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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.351 of 2021

- Cholamandlam Investment & Finance Co. Ltd. (Registered Under Indian Companies Act), Head Office Dare House No. 2, N.S.C. Bose Road, Parrys, Chennai Branch Office- Raipur Road, Mahasamund, Tahsil & District- Mahasamund, Chhattisgarh. Through Constituted Attorney Pinku Sahu.

--- Petitioner

Versus

1. Chandar Singh Bariha S/o Sukhruram Bariha R/o Ward No. 03, Bandora Uniyapara, Post- Achanakpur, Near Main Road, Mahasamund, District- Mahasamund, Chhattisgarh
2. Smt. Baisakhin Bariha W/o Sukhru Bariha, R/o House No.766, K Schoolpara, Village- Bandora, Main Road, Mahasamund, District- Mahasamund, Chhattisgarh

---- Respondents

For Petitioner : Mr. Swayam Tehanguria, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

02/08/2021

1. This petition has been brought being aggrieved by the order dated 18.03.2020 passed by the Court of District Judge, Mahasamund, C.G. returning the execution application filed by the petitioner under Section 36 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as

'the Act, 1996') read with Order 21 Rule 10 of C.P.C. by exercising the powers under Order 7 Rule 10 of C.P.C.

2. It is submitted that the petitioner has an arbitration award in his favour and against the respondents passed by the sole arbitrator. P.P. Saravanan, Advocate, Chennai dated 15.03.2018. The application was filed for the execution of the same under Section 36 of the Act, 1996 which has been returned to the petitioner for filing the application before the appropriate Court by exercise of powers under Order 7 Rule 10 of C.P.C.
3. It is further submitted that a learned District Judge has misinterpreted the provisions of Commercial Courts Act, 2015. Section 36 of the Act, 1996 provides that the arbitration award shall be enforced in accordance with the provisions of Civil Procedure Code, 1908 in the same manner as it were the decree of the Execution Court. The word "Court" has been defined in Section 2(1)(e) of the Act, 1996 as "the principal Civil Court of original jurisdiction in a District." Therefore, in case of any Arbitration Award passed by an arbitrator, it is enforceable and executable as a decree and such an execution shall be filed before the Civil Court of principal jurisdiction that is the Court of District Judge.
4. Heard learned counsel for the parties and perused the documents present on record.
5. On perusal of the impugned order, it is gathered that the learned District Judge has held that the Execution Application shall be enforceable by the Commercial Court, which is a notified Court in Raipur for this reason, the order of returning the Execution Application has been passed. The "Commercial Court" which is defined in the Section 2(b) of the Commercial Courts Act, 2015 does not come under the definition of

Court as included in the Section 2(1)(e) of the Arbitration and Conciliation Act, 1996. Hence, for these reasons, I am of this view that the impugned order is erroneous and unsustainable. Therefore, petition is allowed at the motion stage. The impugned order is set aside. The learned District Judge, Mahasamund is directed to entertain the application for execution filed by the petitioner and proceed in accordance with law.

6. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika