

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1091 of 2023

National Highway Authority of India through Project Director, Project Implementation Unit, Darbhanga, Add H/o Sri S N Mishra, Ward No. 17, Professor Colony Dighee West Darbhanga, Darbhanga, Bihar - 846004.

... .. Petitioner/s

Versus

1. State of Bihar through the Collector, Purnea at Purnea Collectorate, P.S. - K.Hat, Distt. - Purnea.
2. The District Land Acquisition Officer, Purnea, P.S. - K.Hat, District - Purnea.
3. Upendra Narayan Singh (deceased) through his legal heir Resident of Jalalgarh, P.S. - Jalalgarh, District - Purnia.
4. Kishuk Singh, S/o Late Praween Kumar Singh/Grand son of Late Upendra Narayan Singh, Resident of Jalalgarh, P.S. - Jalalgarh, District - Purnia.
5. Swarnima Singh, Widow of Late Praween Kumar Singh, Resident of Jalalgarh, P.S. - Jalalgarh, District - Purnia.
6. Jitendra Narayan Singh, S/o Ramsharan Singh, Resident of Jalalgarh, P.S. - Jalalgarh, District - Purnia.
7. Birendra Narayan Singh, S/o Late Ramsharan Singh, Resident of Jalalgarh, P.S. - Jalalgarh, District - Purnia.
8. Navin Kumar Singh, S/o Late Sudhir Nr. Singh, Resident of Jalalgarh, P.S. - Jalalgarh, District - Purnia.
9. Neeraj Kumar Singh, S/o Late Sudhir Nr. Singh, Resident of Jalalgarh, P.S. - Jalalgarh, District - Purnia.
10. Smt. Sindhu Singh, W/o Late Vijayendra Nr. Singh, Resident of Jalalgarh, P.S. - Jalalgarh, District - Purnia.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Dr. Maurya Vijay Chandra, Advocate Mr. Gaurav Govinda, Advocate
For the Res. Nos.3 to 5	:	Mr. Sunil Kumar, Advocate Mr. Sanjeet Kumar Sanju, Advocate Mr. Bhaskar Sandilya, Advocate
For the State	:	Mr. Sandilya Vilochan Tiwary, AC to GA-9

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 26-10-2024

The instant petition has been filed by the
applicant/appellant/petitioner under Article 227 of the



Constitution of India for quashing the order dated 26.09.2023 ordering for issuance of warrant and consequent issuance of warrant of attachment dated 05.10.2023 under Order XXI Rule 30 of the Code of Civil Procedure (hereinafter referred to as 'the Code') returnable on 03.11.2023 in Money Execution Case No. 38 of 2018 and thereby ordering for attachment of Toll Plaza Maranga, NH-31, Purnea and office building, Project Implementation Unit (PIU), Purnea, movable assets of PIU office, Purnea seeking further relief for quashing of the order dated 05.08.2023 passed by the learned Sub-Judge-I, Purnea rejecting the stay petition filed by the petitioner.

2. Conspectus of the case is that the petitioner, National Highway Authority of India, is a statutory body of the Government of India and a nodal agency of the Ministry of Road Transport and Highways. The land of respondent no.3 bearing Khata No. 761, Khesra No. 710, Khata No. 555 Khesra Nos. 742, 746, 747, 1050, 1056, 1058 and Khata No. 537 Khesra No. 904 with total area of 2.09 $\frac{3}{4}$ acre in Mauza Jalalgarh in the District Purnea was acquired in the year 2005-06 for the purposes of broadening of NH-57. The land of respondent no.3 was acquired under statutory scheme of Section 3-A and Section 3-D of National Highways Act, 1956



(hereinafter 'the NH Act'). The possession of the land was taken on 27.12.2005. Subsequent thereto, Competent Authority of Land Acquisition (CALA) prepared an award under Section 3-G of the NH Act wherein the respondents/land owners were awarded compensation for partial agricultural and residential land. The payment of Rs. 8,95,816/- was received under protest by the land owner on 10.02.2009. The aggrieved respondent/land owner filed Misc. Case No. 10 of 2010-11 before the learned Arbitrator-cum-Additional Collector, Purnea seeking compensation for commercial land. The learned Arbitrator, vide arbitral award dated 29.12.2011, determined that the entire land was not commercial while holding 1.72½ acre land to be commercial and directed CALA to prepare a fresh award under Section 3-G(1) of the NH Act on the basis of its determination. The exact amount of compensation has not been determined by the learned arbitrator. Aggrieved by the determination of the learned Arbitrator-cum-Additional Collector, Purnea, NHA filed Misc. Case No. 16 of 2012 before the court of Civil Judge (Junior Division), Purnea under Section 2(i)(e) read with Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') for setting aside the arbitral award dated 29.12.2011 passed in Arbitration Case No. 10/2010-11.



