

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 22 of 2019

1. Premlal Khande, S/o. Mr. Bhukhan Lal, aged about 56 years, R/o. Near Medical College Katghora, P. S. and Tahsil Katghora, District Korba, Chhattisgarh.
2. Satish Kumar Khande, S/o. Mr. Bhukhan Lal, aged about 54 years, R/o. Near Medical College Katghora P.S. and Tahsil Katghora, District Korba, Chhattisgarh.

---- Petitioners

Versus

Ashok Leyland Finance, presently operating as IndusInd, Bank Branch Office Transport Nagar, P. S. Korba, District Korba, Chhattisgarh.

---- Respondent

For Petitioners	: Mr. Mukesh Sharma, Advocate
For Respondent	: Mr. Chetan Singh Chauhan, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

19/07/2021

1. The present petition under Article 227 of the Constitution of India has been brought seeking relief for setting-aside the order dated 03.11.2018, passed by the District Judge, Korba, in Execution Case No. 6/2011 and for issuance of direction to set-off the claims of the petitioner No.1 in another pending execution proceeding.
2. Facts of the case in brief are these that the respondent is a financial company. The petitioner No.1 has borrowed from the respondent for purchase of a vehicle vide agreement No.PB001613H and the petitioner No.2 is the guarantor. The vehicle purchased by the petitioner No.1 was stolen. Later on after

its recovery, the same has been obtained on supurdnama by the petitioner No.1. Respondent then took over the possession of the vehicle from the petitioner No.1 on 19.04.2006 and sold the same without notice to the petitioners. Subsequent to which, the complaint has been filed by the petitioners, before the District Consumer Dispute Redressal Forum, Korba. The respondent then initiated an arbitration proceeding concealing the fact of the pendency of the proceeding before, the District Consumer Dispute Redressal Forum, Korba. Arbitration proceeding has been concluded ex-parte vide award dated 22.07.2008. The respondent has filed an application under Section 36 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act, 1996") for execution of award dated 22.07.2008.

3. Complaint case filed by the petitioner, Case No. C.C./49/2006 was dismissed by the District Consumer Dispute Redressal Forum, Korba by order dated 04.03.2014. This order was challenged by the petitioners, before the State Consumer Dispute Redressal Commission, Raipur in F.A./14/227, which has been decided vide order dated 25.07.2015 by allowing the appeal and directing the respondent to make payment of damages and compensation.
4. Respondent then has preferred a revision petition, before the National Consumer Dispute Redressal Commission, New Delhi, which was registered as Revision Petition No. 3209 of 2015, which is pending. There is direction of the National Consumer Dispute Redressal Commission, to deposit the entire amount of award, which has to be kept in fixed deposit in any Nationalized Bank till the disposal of the revision petition. The petitioners have also filed

a petition for setting-aside the arbitration award and they filed an application under Section 36 (2) of the Act, 1996 praying for order of stay of the arbitral award on which, the learned District Judge has passed the impugned order.

5. It is submitted by the learned counsel for the petitioners that there are two awards present for execution. The application filed for setting-aside the arbitration award, against the petitioners, is pending, therefore, the stay order in the execution proceeding on the arbitration award should have been granted by the trial Court. Further the State Consumer Dispute Redressal Commission, Raipur, has granted damages and compensation in favour of the petitioners, which is kept in fixed deposit by the order of the National Consumer Dispute Redressal Commission, the same may be adjusted in the execution of the award against the petitioners. Hence, the prayer has been made for passing of appropriate orders.
6. Learned counsel for the respondent opposes the petition and the submissions made in this respect. It is submitted that the arbitral award in favour of the respondent is dated 22.07.2008 and the execution proceeding on this award is pending since 17.02.2011. The petitioners have filed the application under Section 34 of the Act, 1996, after about five years from the date they appeared in the execution proceeding, which is registered as MJC No.112 of 2018, hence, the application under Section 34 of the Act, 1996 is clearly time barred. Provisions under Section 36 (2) of the Act, 1996 clearly provides that filing of an application under Section 34 of the Act, 1996 by itself would not render that award

unenforceable, unless, the Court grants an order of stay of the operation of the said arbitral award, therefore, the learned execution Court has not committed any error in passing conditional order of stay on the application of the petitioners under Section 36 (2) of the Act, 1996. It is prayed that the petition be dismissed.

7. I have heard the learned counsel for both the parties and perused the documents placed on record.
8. The learned execution Court has passed the conditional impugned order imposing conditions on the petitioners directing them to make a deposit of Rs.2.00 lakhs, subject to which, the execution proceeding shall remain stayed. No time limit has been fixed for making such deposit.
9. The provisions under Section 36 (2) & (3) of the Act, 1996 are relevant, which is quoted as here under :-

“36. Enforcement.—

(1) x x x x x x x

(2) Where an application to set-aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem

fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908)."

10. Subsequent to filing of application under Section 34 of the Act, 1996, the executing Court has power to pass an order of stay subject to the provisions under Sub-section (3) of Section 36 of the Act, 1996 by imposing conditions. The condition imposed by the learned executing Court does not appear to be inappropriate or unreasonable. Although the petitioners have succeeded in parallel proceeding, before the State Consumer Dispute Redressal Commission, but that order is under challenge, before the National Dispute Redressal Commission, hence, i.e. is not finalized unless that order is finalized, the prayer for set-off by the petitioners can not be taken into consideration. The petitioners have sought interim relief in the execution proceeding and the same has been granted in their favour by imposition of a condition, which appears to be in accordance with the provisions of law, therefore, I do not find any need to interfere in the impugned order.
11. In view of the forgoing discussion made here-in-above, the present petition is without any substance, which is dismissed at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge