

IN THE HIGH COURT AT CALCUTTA

Ordinary Original Civil Jurisdiction

Commercial Division

Present:

The Hon'ble Justice Shekhar B. Saraf

I.A. G.A. NO. 2 of 2022

in

E.C. No. 155 of 2020

POONAWALLA HOUSING FINANCE LTD.

Versus

V. BABU & Anr.

For the Petitioner

: Mr. Paritosh Snha, Advocate
Mr. Priyankar Saha, Advocate
Mr. K.K. Pandey, Advocate
Mr. Enakshi Saha, Advocate

For the Respondents

: Mr. R.L. Mitra, Advocate

Last Heard on : July 20, 2022

Judgment on : July 27, 2022

Shekhar B. Saraf, J.:

1. The petitioner company has filed this application under Section 36 of the Arbitration and Conciliation Act, 1996 seeking directions in terms of column 10 of the tabular statement of its execution application. The

respondents have filed an interlocutory application seeking dismissal of this execution application.

2. The petitioner company and the respondents entered into a loan agreement on February 26, 2016 wherein the petitioner company contractually agreed to advance a sum of Rupees 31,00,000/- to the respondents. As a security, the said sum was to be provided against an immovable property owned by the respondents. The complete address of the said property is - *Sy. No. 30/1, Part of Ramapuram Village, MIG Flat No. M-I/7, First Floor, Block No. M-1, Senthamil Nagar, Ramapuram Chennai, Pin Code – 600089, Tamil Nadu.*
3. On December 29, 2018, arbitration was invoked by the lender company, and a Sole Arbitrator was appointed by the petitioner for adjudication of disputes. Subsequently, an *ex parte* arbitral award dated June 29, 2019 was secured by the petitioner company. The award provides for a certain sum of money along with interests as mentioned therein to be paid to the petitioner company, and also injuncts the immovable property which was provided as security in the loan agreement.
4. As per the directions of this Court, the respondent no. 1 has filed its affidavit of assets dated February 23, 2022. It has been disclosed that the respondent no. 1 earns Rupees 22,000 per month as Salary, and

owns an immovable property situated on government land detail of which has been mentioned in paragraph 2. This is the same immovable property which was provided as security in the loan agreement. Apart from this, the affidavit provides details of bank account with Indian Overseas Bank, Chennai having Rs. 1000/- balance, stocks and shares worth Rupees 500/- with Syndicate Bank, Chennai and an insurance policy with LIC with Rupees 6822/- as premium payable. Further, it is evident from the affidavit that respondent no. 2 is dependent upon respondent no. 1.

5. Before delving into the merits of this matter, it is important to note that the award debtor does not have any assets located within the ordinary original civil jurisdiction of this Court, and that the only assets are located in the State of Tamil Nadu.
6. Section 36 of the said Act stipulates that the award shall be enforced under the Code of Civil Procedure 1908 in the same manner as if it were a decree of the Court. In the instant execution application, the relevant provisions for grant of execution of a money decree would apply. Order XXI, Rule 30 of the Civil Procedure Code 1908, provides that

“Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of

the judgment-debtor, or by the attachment and sale of his property, or by both”.

7. The respondent no. 1 works as an office attendant in Chennai, Tamil Nadu. The respondent no. 2 is dependent on respondent no. 1. As stated earlier, the affidavit does not disclose the respondents having any immovable assets located within the jurisdiction of this Court. The movable assets disclosed in the affidavit are of the amounts which denote little or no value. The only real asset is the immovable property that the respondent no.1 owns and which was the security as per the said loan agreement. For all intents and purposes, this Court cannot execute the award as the movable properties are negligible.
8. It is a settled principle of law that the award needs to be executed by such Court within whose jurisdiction the assets of the award debtor are located. Further, in the light of Supreme Court decision in ***Sundaram Finance Limited -v- Abdul Samad*** reported in **2018 3 SCC 622**, there is no requirement anymore to obtain a transfer of the decree from the Court having jurisdiction over arbitral proceedings to the Court which has jurisdiction over the award debtor or their properties.
9. Therefore, irrespective of the place where the award was passed, it is to be executed by a Court within whose jurisdiction the award debtor

resides, carries on business or its property is situated. Since the award debtor is admittedly residing within the territorial jurisdiction of the courts at Chennai and has immovable property in the same jurisdiction, such courts would certainly have territorial jurisdiction to enforce the arbitral award. Thus, this Court lacks territorial jurisdiction to entertain the present petition.

10. Lastly, in my view, this execution application is misplaced and in fact, mischievous in the first place to begin with. The petitioner does not pray for execution of the said arbitral award and has gone one step ahead in mentioning that it is not praying for any relief against the said immovable property which is not only the subject matter of security against the loan but has also been enjoined by the learned arbitrator. It appears to me that the petitioner intended to achieve its objective of executing this award indirectly as the same could not have been done directly by this Court.

11. Further, the respondents have made several grave allegations in the interlocutory application regarding the existence of the said loan agreement, whether and how much sum of money was actually advanced by the petitioner company, and suppression of material facts before this Court and in the *ex-parte* arbitration regarding repayment of instalments, among other things, which this Court has not dealt with in deciding this execution application. It is hereby again clarified

that this Court has not gone into the merits of the interlocutory application. In my view, these issues should be dealt with the court having jurisdiction for execution of the award.

12. For the reasons above, this Court lacks territorial jurisdiction to entertain this execution petition. Accordingly, the instant petition along with the interlocutory application is dismissed, with liberty to approach the executing court of competent jurisdiction.

13. There shall be no order as to costs.

14. Urgent Photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)