The learned Sub-Judge-I, Purnea, vide order dated 19.05.2018, dismissed the miscellaneous petition on the ground of continuous absence of the petitioner for a period of 8 months. Aggrieved by the said order, petitioner filed Misc. Case No. 32 of 2018 for restoration of Misc. Case No. 16 of 2012 and the matter has still been pending before the learned Sub-Judge-I, Purnea. Meanwhile, the respondent no.3/land owner filed Money Execution Case No. 38 of 2016 pursuant to the arbitral award against NHAI, PIU, Purnea before the learned Sub-Judge-I, Purnea against the arbitral award dated 29.12.2011 passed in Arbitration Case No. 10 of 2010-11. The respondent no.3/land owner claimed a sum of Rs. 2,54,43,130/- towards the satisfaction of the award. During pendency of the execution proceeding, legal heirs of land owner Upendra Narain Singh were brought on record vide order dated 25.05.2022. Thereafter, the petitioner filed an application for stay of the execution proceedings before the learned District Judge, Purnea, on the grounds of lack of jurisdiction of the court of learned Sub-Judge-I, Purnea but the said application was dismissed vide order dated 05.08.2023 by learned District Judge, Purnea. The petitioner NHAI then filed another petition under Section 34 of the Arbitration Act being Misc. Case No. 66 of 2023 before the



court of learned District Judge, Purnea for setting aside the arbitral award dated 29.12.2011 passed by the learned Arbitrator-cum-Additional Collector, Purnea. While the petition under Section 34 of the Act has been pending before the learned District Judge, Purnea, learned Sub-Judge-I, Purnea, in Money Execution Case No. 38 of 2018, passed an order under Order XXI Rule 30 returnable by 03.11.2023, and directed to attach the Maranga Toll Plaza on NH-31, Purnea, office building of PIU of NHAI Purnea and assets of PIU of NHAI office, Purnea. Aggrieved by the orders dated 05.08.2023, 26.09.2023 and 05.10.2023 passed by the learned Sub-Judge-I, Purnea, the petitioner has approached this Court by filing the present petition.

3. Learned counsel for the petitioner submitted that issuance of warrant of attachment dated 05.10.2023 by learned Sub-Judge-I, Purnea in Execution Case No. 1 of 2016 and consequent notices of Nazir Civil Court, Purnea are bad in the eye of law. Arbitral award passed by the learned Arbitrator-cum-Additional Collector, Purnea in Arbitration Case No. 08 of 2010-11 is a non-executable decree. Learned counsel further submitted that the learned Sub-Judge-I, Purnea is not the competent court for execution of decree. Under the provisions



of Section 3-G(5), Section 3-G(6) of the NH Act read with Section 2(e)(i) of the Act only the Principal Civil Court will have the jurisdiction to enforce the award and for this reason only the Principal Civil Court of the concerned district has the jurisdiction to pass orders in connection with execution of an arbitral award unless the same has been transferred to any other court as per the provisions of Section 39 of the Code. Therefore, only the Principal Civil Court of original jurisdiction, i.e., the District Judge, Purnea will be the appropriate executing court. Since the court of learned District Judge is the competent court, the learned Sub-Judge-I, Purnea does not have jurisdiction to pass any orders in execution of the decree. Learned counsel further submitted that the properties put under attachment are not the properties of petitioner NHAI, PIU, Purnea but the same belongs to private individuals who are strangers to the execution proceedings. The attachment of Toll Plaza will cause prejudice to third parties who otherwise have no interest involved in these proceedings. Moreover, any such attachment is bad in law without hearing the parties, whose properties are being attached. Learned counsel further submitted that the Toll Plaza infrastructure belongs to the National Highways Maintenance Company Private Limited which is a distinct juristic entity and



NHAI is having only 42% share in it and as such warrant of attachment been issued for PIU, Purnea is illegal and is liable to be set aside. Learned counsel further submitted that the orders of Sub-Judge-I, Purnea dated 05.08.2023 and 22.09.2023 are non-speaking orders and are liable to be set aside.

