2024:BHC-AUG:8078

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11825 OF 2023

1. Vikram Anilkumar Patel,
Age 49 years, Occu. Business,
R/o. 180/1, Radhakrushna Kutir,
Visanji Nagar, Gujrathi Galli, Jalgaon,
Taluka and District Jalgaon

2. Darshan Anilkumar Patel,
Age 52 years, Occu. Business,
R/o. Kalpita Enclave CHS,
E-1, Flat No.1 and 2, Ground Floor,
Sahar Road, Koldongari, Andheri (E),
Mumbai .. Petitioners

Versus

1. Pravinchandra Jinabhai Patel
Since deceased through L.R's
(Respondents No.2 to 5)

2. Savitaben w/o. Pravinchandra Patel,
Age 71 years, Occu. Business,

3. Mrs. Kalpita w/o. Deelipkumar Patel,
Age 53 years, Occu. Business,

4. Mrs. Trupti Amish Kothari,
Age 49 years, Occu. Business,

5. Mrs. Alpita Jayesh Soni,
Age 51 years, Occu. Business,

All R/o. P. J. Patel, 40, 41, Patel
Bunglow Next to Collector, Girna Tank
Road Jalgaon, Taluka and District
Jalgaon .. Respondents No.2 to 5
(Original Decree Holders)

6. Geetaben w/o. Anilkumar Patel,
Age 70 years, Occu. Business,
R/o. 153, Polan Peth, Dana Bazar,
Jalgaon, Taluka and District Jalgaon

7. Chetan s/o. Anilkumar Patel
Since deceased through L.R's

7A. Mrs. Amita w/o. Chetan Patel,
Age 51 years, Occu. Housewife,
R/o. Flat No. B-501, Zeon Windfield,
Near Ishan Bunglow, Shilaj,
Ahmedabad – 380 009

7B. Mr. Meer s/o. Chetan Patel,
Age 15 years, Occu. Education,
Through its Natural Guardian,
Mrs. Amita w/o. Chetan Patel,
Age 51 years, Occu. Housewife,
R/o. Flat No. B-501, Zeon Windfield,
Near Ishan Bunglow, Shilaj,
Ahmedabad – 380009

7C. Mr. Meet s/o. Chetan Patel,
Age 15 years, Occu.Education,
Through its Natural Guardian,
Mrs. Amita w/o. Chetan Patel,
Age 51 years, Occu. Housewife,
R/o. Flat No. B-501, Zeon Windfield,
Near Ishan Bunglow, Shilaj,
Ahmedabad – 380009

8. Mrs. Monica w/o. Darshan Patel,
Age 49 years, Occu. Hosehold,
R/o. Kalpita Enclave CHS,
E-1, Flat No. 1 & 2, Ground Floor,
Sahar Road, Koldongar, Andheri (E),
Mumbai

9. The Collector, Jalgaon,
District Jalgaon

10. The Tahsildar, Jalgaon,
Taluka and District Jalgaon .. Respondents
(R.Nos.6 to 8 are original judgment debtors)

Mr. V. D. Sapkal, Senior Advocate instructed by Mr. S. R. Sapkal, Advocate for Petitioners;

Mr. V. D. Hon, Senior Advocate instructed by Mr. A. V. Hon, Advocate for Respondent No.3;

Mrs. M. L. Sangit, A.G.P. for Respondents No.9 and 10;

CORAM : S. G. MEHARE, J.

Reserved on : 12-02-2024

Pronounced on : 17-04-2024

JUDGMENT:-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsels for the appearing parties.

2. The petitioners have impugned the order of the Executing Court below Exhibit-31 in Special Darkhast No.1351 of 2015, dated 16.09.2023.

3. The brief facts of the case were that the decree-holder Pravinhandra and the deceased Anilkumar were the real brothers. They had a huge family business and many movable and immovable properties. However, they had differences. Hence, they decided to resolve the issues regarding their shares and the shares of their legal heirs. They consensually referred their dispute to the persons acquainted with them and got consensual awards passed from the Arbitrators. There are three arbitration awards. The First was dated 07.07.1996, the second was dated 03.11.1996, and the third was dated 01.03.2005. Apart from these awards, they also had an interim memorandum of understanding (IMOU) and memorandum of understanding (MOU) before the awards were passed.

