

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10803 OF 2022

Dipak Vitthal Bairagi And Others

.. Petitioners.

Versus

M/S Shriram City Union Finance Ltd.

GPA Holder Indrajit D. Mahajan and Another.

.. Respondents.

WITH

WRIT PETITION NO.10806 OF 2022

Shaikh Abdul Jumman Sk. Ashraf Ali

.. Petitioner.

Versus

M/s.Shriram City Union Finance Ltd.

GPA Holder Ramesh K. Yewale and Others.

.. Respondents.

Ms. S.N. Devmane (Munde) h/f. Mr.Girish V. Wani, Advocate for the
Petitioners in both the petitions.

Mr. Vinod Y. Bhide, Advocate for the Respondent No.1 in both the
petitions.

CORAM : SHARMILA U. DESHMUKH, J.

DATED : FEBRUARY 23, 2023.

PER COURT :

1. By these two petitions common issues arise for consideration and hence these petitions were heard together and common order has been passed.

2. The issue which arises is as regards the execution of the arbitral award by the Court which is sent for execution under Sections 38 and 39 of the Code of Civil Procedure, 1908, would be competent, in view of the definition of Court under Section 2(e) of

the Arbitration and Conciliation Act, 1996. The facts of the case are not in dispute. The petitioners herein suffered an arbitration award dated 30.08.2022, which were put into execution by the respondent no.1 before the Court of Principal District and Sessions Judge, Jalgaon at Jalgaon.

3. The execution proceedings were transferred to the Civil Court Senior Division and an objection was raised by the judgment-debtor that considering the definition of Court contained in Section 2(e) of the Act, it is only the Principal Civil Court of original jurisdiction in which the execution application can be filed and it is not the Civil Judge Senior Division, who would be competent to execute the award.

4. Heard the learned counsel appearing for the parties.

5. Learned counsel appearing for the petitioners submits that the provisions of the Act are very clear and Part-I of the Act, which deals domestic arbitration defines Court under Section 2(e) of the Act, which reads as under:

“2. Definitions.- (1) In this Part, unless the context otherwise requires,--

(a) ----

(b) ----

(c) ----

(d) ----

(e) “Court” means-

(i) in the case of an arbitration other than international commercial arbitration, the principal

Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) In the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of Courts subordinate to that High Court.”

6. She would further submit that the enforcement of the Award is provided under Section 36 of the Act and as per the said section, the Award is to be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as it were a decree of the Court. She would submit that the “Court”, which is referred to in Section 36 is necessary referable to Section 2(e) of the Act. In support of her contentions, she relied upon the Full Bench decision of this Court in the case of **Fountain Head Developers Vs. Maria Arcangela Sequeira**, reported in 2007(3) Mh.L.J. and in the case of **Rajashree Shrinivas Joshi and Others Vs. Omega information Systems, Sangli**, reported in 2009(3) Mh.L.J.

7. Per contra, learned counsel for the Respondent No.1 submits that the decisions are clearly inapplicable, inasmuch as the Full Bench decision was in context of Section 34 of the Act, so also the decision of the Single Judge in the case of **Rajashree Shrinivas Joshi and Others (supra)**. He would further submit that it is in context of the challenge under Section 34 of the Act that this Court has observed that it would be the Principal Civil Court of original jurisdiction in a district which would have the jurisdiction. He would submit that in the present case, what is sought to be put to execution is an arbitration award, which takes character of a decree by virtue of Section 33 of the Act. He would further submit that the provisions of Section 42 of the Act, which pertains to the jurisdiction read with Section 2(e) of the Act would apply only in event of challenge to the arbitral award under the provisions of Section 34 the Act. It is his submission that as far as the execution of the arbitral award is concerned, the same would lie before the Court which would have the jurisdiction over the property and it is not necessary to obtain a transfer of the decree from the principal civil Court of original jurisdiction which otherwise has the jurisdiction over the arbitral proceedings. In support of his contention, he relies on the following decisions:

