

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

OSA No.53 of 2021
and C.M.P.No.1830 of 2021

Gopuram Enterprises Ltd
No.31, First Floor,
Lazarus Church Road,
(above Andhra Bank)
Raja Annamalai Puram,
Chennai - 600 028.

... Appellant

-vs-

M/s Integrated Finance Company Ltd
No.112, Thiyagarajar Salai,
T.Nagar, Chennai - 600 017
Currently having its registered office at
No.R-10, Second Floor,
Prem Nagar Colony, South Boag Road,
T.Nagar, Chennai - 600 017.

.. Respondent

Appeal filed under Clause 15 of the Letters Patent and Order XXXVI Rule 11 of the O.S. Rules read with Section 37 of Arbitration and Conciliation Act, 1996, against the order dated 25.09.2020 passed in Application Nos.5835 and 5836 of 2019 on the file of original side of this Court.

For Appellant

: Mr.A.K.Sriram
for M/s A.S.Kailasam &
Associates

For Respondent

: Mr.V.P.Raman

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

This appeal is by the award-debtor (the appellant in O.S.A.No.74 of 2018) against an order passed under Section 9 of the Arbitration and Conciliation Act, 1996. In the post-award petition under Section 9 of the Act, orders have been passed which are ordinarily passed in execution proceedings.

2. The principal contention of the appellant is that Section 9 of the Act permits orders for interim measures to be granted and the jurisdiction available to the Court at the post-award stage is till the award is enforceable. In other words, the appellant contends, that once an arbitral award becomes enforceable, the authority to entertain a petition under Section 9 of the Act or to continue with the same or pass any orders thereon vanishes.

3. There can be no quarrel with the legal ground which has been raised. The very wording of Section 9 of the Act permits a post-award petition for interim measures to be relevant till such time that the award becomes enforceable. Though the relevant words used in the provision are "but before it is enforced in accordance with section 36", such expression read in the context of Section 36 of the Act that provides for enforcement implies that a party may apply to a Court for interim measures only till such time that the arbitral award becomes enforceable.

4. There are at least four possibilities that immediately come to mind. For one, an arbitral award may not have been challenged within the time permitted or, if challenged, no stay of the operation thereof has been obtained. In such a scenario, the award would be enforceable. Section 36(1) of the Act uses the expression "award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the Court." The word "shall" in Section 36(1) of the Act does not mandate that the arbitral award must be enforced. Such mandatory "shall" only implies that if the award were to be enforced, it may be so done only in accordance with the provisions of the Code. To the extent that a post-award application for interim measures may be regarded as something in aid of the award by way of its enforcement, the doors of a Court under Section 9 of the Act will be open to an award-holder till such time that the award becomes enforceable. Once the award ripens for implementation, it has per force to be executed in accordance with the Code.

5. It is possible that a part of the award is challenged or the stay of operation of a part of the award is granted. In such a case, the same rule will apply and that part of the award which is not challenged or in respect whereof there is no express stay granted in proceedings under Section 34 of the Act, it would have become enforceable and the procedure under the Code for execution thereof, as if it were a civil decree, would require to be followed.

6. In short, notwithstanding the Act of 1996 being a complete code and governing everything pertaining to arbitration, once an arbitral award, in full or part, becomes enforceable, the enforcement of such award or part of the award has to be in accordance with the Code. In a manner of speaking, the matter as to the enforcement of an award slips out of the purview of the Act of 1996 and falls within the domain of the Code for it to be exclusively governed by the Code thereupon.

7. Though such aspect of the matter may not be relevant in the present context, but for the completeness of the discussion on the aspect, it must not be lost sight of that the word "Court" in the relevant expression in Section 36(1) of the Act is preceded by the definite article. That would necessarily imply that the Court before which execution of an arbitral award is sought must have been capable to entertain a suit between the parties in respect of the subject-matter of the arbitral reference. The choice of the definite article instead of the indefinite, necessitates such construction and excludes any other.

8. However wide the powers conferred on a Court under Section 9 of the Act may be seen to be, such powers may not extend to issuing orders for discovering the assets of an award-debtor. Order XXI of the Code, that provides for execution, carries the necessary provisions for such purpose and Section 9 of the Act cannot be enlarged to incorporate the wide authority that an executing Court has to aid the award-holder, who metamorphoses as a decree-holder by the legal fiction contained in Section 36(1) of the Act, to seek or obtain orders of such nature or of arrest or detention of the award-debtor or the sequestration of its assets and properties.

9. The quality of orders that can be passed under Section 9 of the Act are substantially different from the quality of orders that may be passed in course of execution. While the emphasis in Section 9 is to the subject-matter of the arbitration and may even, charitably, be seen to cover the subject-matter of the award; orders in the nature of discovering assets of the deemed judgment-debtor or requiring him to file an affidavit of assets and the like may not be seen within the

ambit of the authority available under Section 9 of the Act of 1996.

10. The Act of 1996 covers all things pertaining to arbitration and operates between the commencement of the arbitral proceedings within the meaning of Section 21 of the Act of 1996 and the conclusion of all matters pertaining to the arbitration before Section 36 of the Act kicks in, so to say, and renders the award enforceable.

11. For the reasons aforesaid, the order impugned in O.S.A.No.53 of 2021 is found to be in excess of jurisdiction and not being squarely covered by the limited ambit of Section 9 of the Act of 1996 available at the post-award stage. Such order is set aside.

12. This, however, may be a pyrrhic victory for the appellant herein since the order is now available for execution. Nothing in this order will prevent the award-holder now to seek the same directions from the appropriate executing court to which the award is carried.

O.S.A. No.53 of 2021 is disposed of. There will be no order as to costs. Consequently, C.M.P.No.1830 of 2021 is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

sra

To

1.The Sub Assistant Registrar

Original Side

High Court, Madras

+2 ccs to Mr.V.P.Raman Advocate sr8978

OSA No.53 of 2021

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