4. The awards dated 07.07.1996 and 03.11.1996 were put for enforcement before the Executing Court under Section 36 of the Arbitration and Conciliation Act, 1996 (for short, "Act of 1996"). The award enforceable under the Act of 1996 is enforced as if it were a decree of the Court. Therefore, the relevant procedures of the Civil Procedure Code (for short, “C.P.C.”) apply to the enforcement of such awards.

5. After filing the award for enforcement, various applications were filed, and judgment debtors have raised objections against the enforcement of the awards. The execution is going on, objections are coming from the judgment debtors, and enforcement goes at a snail's speed. Enforcement and execution of the decree is a tedious job. The decree-holder faces many more problems in execution than getting a decree.

6. The Hon'ble Supreme Court recently expressed a serious concern about the difficulties the decree-holder in India is facing, in the case of Jini Dhanraj Curi and another Vs. Shilbu Mathew and another, etc., in Civil Appeal No.3758-3796 of 2023 (arising out of SLP (C) Nos. 28258-28296 of 2018) with contempt petitions, decided on 16.05.2023, the opening paragraph of the pronouncement reads thus:-

“2. More than a century and a half back, the Privy

Council (speaking through Right Hon. Sir James. Colville) in the General Manager of the Raj Durbhunga, under the *Court of Wards vs. Maharajah Coomar Ramaput Singh (1871-72) 14 Moo IA605)* lamented that the difficulties of the litigants in India indeed begin when they have obtained a decree. A reference to the above observation is also found in the decision of Oudh Judicial Commissioner's Court in Kuer-Jung Bahadur vs. Bank of Upper India Limited, Lacknow, (AIR 1925 Oudh 448). It was ruled there that the courts had to be careful to ensure that the process of the Court and laws of procedure were not abused by judgment-debtors in such a way as to make the courts of law instrumental in defrauding creditors, who are obtained the decrees in accordance with their rights.

3. Notwithstanding the enormous lapse of time, were left awestruck, and the observation of the Privy Council which seems to have proved prophetic. The observations still holds true in present times and this case is no different from cases of decree-holders' owes commencing while they are in pursuit of enforcing valid and binding decrees by Civil Courts of competent jurisdiction. The situation is indeed disquieting, viewed from the perspective of the decree-holders, but the law, as it stands, has to be given effect whether the Court likes the result or not. In Martin Burn Limited vs. Corporation of Culcutta (AIR 1966 SC 529), this Court held that the Court has no power to ignore that provision to believe what it considers a distress resulting from its operations."

7. The decree-holders are running pillar to post to enforce the arbitral awards dated 07.07.1996 and 03.11.1996 by way of execution proceedings filed in the year 2005. The judgment assailed its enforceability. The judgment-debtors had impugned the legality and validity of the awards under Section 34 of the Act of 1996 and took the matter up to the Hon'ble Supreme Court, raising the grounds that the arbitral awards put for enforcement were false, fabricating, manufactured and backdated. The plea was also raised that deceased judgment-debtor Anilkumar did not sign the arbitral awards, and the present judgment-debtors were not the party to the said arbitral awards. However, the Hon'ble Supreme Court discarded the plea and dismissed the petition on the factum and the limitation. Thereafter, the executability of the arbitral awards has been objected to by raising various objections that would be discussed in the later part of the judgment.

8. The decree-holders moved an application below Exhibit-31 and prayed to issue the warrant of attachment in Annexure 'A' fallen to the share of judgment-debtors and included in the award dated 07.07.1996 and 03.11.1996, respectively. It was also prayed that necessary directions be issued to sell those properties and disburse the sale proceeds to satisfy the decretal amount with interest. The orders of prohibitory injunction were also prayed for. It was also prayed that

revenue authorities be directed to mutate the names of the decree-holders regarding the properties fallen to their share described in Annexure' B' to the application as per the awards asked for enforcement.

