

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.267 of 2020

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Bihar Industrial Area Development Authority, constituted by the State of Bihar (Under Bihar Industrial Area Development Authority, 1974), 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna, Bihar through its Managing Director.

... .. Petitioner/s

Versus

1. M/s Walia Builders through its Proprietor namely Shri Mohan Ahluwalia, Son of Late Karamchand Ahluwalia, G-82, Saket, New Delhi- 110017.
2. Mr. R.K. Sinha, Arbitrator, Rajendra Nagar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Parth Gaurav, Adv.
For the Respondent No.1	:	Mr. Sanjeev Kumar, Adv.
		Mr. Nilesh Kumar Nirala, Adv.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

13 16-07-2024 Heard learned counsel for the petitioner as well as learned counsel for respondents.

02. The instant writ petition has been filed under Article 227 of the Constitution of India with prayer in following terms:

(i) For the petitioner beseeches indulgence of the Hon'ble Court for setting aside the Order dated 26.08.2019 (hereinafter 'Impugned Order') passed by the Executing Munsif, Patna Civil Court in Execution Case No.- 369 of 2018 and subsequent notice dated 27.08.2019 (hereinafter 'Execution Case') whereby and whereunder the learned Court has been pleased to attach the property being (a) 1st floor and 2nd floor of the Udyog Bhawan, Gandhi Maidan as



well as (b) Bank account of the petitioner Authority being Saving Account No. 3041000101412360 at Punjab National Bank, Gandhi Maidan, Patna, in process of the execution of an award passed by the Sole Arbitrator (Respondent No.2) dated 31.10.2017, and received on 29.01.2018.

(ii) For that petitioner further seeks relief for no coercive action be taken in pursuance of the order dated 26.08.2019 passed in Execution Case No. 369 of 2018 and subsequent notice dated 27.08.2019 by the Executing Munsif, Patna during pendency of the petition under Section 34 application Arbitration and Conciliation Act, 1996.

(iii) For that the petitioner further seeks declaration from the Hon'ble Court that the court of Executing Munsif, Patna does not have power to execute an Arbitration Award of a value which is more than five crores and whereunder the Arbitration and Conciliation Act, 1996, there is special provision for challenge to the Award, i.e. under Section 34 before the Court of Principal Civil Jurisdiction and the same could be executed only in the said court, and thereby warranting interference by this Hon'ble Court for quashing/setting aside the impugned order dated 26.08.2019 in Execution Case No. 369 of 2018 and for declaration of any such proceedings in the matter before the learned Executing Munsif, Patna as void ab-intio and also for



quashing/setting aside the entire proceeding as being without jurisdiction.

(iv) For that the Hon'ble Court may give appropriate direction or directions to the Commercial Court of Division, Patna to hear and to dispose of Section 34 application of petitioner challenging the Arbitration Award dated 31.10.2017 passed by the Sole Arbitrator which is pending before the said Court vide Misc. Arbitration Case No. 72 of 2018 wherein pleadings of parties are complete and only arguments on merit of the case is to be most likely advanced, and further during pendency of the Section 34 application, it may further be directed to hear and pass an appropriate order on the application u/s 36 of Arbitration and Conciliation Act, 1996 read with Section 151 of the Civil Procedure Code, so filed for stay of the Award dated 31.10.2017.

(v) For any other relief/reliefs, which the Hon'ble Court may grant in the interest of the petitioner that may be deemed appropriate and necessary in this case."

03. At the outset, it has been submitted by the learned counsel for the respondent no.1 that challenge to the order dated 26.08.2019 is primarily on the ground that the learned Execution Munsif, Patna has got no power or jurisdiction to entertain the execution proceeding for enforcement of an arbitral award. But, the execution proceeding has been initiated in the



court of learned District Judge, Patna, which is the 'Principal Civil Court' as defined under Section 2(1)(e) of the Arbitration And Conciliation Act, 1996 (for short 'the Act') and the said execution case has been filed under Order 21 Rule 11 of the Code of Civil Procedure, 1908 r/w Section 36 of the Act. The said execution case was transferred to the court of learned Execution Munsif, Patna for proceeding in accordance with law. Therefore, any challenge to the jurisdiction of the court of learned Execution Munsif, Patna is on the basis of wrong appreciation of law and there arises no issue of jurisdiction.

04. Apart from the above-noted relief, another relief sought by the petitioner is for appropriate direction to the Commercial Court Division, Patna to hear and dispose of Section 34 application of the petitioner challenging the arbitral award dated 31.10.2017 passed by sole arbitrator which is pending before the Commercial Court vide Misc. Arbitration Case No. 72 of 2018. However, the said Misc. Case has already been disposed of and the appeal has been dismissed. Therefore, none of the reliefs of the petitioner survives for consideration and the petition has become infructuous.

05. The learned counsel for the petitioner submits that if the execution case was filed before the court of learned



District Judge and thereafter it was transferred to the court of learned Execution Munsif, he does not want to press the point further. However, learned counsel for the petitioner submits that though the appeal against award has been dismissed but the dismissal order is under challenge before this Court in an application filed under Section 37 of the Act.

06. In the light of the aforesaid facts and circumstances and submission made on behalf of the parties, as the relief nos. (i), (ii) and (iii) as mentioned above in paragraph no.2 are not being pressed and the relief no. (iv) has become infructuous, the present petition stands disposed of as such.

07. Pending interlocutory application(s), if any, also stands disposed of.

08. It goes without saying the interim orders, if any, shall merge with the final order.

(Arun Kumar Jha, J)

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