4. Learned counsel further submitted that the award is not executable as it does not finally determine the rights and obligations of the parties. No final compensation amount under Section 3-G(5) under NH Act has been determined by the learned Arbitrator and the determination of final amount has been left to CALA under Section 3-G(1) of the NH Act which is again open to challenge before Arbitrator. As no amount is mentioned in the award, the same is not executable.

5. Learned counsel further submitted that in a *catena* of cases including a judgment of Division Bench of this Court passed in ***Shivam Housing Pvt. Ltd. & Ors vs Mithilesh Kumar Singh***, reported in ***2015 SCC OnLine Pat 6005*** held that the Principal Civil Court in the court of District Judge and in a decision of Kerala High Court in the case of ***Metro Silks & Sarees Vs. Darpan Traders***, reported in ***2009 SCC OnLine Ker 6359***, it has been held that only Principal Civil Court of original jurisdiction, i.e., District Judge, will be the appropriate



executing court. Thus, the learned counsel submitted that court of learned Sub-Judge, Purnea not being the Principal Civil Court has got no power to execute the award.

6. Learned counsel further relied on a number of decisions of the various courts in support of his contentions. Learned counsel placed reliance on the decision of the Allahabad High Court in the case of ***Bhartiya Rashtriya Rajmarg Pradhikaran vs. Rajesh Kaushik & Ors.***, reported in ***2021 SCC OnLine All 24: AIR 2021 All 33*** on the proposition that the learned Arbitrator cannot refer the matter back to CALA for determination of compensation in terms of directions of the learned Arbitrator. Under the provisions of Section 3-G(5) of the NH Act, the learned Arbitrator has to himself determine the just amount of compensation and direction issued by the learned Arbitrator becomes a nullity in law. Learned counsel further submitted that perusal of the order passed by the learned Arbitrator clearly shows that the Arbitrator has not determined the amount of compensation to be paid and he has not quantified the total compensation amount. Remitting the matter to the competent authority for the said purpose runs against the scheme of Section 3-G(5) of the NH Act. Thus, the learned counsel submitted that the award is nullity as it is a declaratory



award and cannot be enforced. Paragraph nos. 11, 12 and 13 of ***Bhartiya Rashtriya Rajmarg Pradhikaran*** (supra) referred by the learned counsel read as under:-

“11. Irrespective of the fate of the arbitration proceedings, the order of the competent authority would not merge in the award rather it would continue to exist, though its enforceability (as to quantum of compensation payable), may, in given facts be eclipsed by the arbitral award. It is so because, the terms of reference arise from the plain language of Section 3-G (5) of the Highways Act. That provision of law would ever limit the scope of arbitration proceedings and command the arbitrator to himself determine the just amount of compensation.

12. Thus, in no event, the arbitrator may set aside the order passed by the competent authority and he may never remit the matter to the original/competent authority to pass a fresh order. Typically, that power is a power of a Court or Tribunal sitting in appeal or revision that too, if specifically granted by statute, and not implied. In absence of any such power given to the arbitrator either under the Highways Act or the Act, the direction issued by the arbitrator is a nullity in law.

13. Perusal of the order passed by the arbitrator again does not leave any manner of doubt that he has not determined the amount of compensation to be paid, since, he has neither mentioned the rate at which compensation may be awarded for 2400 sq. mtrs of land nor he has quantified the total compensation amount. In fact, he has specifically remitted the matter to the competent authority for that purpose. That direction clearly falls foul with Section 3-G (5) of the Highways Act.”



