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

% Judgment delivered on: 26.05.2023

+ EX.F.A. 19/2023 & CM APPL. 28719-21/2023

PRASAR BHARATI (BROADCASTING CORPORATION

OF INDIA) & ANR Appellants

versus

STATUS AIR VISION PVT LTD Respondents

Advocates who appeared in this case:

For the Appellants : Ms. Radhalakshmi R, Advocate

For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The appellants challenge the order dated 25.02.2023 passed by the learned Executing Court in Ex. No. 118/2018 titled as “Status Air Vision Pvt. L td. vs. Prasara Bharti”, whereby the learned Executing Court had directed the petitioner /judgment debtor to pay a sum of Rs.2,54,200/- on account of legal expenses and counsel fees etc.

2. Ms. Radhalakshmi R, learned counsel appearing for the appellants submits that despite the fact that the original award did not consider the issue of legal expenses and counsel’s fee while passing the impugned order, the learned Executing Court had in an ambiguous way granted legal expenses etc., which it could not have done so.



3. Ms. Radhalakshmi R, submits that, so far as the Arbitrator's fees is concerned, the appellant has no objection thereto and has already paid the same.

4. So far as the legal fees is concerned, Ms. Radhalakshmi R, invites attention of this Court to para 4 and 5 of the affidavit filed on behalf of the appellant / judgment debtor before the learned Executing Court, to submit that the decree holder was not entitled to the expenses or legal cost incurred by it before the Arbitrator for the reason that no such quantification or any affidavit or bill of costs on that account was ever filed either before the Arbitrator or even before the learned Executing Court.

5. She further submits that the decree holder would have been entitled to only those legal costs, which could be ascertainable and quantifiable from the evidence which was placed before the Arbitrator. Learned counsel further submits that having regard to the fact that no such material was placed either before the learned Executing Court or before the Arbitral Tribunal, the Executing Court could not have passed such directions directing the appellant / judgment debtor to pay to the respondent a sum of Rs.2,54,200/- on that account.

6. On a query by this Court, learned counsel submits that no objection petition under Section 34 of the Arbitration & Conciliation Act, 1996 was ever filed against the award which was passed by the Arbitrator on 12.06.2018.

7. So far as the observations and the conclusions drawn by the sole arbitrator is concerned, keeping in view the fact that the award was never challenged, has become final and binding upon the appellant.



8. The appeal which has now been filed against the impugned order dated 25.02.2023 is unsustainable in law for the reason that when the objection has never been raised against the original award, the appellant is not permitted to raise any objection to the execution of a decree arising therefrom.

9. The aforesaid view taken by this Court is consistent with a view taken by the Coordinate Benches of this Court in the case of ***Morgan Securities & Credits Pvt. Ltd. vs. Morepen Laboratories Ltd. & Anr.*** reported in **2006 SCC Online Del 774** whereby in the penultimate para 22, the learned Single Judge of this Court had framed a question, in that, whether the judgment debtors could challenge the award in the execution proceedings having not filed a petition under Section 34 of the Arbitration & Conciliation Act, 1996. Answering the aforesaid question, the learned single Judge held that such a course of conduct cannot be permitted as it would amount to permitting the judgment debtors to do something indirectly which it could not have done directly. The rationale behind that appears to be that the challenge under Section 34 of the Act not having been taken up, permitting the judgment debtor to raise the same issue under the garb of objections to the of execution petition, would amount to re-considering the issues which were never raised under the valid provision of law and that would be impermissible in law.

10. The other judgment of the learned Coordinate Bench of this Court was rendered in ***Hindustan Zinc Ltd. Vs. National Research Development Corporation*** reported in **2023 SCC OnLine Del 330**, while upholding the principles laid down in the ***Morgan Securities***



(*supra*) reiterated the same ratio and settled the law on that subject.

11. This Court is in complete and in respectful concurrence of the ratio so laid down by the two aforesaid judgments. It cannot be fathomed nor countenanced to see a party whose right to object to the award had crystalized after the passing of the award and limited by the provision of Section 34 of the Arbitration & Conciliation Act, 1996 and not having objected under Section 34 of the Act cannot by way of an objection in execution petition be permitted to object and delay the execution proceedings.

12. In view of the aforesaid and applying the same ratio in the present case, the issue as to whether there was any document or proof or a quantification available with the Arbitrator or the executing Court would become irrelevant and pale into insignificance.

13. Accordingly, the appeal is dismissed with no order as to costs.

14. Pending applications also stand disposed of.

TUSHAR RAO GEDELA, J .

MAY 26, 2023

Ms