-. There is nothing to show as to whether the applicant had thereafter filed necessary application for attaching the sums from the said banks both of which were situate in Mangalore. In fact in the earlier order passed in E.P.No.692 of 2009, the learned Master while allowing the said application had observed as follows:

“So E.P.No.692/2009 is filed for issue of precept and the precept was issued thereby moneys of the applicant has been attached as stated above. Then the decree holder has to move the executing Court which 13 having jurisdiction by filing necessary execution petition to realise the decree amount after the decree being transmitted to that Court within the period fixed by the Act to execute the decree.”

14. Therefore, even in the earlier order it was made clear that attachment has to effect only before the Court within whose Jurisdiction the Garnishee was situate. However, in that earlier Execution Petition, the award was directed to be transmitted. There is

nothing to show whether the applicant had followed up this order and obtained necessary orders before the Court at Mangalore.

15. Be that as it may, the present application is filed for attaching the property which is situate outside the jurisdiction of this Court. As rightly observed by the learned Master since the award cannot be equated to a decree, the decree holder can straight way file an Execution Petition before the jurisdiction Court, namely, the Sub Court, Ponneri.

16. In fact, the applicant has misconstrued the order passed by the learned Master. The learned Master has stated that the transmission of the decree was not required and he has not stated that the award has to be transmitted. Even in the Judgement reported in **(2018) 3 SCC 622**, the Honourable Supreme Court relying heavily on the Judgement of this Court reported in **2011 SCC Online Mad 1290** has stated that Section 42 of the Arbitration Act is available only till the arbitration proceedings were pending whereas once the arbitral proceedings stands terminated, Section 42 of the Arbitration and Conciliation Act would have no relevance. The learned Judges had relied on Section 32 of the

Arbitration and Conciliation Act, to fortify their observation. The learned Judges after extracting the provisions of Section 32 of the Arbitration and Conciliation Act has observed as follows:

“The Madras High Court in [Kotak Mahindra Bank Ltd. v. Sivakama Sundari](#) 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”

17. In the light of such categorical pronouncements, I do not find any error in the order passed by the learned Master. The application stands dismissed. Consequently, connected Stay petition is also closed.

Sd/-P.T.A.J.
16.10.2020

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After pronouncing of the orders, the learned counsel for the applicant would submit that this being the last E.P. directions may be given to the Registry to return the original Award to enable him to present the same before the jurisdictional Court.

Registry is directed to return the said Original Award to the learned counsel for the applicant. It is also made clear that the time taken for prosecuting the proceedings E.P.(SR).No.57332 of 2019 before this Court shall stand excluded.

Sd/-P.T.A.J.
16.10.2020

//Certified to be a true copy//

Dated this the day of 2020.

S.U./03.11.2020

COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.