7. On the lack of competence of the learned Arbitrator passing the award, the learned counsel next referred to the decision of the Hon'ble Supreme Court in the case of ***Official Trustee, West Bengal & Ors. vs. Sachindra Nath Chatterjee & Anr.***, reported in ***AIR 1969 SC 823*** on the point that the learned Arbitrator has not only passed a wrong order but it was an order which he has no competence to make and, therefore, the order is a void order and consequently the award becomes non-executable. Learned counsel further submitted that where a power is given to do a certain thing in certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. But the learned Arbitrator has not considered this aspect and passed the order in a manner not prescribed by the law and, hence, the award is not sustainable. The learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Union of India & Ors. vs. Mahendra Singh***, reported in ***2022 SCC OnLine SC 909 (Judgment dated 25.07.2022 passed in Civil Appeal No. 4807 of 2022)*** in support of his contention. On the same proposition, learned counsel further relied on another decision of the Hon'ble Supreme Court in the case of ***Tata Chemicals Limited vs. Commissioner of Customs (Preventive), Jamnagar***,



reported in **(2015) 11 SCC 628**. Learned counsel further submitted that if the decree is nullity, law does not take any notice of the same and the same could be challenged in any proceeding at any stage, even in a collateral proceeding and the learned counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Dhurandhar Prasad Singh vs. Jai Prakash University & Ors.***, reported in **(2001) 6 SCC 534** in support of his contention.

8. Learned counsel further submitted that though the nature of the land has been held to be commercial yet there is nothing on record to show its conversion from agriculture to commercial. Permission of State Government is required for such conversion under the provisions of Section 3 of Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) Act, 2010. There is nothing on record to suggest that such permission was sought or the Collector gave the permission. Learned Arbitrator did not take note of this fact and passed the award casually. The court should not perpetuate the illegality. Learned counsel further submitted that said provision is to be read alongside Section 23(4) of the Bihar Tenancy Act, which reads as under:-

“23. Right of raiyat in respect of use of land :-
(1)



(2)

(3).....

(4) *A raiyat may, with the previous permission of the Collector, use his land for the purposes not enumerated in sub-section (2):*

Provided that before giving such permission the Collector shall redetermine the rent of such land in the prescribed manner to the extent of five per cent of the market value of the land:

Provided further that if a raiyat has not taken prior permission of the Collector, the Collector may give post facto permission on payment of double amount of the rent which he would have paid for obtaining prior permission, for the period between the date of commencement of use for purposes other than those enumerated in sub-section (2) and the date of application or detection, as the case may be:

Provided also that if a raiyat has been using his land for purpose other than those enumerated in sub-section (2), from before the commencement of this Act, he shall apply within 90 days of the date of commencement of this Act for permission to the Collector who on receipt of such application shall proceed in such manner as if the above use had started on the date of commencement of this Act. If the raiyat fails to do so, he shall be liable for payment of double amount of the rent which he would have been liable to pay, had he applied in time for the period between the date of commencement of this Act and the date of application or detection as the case may be:

Provided further also that the Collector shall have the power to revise the rent so determined after every ten years.

(5).....”

9. Learned counsel further submitted that conversion of the land is an exception and is subject to the conditions



enumerated therein. In this regard, learned counsel referred to the decision of the Hon'ble Supreme Court in the case of **Goa Housing Board vs. Rameshchandra Govind Pawaskar & Anr.**, reported in **(2011) 10 SCC 371**, paragraph nos. 19, 20 and 34 of which read as under:-

“19. Where an acquired land is subject to a statutory covenant that it can be used only for agriculture and cannot be used for any other purpose necessarily it will have to be sold as agricultural land as the land owner cannot sell it for any purpose other than agriculture and the purchaser cannot sell it for any purpose other than agriculture. As a consequence, the price fetched for such land will be low even if it is situated near any urban area. But if the same land is not subject to any prohibition or restrictive covenant regarding use and has the potential of being developed either as a residential layout or put to commercial or industrial use, the land will fetch a much higher price; and the market value of such other land with development potential can be determined with reference to the sale price of nearby residential plots by making appropriate deduction for development. On the other hand if the land is to be used only for agricultural purposes, it may not be possible to arrive at the market value thereof with reference to the market value of nearby residential plots.

20. Therefore, we are of the considered view that in regard to the land in question, in view of the permanent restriction regarding user, that is it should only be used for agricultural purposes, and the bar in regard to any non-agricultural use, it will have to be valued only as an agricultural land and cannot be valued with reference to sales statistics of other nearby



lands which have the potential of being used for urban development.

