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Appln.No. 3170 of 2022
IN
EP DR.No. 45983 of 2020

C.V.KARTHIKEYAN, J.

This application has been filed seeking interference of an order of the learned Master dated 22.04.2022 in EP DR.No. 45983 of 2020. The order was passed in A.No. 2457 of 2021. The respondent in the unnumbered execution petition is the petitioner herein. The Decree holder had necessity to file EP DR.No. 45983 of 2020 to put into effect an award of the arbitrator dated 04.02.2008.

2. In the unnumbered Execution Petition, the Decree holder had filed an application under Order 21 Rule 41 of the Code of Civil Procedure seeking a direction to the Judgment Debtor to declare his assets to enable enforcement of the arbitration award.

3. Before examining the facts of the case, a few dates are required to be pointed out. The award was dated 04.02.2008. The Execution Petition was filed in July 2020. In the meanwhile, the applicant herein, who was the Judgment Debtor, and had suffered an adverse order in the award, filed O.P.No. 476 of 2008.



4. It is contended by Mr.V.P.Raman learned counsel, for the respondent herein / petitioner in the execution petition that with the filing of petition under Section 34 of the Arbitration and Conciliation Act 1996, an automatic stay enures to the applicant, who files such petition. That Original Petition No. 476 of 2008 meandered around and finally was dismissed on 07.12.2017. Challenging that order of the learned Single Judge, an Original Side Appeal was filed and that was also dismissed to the adverse interest of the petitioner herein by a Judgment dated 13.03.2019. It is therefore contended by Mr. V.P.Raman that only after 13.03.2019 did the decree holder get a firm hold over the award to exercise right was to put it to enforcement. Accordingly, the Execution Petition was filed on 20.07.2020.

5. The main objection raised in this Application and which objections had actually been also advanced before the learned Master was, in my opinion a slightly misguided interpretation of Sections 34 and 36 of the Arbitration and Conciliation Act 1996. It had been stated that in the year 2015, there was an amendment brought about to the said provisions and it is contended that the said amendment would have retrospective effect. It is therefore contended that even though the award was of the year 2008, the amendment



of the year 2015 would enure to the award and owing to such amendment in the year 2015, an Execution Petition filed in the year 2020 automatically stood barred.

6. To support this contention, the learned counsel for the applicant relied on a Judgment of the Hon'ble Supreme Court reported in **(2018) 6 SCC 287 [Board of Control for Cricket in India Vs. Kochi Cricket Private Limited and Others]**. Specific reference was drawn to paragraph Nos. 67 wherein the effect of the amendment and its retrospective nature was discussed and it was held as follows:-

“67. In 2004, this Court’s Judgment in National Aluminium Company Ltd. V. Pressteel & Fabrications (P) Ltd., (2004) 1 SCC 540 had recommended that Section 36 be substituted, as it defeats the very objective of the alternative dispute resolution system, and that the Section should be amended at the earliest to bring about the required change in law. It would be clear that looking at the practical aspect and the nature of rights presently involved, and the sheer unfairness of the unamended provision,



which granted an automatic stay to execution of an award before the enforcement process of Section 34 was over (and which stay could last for a number of years) without having to look at the facts of each case, it is clear that Section 36 as amended should apply to Section 34 applications filed before the commencement of the Amendment Act also for the aforesaid reasons. ”

7. I would extract the relevant provisions of law before examining further the point which had been raised.

8. Section 34(3) of the Arbitration and Conciliation Act 1996 is as follows:-

“3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided



that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.
”

9. Section 36 (2) of the Arbitration and Conciliation Act, 1996 is as follows:-

“2. Where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an applicaiotn 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.”

10. It is stated that the execution petition which had been filed after 12 years from the date of the award suffered from the viles of limitation and cannot be put into effect.



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11. In this connection, Article 136 of the Limitation Act 1963 can also be referred to and the same is extracted below:-

“Article 136 of the Limitation Act, 1963 (for short 'the Act') prescribes a period of twelve years for the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court. It provides that the period would commence when the decree or order becomes enforceable.

2) Where a decree or order is appealed from or sought to be revised or reviewed, or when an application is made for leave to appeal from a decree or order the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded”

12. It is to be mentioned that any application under Section 34, is a continuation of the arbitral proceedings. The grounds to question an arbitration award are quite narrow. An award cannot be questioned on all



sundry points. The grounds have been stipulated.

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13. It is also trite in law to point out the Court which examines an award under Section 34, does not sit as an Appellate Court and the authority of the Court to substitute its own views in the award has also been restricted and narrowd down. However, the Court has every power to examine whether an award is passed in manner known to law. So long as that particular exercise is undertaken, the award cannot and should not be put to enforcement under Section 36 of the Act . After determination of the application under Section 34 of the Act, an intra Court appeal is available in the nature of an Original Side Appeal. Again that is an extention of the exercise undertaken under Section 34 of the Act. Therefore, I hold that an Execution Petition cannot be held to be barred by the law of limitation under Article 136 of the Limitation Act ignoring the pendency of petition under Section 34 of the Arbitration and Conciliation Act, 1996 or its further proceedings in the hierarchy of Courts.

14. Mr.V.P.Raman relied on a Judgment of the Hon'ble Supreme Court reported in *(2022) 4 SCC 206 [Ratnam Sudesh Iyer Vs. Jackie Kakubhai Shroff]*, wherein the Hon'ble Supreme Court held as follows:-



*“21. In **BCCI v. Kochi Cricket (P) Ltd.** [**BCCI v. Kochi Cricket (P) Ltd.**, (2018) 6 SCC 287 : (2018) 3 SCC (Civ) 534] a reference was made to Section 26 of the 2015 Amendment Act which had bifurcated proceedings into arbitral proceedings and court proceedings. The said provision reads as under:*

“26. Act not to apply to pending arbitral proceedings.—Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act, unless the parties, otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.”

15. In this particular Judgment, the effect of **BCCI Vs. Kochi Cricket (P) Ltd.**, (*referred supra*) had been examined and it had been clarified that subsequent proceedings, will have to be given due credence.



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16. The learned Master had done just that and I find no reason to interfere with that order. The proceedings under Section 34 and its consequential proceedings by way of appeal, will have to be given its due weightage and those litigations do not affect limitation for filing an Execution Petition under Section 36 of the Arbitration and Conciliation Act, 1996.

17. Mr.V.P.Raman also placed reliance on **(2020) 17 SCC 324 [Hindustan Construction Company Ltd., Vs. Union of India and Others]**. In paragraph No.66, the Hon'ble Supreme Court had occasion to observe as follows:-

*“66. The result is that **Kochi Cricket [BCCI v. Kochi Cricket (P) Ltd., (2018) 6 SCC 287 : (2018) 3 SCC (Civ) 534]** judgment will therefore continue to apply so as to make applicable the salutary amendments made by the 2015 Amendment Act to all court proceedings initiated after 23-10-2015. ”*



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18. This observation strengthens the view that the amendment would take into effect for all Court proceedings initiated after 23.10.2015.

19. I hold that the Master is certainly not barred by law in proceeding further in EP DR.No. 45983 of 2020. This Application stands dismissed. The learned Master is directed to examine Appln.N. 2457 of 2021 in manner known to law and pass appropriate orders. No costs.

Vsg

12.09.2022

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