- (i) **Daelim Industrial Co.Ltd. Vs. Numaliharh Refinery Ltd.** reported in 2009 GoJuris (Del) 2126;
- (ii) **Kotak Mahindra Bank Ltd. Vs. Sivakama Sundari S. Narayaa S.B. Murthy**, reported in 2011 GoJuris (Mad) 3648;

- (iii) **Shriram Transport Finance Co. Ltd. Vs. S.Salauddin & Ors.**, reported in 2017 GoJuris (AP) 242;
- (iv) **Sundaram Finance Ltd. Vs. Abdul Samad & Anr.** reported in AIR 2018 SC 965;
- (v) **PAnand Gajapathi Raju and others *Appellants* v. P.V.G. Raju (died) and others *Respondents***, reported in AIR 2000 SC 1886;
- (vi) **Gemini Bay Transcription Private Ltd., Nagpur v. Integrated Sales Service Ltd., Bangalore**, reported in AIR 2018 BOMBAY 89.

8. Considered the rival submissions of the parties.

9. It is not in dispute that there is no challenge to the arbitral award under Section 34 of the Act and the objection is only as regards the maintainability of the execution application before the Civil Judge Senior Division. The position is no longer *res-integra*. This Court in the case of **Akola Janata Commercial Co-op. Bank Ltd. Vs. Raju Natthuji Badhe and Others**, reported in 2011 (1) **Mh.L.J. 207**, has held that the arbitral award can be executed either by District Judge or by any Court to which it may be sent by the District Judge for execution. The decision of this Court in the case of **Akola Janata Commercial Co-op. Bank Ltd. (supra)**, was rendered taking into consideration the provisions of Sections 37, 38, and 39 of the Code of Civil Procedure, 1908. This is for the reason that by virtue of Section 36 of the Act, the arbitral award if not set aside under Section 34 is deemed to be a decree and is required to be enforced, as if it was the decree of the Court.

9. Learned counsel for respondent no.1 has gone a step forward and has submitted that it is not necessary that the decree has to be lodged in the Principal Civil Court of original jurisdiction as it is not a challenge within the meaning of Section 34 and it is only in the context of challenge under Section 34 that the definition under Section 2 (e) of the Act would come into play. This position has been upheld by various decisions of the Delhi High Court and the Madras High Court on which reliance has been placed by learned counsel for the petitioners. All these decisions have been considered by the Apex Court in the case of **Sundaram Finance Ltd. (supra)**.

10. In the decision of **Sundaram Finance Ltd. (supra)**, the Apex Court after considering the various provisions of the Arbitration and Conciliation Act, 1996 and the Code of Civil Procedure, 1908 and the decisions of the Delhi High Court and the Madras High Court has observed that the arbitration proceedings are terminated by the final arbitral award and the award for execution stands arose the proceedings which are already terminated as such, the provision of Section 42 of the Act which deals with the jurisdiction issue would not have relevance. The Apex Court has further held that the enforcement of an award in its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court which would have jurisdiction over the arbitral proceedings. Considering the authoritative

pronouncement of the Apex Court, it can be held that for enforcement of the arbitration award the execution can be filed anywhere in the country provided the same is filed for execution in the Court of competent jurisdiction which would have jurisdiction over the property which is sought to be attached in pursuance to the execution and there is no requirement for obtaining a transfer of the decree from Court which would have jurisdiction over the arbitral proceedings. As regards the decision which has been relied upon by the learned counsel for the petitioners in the case of **Fountain Head Developers (supra)**, the same was considered by another Full Bench of this Court where the question as framed was as under:

“An Award made under Part I of the Arbitration and Conciliation Act, 1996 can be executed not only by the Court as defined by Section 2 (1) (e) (I) but also by the Court to which it is sent for execution under Sections 38 and 39 of the Code of Civil Procedure, 1908.”

11. In light of the various decisions above, which are binding on this Court, the objection raised by the petitioners to the execution of the arbitral award by the Civil Judge Senior Division, is legally unsustainable.

12. Writ Petitions are devoid of merits and stand dismissed.

(SHARMILA U. DESHMUKH, J.)