34. Further, under section 30 of the Land Revenue Code, no land used for agriculture shall be used for any non- agricultural purpose except with the permission of the Collector under section 32 of the Code. Section 32 provides for the procedure for conversion of use of land from agricultural to non-agricultural use. It requires an application to be made by the land holder to the Collector and a permission being granted by Collector for conversion, subject to payment of the fees prescribed therein. It is not the case of the respondent that the land has been converted to non-agricultural use under sections 30 and 32 of the Land Revenue Code. In fact, before the issue of a purchase certificate on 6.5.1993, it may not be possible for a tenant-purchaser to apply for conversion to non- agricultural use. It is, thus, clear that the land in question was agricultural land as on the date when the Land Use Act came into force and when the land was acquired under the Land Acquisition Act. Therefore, the contention that it was not agricultural land, is rejected.”

10. Thus, the learned counsel submitted that market value cannot be determined *de hors* its actual use. Learned counsel next relied on the decision of a Co-ordinate Bench of this Court in the case of ***National Highway Authority of India vs. Sri Vijay Kumar Singh & Ors., (Judgment dated 05.04.2023 passed in Misc. Appeal No. 651 of 2021)***, wherein the learned Single Judge held that simply recording the finding that the land is in the nature of commercial land is not in



consonance with the scheme of the Act and under Section 3-G of the NH Act. Such order cannot be conferred with the statutory claim of an award and thus, the award was set aside.

11. Learned counsel further submitted that even if in some of the cases, such type of awards may have been entertained and compensation disbursed by the authority, the same would not act as a precedence. The same does not confer any right to any person and referred to the decision of the Hon'ble Supreme Court in the case of State of *U.P. & Ors. vs. Rajkumar Sharma & Ors.*, reported in (2009) 3 SCC 330, wherein the Hon'ble Supreme Court held that Article 14 of the Constitution of India does not envisage negative equality, and if the State committed a mistake, it cannot be forced to perpetuate the same mistake.

12. Learned counsel for the petitioner submitted that the learned executing court has committed an error apparent on the face of the record while arriving at the payable amount. The executing court has deducted the amount of Rs. 8,95,816/- from the entire amount including the *pendente lite* interest whereas the said amount ought to be deducted from the principal amount. As the order has resulted in compounding of *pendente lite* interest, the same is contrary to the provisions of Section 3-



G(7) of the NH Act.

13. Learned counsel appearing on behalf of respondent nos. 3A, 3B, 4 and 5 submitted that the lands of respondents have been acquired by petitioner in the year 2005 for the purposes of broadening of NH-57 and possession was also taken over in the same year. However, the award for compensation was prepared on 29.05.2011 and respondents received the award of Rs. 8,95,816/- with objection and subsequently filed arbitration case. The competent authority awarded compensation for partly agricultural and partly residential land. Aggrieved by the award of CALA, the respondents filed Arbitration Case No. 10 of 2010-11 on 15.04.2011 in the court of Arbitrator-cum-A.D.M., Purnea seeking compensation for commercial land and also to pay interest on payments by treating lands of the respondent as commercial and residential. In the said Arbitration Case No. 10 of 2010-11, the learned Arbitrator, vide order dated 29.12.2011, awarded an amount of Rs. 1,58,67,751/- considering the nature of the lands. The petitioner then filed Misc. Case No. 16 of 2012 before the learned Principal Civil Court, Purnea under Section 34 of the Act for setting aside the arbitral award dated 29.12.2011. The said miscellaneous case was dismissed in



default. In the said miscellaneous case the respondents filed detailed written argument. Thereafter, the petitioner filed Misc. Case No. 32 of 2018 for restoration of Misc. Case No. 32 of 2018 which is still pending before the court of learned Sub Judge, Purnea. Learned counsel further submitted that the land owners/respondents filed Money Execution Case No. 38 of 2016 for enforcement of arbitral award against the petitioner before the learned Sub-Judge, Purnea claiming therein a sum of Rs. 2,54,43,130/-. Learned counsel further submitted that the petitioner, in order to delay the execution proceeding, filed an application before the learned District Judge, Purnea to stay the execution proceeding but the said application was dismissed. Learned counsel further submitted that the instant civil miscellaneous case has been filed by the petitioner with ulterior motive and only to delay the legitimate payment to the respondents and that too, without exhausting the remedies available to the petitioner under the law. Learned counsel further submitted that the Misc. Case No. 66 of 2023 has been filed by the petitioner before the learned District Judge against the order of execution passed by learned Sub-Judge, Purnea. But without awaiting the final outcome of Misc. Case No. 66 of 2023, the petitioner has preferred the present civil miscellaneous petition



which is total abuse of process of law. Learned counsel further submitted that the award drawn by the learned Arbitrator is based on facts and legal provisions after following all the procedure. So non-payment of the amount of award to the respondents is malicious and mischievous. Award has been filed for execution within legal framework of the Act.

