

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 129 of 2020

Order Reserved on : 15/01/2021

Order Delivered on : 24/03/2021

- Cholamandlam Investment and Finance Co. Ltd. (Registered Under Indian Companies Act) Head Office Dara House No. - 02, N.S.C. Bose Road, Parrys, Chennai 600001, Through Constituted Attorney, Branch Office - Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh

---- Petitioner

Versus

1. Ghanshyam Singh Rajput, S/o Shri Bal Singh, Aged About 56 Years, R/o 505, Indra Nagar, Raigarh, Revenue And Civil District - Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh
2. Kishori Rajput, Aged 49 Years R/o 505, Indra Nagar, Raigarh, Revenue And Civil District - Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh

---- Respondents

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WP227 No. 131 of 2020

1. Cholamandlam Investment And Finance Co. Ltd. (Registered Under Indian Companies Act) Head Office Dare House No.2, N.S.C. Bose Road, Parrys, Chennai 600001, Through Constituted Attorney, Branch Office- Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh

---- Petitioner

Versus

1. Balvinder Singh Bhalla, S/o Mandir Singh Bhalla, Aged About 40 Years, R/o 007, Civil Lines Raigarh, Revenue and Civil District- Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh
2. Smt. Maninder Kaur Bhalla, Aged About 40 Years, R/o 128, Darogapara Ward No.16, Raigarh, Tahsil Raigarh, Revenue And Civil District- Raigarh, Chhattisgarh.

---- Respondents

For petitioner : Mr. Mukesh Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

24/03/2021

1. Since a common issue is involved in both the above petitions, they are being heard together and disposed of by this common order.
2. These petitions have been brought being aggrieved by the common order dated 3.12.2019 passed by learned District Judge, Raigarh in M.J.C.(Civil) Nos.630/2019 & 631/2019.
3. It is submitted by the counsel for petitioners, that the petitioner has filed the copy of arbitration award before the Court of learned District Judge Raigarh, in Case No.MJC(Civil) No.631/2019 with a prayer for execution of the same under Section 36 of Arbitration and Conciliation Act, 1996 read with Order 21 Rule 10 of CPC. Learned District Judge in the impugned order has held that the petitioner shall be required to file the original award and pay the requisite Court fees, which is payable in the State of Chhattisgarh, from which the petitioner is aggrieved.
4. It is submitted by the counsel for petitioner that the arbitration proceeding has been taken up in the State of Tamil Nadu, which is mentioned in the arbitration award itself. Section 36 of the Act 1996 provides for the executability of an arbitration award as a decree, therefore, the award is not a deemed decree and there is no requirement for filing of original award. Under Rule 382 of C.G. High Court Rules, 2007, it is provided as to in what manner the application for enforcement of award shall be filed and in that there is no such direction for filing of original award.
5. It is also submitted that order for payment of stamp duty in accordance with law and rules of C.G. State is erroneous and such law is not applicable in such execution proceeding. In the case of Paramjeet Singh Patheja v. ICDS Ltd. the Supreme Court has elaborately discussed Sections 35 & 36(1) of the Arbitration and Conciliation Act, 1996 and held, that for the purposes of execution, arbitration award shall be construed as decree of civil Court and the same can be

executed at any place other than the place where the award was passed.

Reliance has been placed on the judgment of Supreme Court in the case of Sundaram v. Abdul and another, reported in AIR 2018 SC 965. M/s Maharashtra Apex Corporation Ltd. v. Balaji. G & Ors.. The judgment of High Court Kerala, reported in (2011) 4 ILR Kerala 450. Hence, it is prayed that the impugned order be set aside and the learned Executing Court be directed to proceed with the execution case.

6. Considered on the submissions. Direction of the learned Executing Court and the impugned order for production of original award is firstly considered. The M.P. Arbitration Rules, 1997 which was framed soon after the enactment of the Act of 1996, provides in Rule 4(2) that an application for enforcement of arbitral award under Section 36 or foreign award under Section 47 or Section 46, shall be handwritten, signed and verified by the applicant or by some other person proved to be acquainted with facts of the case and shall contain in a tabular form the particulars prescribed in sub-rule (2) of Rule 11 of Order 21 of CPC.
7. Order 21 Rule 11 (2) of CPC provides about the details of written application and Order 21 Rule 3 provides that any written application under sub-rule (2) of Order 21 Rule 11 of CPC may be accompanied with a certified copy of the decree. Therefore, neither the Rules, 1997 nor the provisions under CPC provide, that there shall be necessity of filing of original award for the purposes of enforcement of any award. There is nothing mentioned in the impugned order, as to under what provision there is requirement of production of original award. Section 31(5) of the Act, 1996, though provides that a signed copy of the arbitral award shall be delivered to each party, but it is not provided that there shall be a necessity of production of the same signed copy, for the execution of the same. The provision under Rules 1997 and Order 21 do not make any compulsion for production of any original award for the purpose of enforcement of the same, therefore, I am of this view that the direction of the learned Court on this point is totally erroneous and against the provisions of law, which is not sustainable.

8. Considered on the submissions on the point of applicability of C.G. Amendment, on the award for the purpose of payment of stamp duty. The impugned order refers to amended Section 3(bb) of Stamp Act, 1899, which deals with instruments chargeable with duty. Reference has also been to Section 19(A) which says that the extended stamp duty shall be payable on the instrument in accordance with the State Amendment. Instrument has been defined in Section 2(14) of Stamp Act, 1999, which means every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, Instruments that are chargeable with duty are detailed in Section 3 of the Act, 1899, and it is specific that such an instrument must have been executed by some person. An award under Arbitration and Conciliation Act, 1996 is the result of decision making procedure under the Act, 1996, therefore, it is not an instrument as defined under Section 2 (14) of Stamp Act, 1999 and, thus there can be no applicability of Section 19 (A) of the Stamp Act, 1999 on such award. Again the Rules 1997 have applicability in such a case. The Schedule under Rule 5 of Rules 1997 provides that application under Section 36 of the Act 1997 shall be filed along with the court fees of Rs.200/- only, therefore, the impugned order directing payment for stamp duty on the award filed for enforcement before the said Court is also erroneous and illegal.
9. After the considerations made herein above and the conclusions drawn, I am of this view that the impugned order is not sustainable. Accordingly, the petition is allowed. The impugned order is quashed. The learned execution Court is directed to proceed with execution case in accordance with law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge