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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 27.03.2023

+ CM(M) 498/2023

SANJAY KUMAR SAJAN

..... Petitioner

versus

MEENAKSHI GUPTA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Abhas Kumar and Mr. Mahesh Gupta, Advocates

For the Respondent : Mr. Vijay Kasana, Mr. Abhijeet Vikram Singh and Mr. Kshitiz Chabbara, Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 14914/2023 (Exemption)

1. This is an application seeking exemption from filing certified copies of the annexures/documents.
2. Exemption is allowed, subject to all just exceptions.
3. The application stands disposed of.

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4. The petitioner challenges the order dated 17.02.2023 passed in

Execution Civil No. 1145/2018 titled '*Meenakshi Gupta vs. Sanjay Kumar Sajan*', whereby the learned Executing Court has dismissed the objection filed by the petitioner/judgment debtor under Section 47 read with Order XXI Rule 58 of the Code of Civil Procedure, 1908 (hereinafter as "CPC").

5. Mr. Abhas Kumar, learned counsel appearing for the petitioner submits that the learned Executing Court vide impugned order has summarily dismissed the objections filed by the petitioner and has simultaneously appointed bailiff to attach the properties of the petitioner/judgment debtor.

6. Learned counsel submits that the learned Executing Court ought to have examined the objections so raised for the purpose of ascertaining whether there is any ground at all for interfering with the execution proceedings.

7. Learned counsel submits that no such ground is discernible from the impugned order dated 17.02.2023.

8. Learned counsel submits that it was incumbent upon the learned Executing Court to render reasons based whereon the objections were dismissed. Having not done so, the impugned order is unsustainable in law and ought to be interfered with by this Court.

9. *Per Contra*, Mr. Vijay Kasana, learned counsel for the respondent submits that on the very same day, i.e. 17.02.2023, the objections under 34 of Arbitration and Conciliation Act, 1996 (hereinafter as "A&C Act") alongwith an application under Section 5 of Limitation Act seeking condonation of delay in filing the objection under Section 34 of A&C Act were considered and dismissed.

10. Learned counsel submits that it was only on the dismissal of petition filed under Section 34 of A&C Act that the impugned order rejecting the objections raised by the petitioner was passed.

11. Learned counsel submits that the said rejection of the objections under Order XXI Rule 58 CPC is done purely in accordance with law and cannot be interfered with by this Court under the jurisdiction conferred by Article 227 of the Constitution of India.

12. Learned counsel appearing for the respondent refers to the judgment of a Coordinate bench of this Court in '**Hindustan Zinc Ltd vs. National Research Development Corporation**' Neutral Citation No. 2023/DHC/000475, whereby this Court, in its judgment, in paragraphs 20 to 24, after considering the various judgments rendered by the Hon'ble Supreme Court and by interpreting various provisions of Arbitration and Conciliation Act, 1996, came to the firm conclusion that once the grounds raised in Section 34 of the A&C Act is dismissed, so far as such applicant is concerned, no objections under the Code of Civil Procedure, 1908 while executing the said arbitral award can be raised or dealt with by the Executing Court.

13. On the above basis, learned counsel submits that the present petition is not maintainable and ought to be dismissed *in limine*.

14. This Court has considered the rival submissions of parties as also perused the impugned order and the judgment of the Coordinate Bench in the case of **Hindustan Zinc Ltd** (supra).

15. That so far as the question of the petitioner raising objection under Section 47 read with Order XXI Rule 58, CPC is concerned, it appears to be no more *res integra* in view of the judgment of the

Coordinate Bench in *Hindustan Zinc Ltd*, in that, a party cannot be permitted to raise a similar objection twice over. There cannot be a question of a second bite on the apple by a party having failed in the initial attempt under the Arbitration and Conciliation Act, 1996.

16. From a reading of the judgment of the Coordinate Bench *Hindustan Zinc Ltd*, it is clear that the learned Coordinate Bench had kept in mind the provisions of Section 5 of the Act in conjunction with Sections 34 and 36 of the A&C Act to conclude that once the party has lost its round in petition under Section 34 of A&C Act, re-agitating the same grounds by way of objections now, under the Code of Civil Procedure, 1908 would not be permissible.

17. This Court is in agreement with the conclusion drawn by learned Coordinate Bench of this Court.

18. In the present case too, the petitioner had already raised similar grounds of challenge/objections in the petition under Section 34 of A&C Act against the arbitral award. The grounds of challenge and objections raised before the Executing Court in the objections under Order XXI Rules 5 and 6 of CPC are on the same lines. The petitioner cannot be permitted to reopen what has already been settled by the Court dismissing the objections under Section 34 of A&C Act.

19. In view of the aforesaid as also the judgment of learned Coordinate Bench of this Court, this Court is of the considered opinion that the present petition is not maintainable and is rejected *in limine*.

20. Needless to state that the aforesaid rejection would not come in the way of the petitioner seeking out appropriate remedies in accordance with law.

21. In view of the aforesaid, the petition is dismissed with no order as to costs.

TUSHAR RAO GEDELA, J.

MARCH 27, 2023

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