14. Learned counsel further submitted that the award dated 29.12.2011 was not challenged within statutory period of three months and further period of thirty days as prescribed under Section 34(3) of the Act. Misc. Case No. 66 of 2023 was filed under Section 34 of the Act only in the year 2023. Learned counsel referred to the decision of the Hon'ble Supreme Court in the case of *Mahindra And Mahindra Financial Services Limited Vs. Maheshbhai Tinabhai Rathod & Ors.*, reported in *(2022) 4 SCC 162*, wherein the Hon'ble Supreme Court held that there is no application of Section 5 of the Limitation Act in the matter of challenge to the award under the Act and hence delay cannot be condoned. Therefore, the award has become final. The learned Executing Court cannot go behind the award and cannot consider the objections raised by the petitioner on the merits of the case. Learned counsel further relied on another decision of the Hon'ble Supreme Court in the case of *Vasudev*



Dhanjibhai Modi vs. Rajabhai Abdul Rehman & Ors. reported in ***(1970) 1 SCC 670*** submitting that the petitioner cannot take the plea that the award is not in consonance with the provisions of NH Act when there has been no challenge to the award by the petitioner within the statutory period of limitation. The award may be erroneous but it is not nullity. Learned counsel further referred to the jurisdictional aspect of the execution proceeding and cited the decision of the Hon'ble Supreme Court in the case of ***Sundram Finance Limited vs. Abdul Samad & Anr.***, reported in ***AIR 2018 SC 965*** wherein the Hon'ble Supreme Court held that for enforcement of an award through 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 decree from the court which would have jurisdiction over the arbitral proceeding. Thus, the learned counsel submitted that the award is maintainable before the learned Subordinate Judge as the said court is having jurisdiction for the reason that the proceedings were initiated in jurisdiction of the said court and the property of the petitioner was situated within the jurisdiction of the court and for this reason there is no error of jurisdiction.

15. I have considered the submissions made on behalf



of the parties and also the facts of the case. The orders of learned Sub-Judge before whom execution proceedings are pending have been assailed on a number of grounds. Similarly, there has been defence on the part of the respondents to the orders of learned executing court meeting those objections. But at this stage, I would refrain myself from venturing into the merits of the case since award has also been challenged before the learned District Judge and the parties are free to raise all issues on merits before the learned District Judge. But I would like to take up the question of non-consideration of jurisdiction of learned Sub-Judge to proceed with the execution of the award raised by the petitioner. Impugned order shows there has been no unequivocal finding supported with reason on this aspect of the matter. Now, Section 36 of the Act reads as under:-

“36. Enforcement.- (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908(5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application 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.

(3) Upon filing of an application under sub-



section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing: Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908(5 of 1908).]

*1[Provided further that where the Court is satisfied that a Prima facie case is made out that,-
(a) the arbitration agreement or contract which is the basis of the award; or
(b) the making of the award,
was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.”*

For enforcement of an award, procedure has been prescribed and it would be in accordance with the provisions of the Code in the same manner as if it were a decree of the court. Further, Section 38 of the Code provides as under:-

“38. Court by which decree may be executed.- A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.”

16. So application for enforcement of an award is to be filed in a court following the procedure of the Code. Now Section 2(1)(e) of the Act provides that court means the Principal Civil Court of original jurisdiction in a District and also includes the High Court in exercise of its ordinary original



civil jurisdiction but does not include any civil court of a grade inferior to such Principal Civil Court or any court of small causes. A Division Bench of this Court in the case of ***Shivam Housing Pvt. Ltd. & Ors. vs Mithilesh Kumar Singh***, reported in ***2015 SCC OnLine Pat 6005*** has occasion to consider the question as to whether Subordinate Judge or District Judge is the Principal Civil Court of original jurisdiction in a district within the meaning of Section 34 of the Act. After consideration of the legal provision of case laws, the Division Bench arrived at the conclusion that it is the court of District Judge which has the original civil jurisdiction within the meaning of Section 34 of the Act and Principal Civil Court would be the court of District Judge of the district concerned.

17. In this background, the learned Sub-Judge was required to examine the issue. Obviously, the learned Sub-Judge, Purnea has not recorded its finding in the light of the settled position of law. The authority of ***Sundram Finance Limited*** (supra) has got no application in the present case as there is no dispute over territorial jurisdiction of the executing court since the award has been filed for execution in the District of Purnea. However, as it has been filed in the court of Subordinate Judge which is not the Principal Civil Court in the



district, there is a question mark over the competence of the learned Subordinate Judge to proceed with the execution of the award.

18. Reading all these facts together a shadow is cast over the competence of the learned Sub-Judge, Purnea to proceed with the execution matter. The learned executing court was required to examine this issue about its competence to proceed with the execution case filed by award holders/respondents. Further objection has been taken about properties of third parties/private parties being ordered to be attached and the impugned orders are also silent on this point. However, from perusal of order dated 05.08.2023 it appears the learned Sub-Judge-I, Purnea has not recorded any finding and brushed aside all objections in one line by saying that 'this court is a right forum and accordingly the award holder has rightly filed this case in the court'. The Hon'ble Supreme Court in the case ***Raj Kishore Jha vs. State of Bihar And Ors.***, reported in ***AIR 2003 SC 4664 : 2003 (11) SCC 519*** has held that the reason is the heartbeat of every conclusion. Without the same, it becomes lifeless and for this reason the approach of the learned Sub-Judge-I, Purnea could not be appreciated. Further, the Hon'ble Supreme Court in the case of ***Kranti Associates Private Limited***



& Anr. Vs. Masood Ahmed Khan & Ors., reported in **(2010) 9 SCC 496** has held that reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process. The aforesaid decisions of Hon’ble Supreme Court stress upon the importance of reasoned judicial orders and have discussed elaborately why reasoning is the soul and heart of the justice. Therefore, I have no hesitation in holding that the orders disposing of the applications of the petitioner without recording reasons in support of conclusion arrived at in the order and failure to record the reasons would make the orders unsustainable. Not recording the reasons in fact amounts to denial of justice whether it is an administrative authority, quasi judicial body or a judicial body. The aforesaid authority could not pass orders without assigning reasons in support of their conclusion, more so, a judicial authority.

19. The chronology of the events shows that the 3-G, NH Act award was passed by CALA in the year 2009 as well as award prepared by CALA, Purnea in the year 2011, objection was raised in the year 2012, execution case was filed in the year 2018, and the impugned orders were passed on 05.08.2023, 26.09.2023 and 05.10.2023. So at this stage making the award holder to take up all steps afresh and relegating him to initiate a fresh proceeding



for execution of award would be unjustified and unduly harsh. Equity demands that the proceeding which has been initiated by the award holder should continue but in the court of competent jurisdiction. Therefore, I think the matter should be remanded to the court of competent jurisdiction i.e., learned District Judge for consideration and passing orders on the petitions filed by the petitioner after due consideration of contention of the parties.

20. Therefore, in the light of discussion made hereinbefore, the orders dated 05.08.2023, 26.09.2023 and 05.10.2023, passed by the learned Sub-Judge-I, Purnea are set aside and the case record is ordered to be transmitted to the court the learned District Judge, Purnea and the learned District Judge, Purnea is directed to pass orders afresh in accordance with law on the issue raised by the petitioner within two months from the date of receipt/production of a copy of this order considering the intervening holidays.

21. Since the matter is being disposed of on this short point, the authorities cited by the learned counsel for the parties touching upon the merits of the case are not relevant.

22. Accordingly, the instant civil miscellaneous petition stands disposed of in terms of aforesaid direction.

23. It is made clear that this Court has not made any comments on the merits of respective case of the parties and the



learned District Judge, Purnea will proceed to dispose of the petitions of the petitioner entirely on its merits and without being influenced by anything said or observed in the present order.

(Arun Kumar Jha, J)

balmukund/-

AFR/NAFR	AFR
CAV DATE	21.09.2024
Uploading Date	28.10.2024
Transmission Date	NA