9. The present petitioners filed their say and raised around 15 objections to enforcing the award.

10. Before adverting to the objections, it would be appropriate to mention the attempts of the judgment debtors to assail the award under Section 34 of the Act of 1934. The said assailment went up to the Hon'ble Supreme Court. The said petition was registered as Arbitration Petition No.202 of 2015. That petition was filed objecting to the award dated 07.07.1996 on the grounds that it was a false, fabricated, manufactured, and backdated document. It was the contention that the judgment debtors considered that the arbitrators are biased against him. Hence, he orally terminated / revoked the appointment of those arbitrators. Thereafter, he never came to Jalgaon to conduct the arbitration proceeding. By a letter dated 02.07.1996 addressed to the arbitrators, he brought to their notice the instances of their bias, partial and dishonest acts, and thereby asked them that he withdraw his consent for arbitration. However, the Arbitrators did not decide his objections. It was also challenged on the ground that those

were against the principle of natural justice. They had amended the arbitration petition No.202 of 2005, raising the grounds that the awards were passed without following the procedure under Chapter V of the Act of 1996. It was induced and affected by their fraud and was in conflict with the public policy of India. The copy of the Hon'ble Supreme Court judgment passed in a Civil Appeal arising out of the judgment and award of the District Judge passed in the arbitration proceeding No.202 of 2005 has also been placed on record. The Hon'ble Supreme Court had discussed the facts of the case in detail. The issue of limitation was raised in that proceeding. The Judgment-debtor Anilkumar's legal heirs had a contention that they learnt about the award dated 07.07.1996 on 11.08.2005 on receiving the notice from the Executing Court. The appellants No.1(a) to 1(d) in the said appeal have also contended that they were not the party to the arbitral award. Hence, it is not binding upon them. Besides that objection, they also objected that those are false and fraudulent arbitral awards. It has been observed that Anilkumar had preferred the Writ Petitions from time to time. On dated 13.11.2006, this Court had dismissed a last writ petition No.7614 of 2006 observing that Anilkumar Patel is adopting tactics of approbate and reprobate and acting as per his convenience by denying the knowledge of award dated

03.11.1996 in some proceeding, though in some other proceedings, he relied on the said award and sought to take advantage on the basis of the said award. 10. In so far as the challenge to the award dated 07.07.1996, the District Judge vide order dated 14.02.2011 allowed the application under Section 34 of the Act, holding that it was within limitation. The District Judge set aside the award, holding that number of serious issues have been raised in the application under Section 34 and there is nothing to show that Anilkumar Patel was authorized by other applicants to receive copy of award on their behalf and it cannot be said that appellant Nos.1(a) to 1(d) and respondent No.10 have received the award in terms of Section 31(5) of the Act. The decree-holder had impugned the said judgment and award of the District Judge in Writ Petition No.4669 of 2011. By order dated 27.03.2012, this Court set aside the order of the District Judge, holding that the petition filed in the year 2005 under Section 34 of the Act was time-barred. The High Court held that so far as the order dated 03.11.1996, the findings in writ petition No.7614 of 2006 have attained finality, which has foreclosed the right of Anilkumar Patel to challenge the award dated 07.07.1996. The Hon'ble Supreme Court also observed that the High Court enumerated various circumstances to hold that Anilkumar Patel and his family members were well aware of the award dated

07.07.1996. The High Court also relied upon various correspondence between the parties, legal proceedings, etc. to conclude that Anilkumar Patel received the award dated 07.07.1996. Upon those findings, the High Court dismissed the petition as time-barred and a challenge to the award, dated 07.07.1996. The Hon'ble Supreme Court referred to the contents of the award and held that Anilkumar Patel received the award dated 07.07.1996 for himself and on behalf of his family members. He had signed for himself and power-of-attorney-holder for his wife, all sons and daughter-in-law. Hon'ble Supreme Court also remarked on the capacity of Anilkumar Patel to understand and appreciate the arbitral award and make a decision as to whether an application under Section 34 of the Act was required to be filed or not. In such facts and circumstances, in my considered view, service of the arbitral award on Anilkumar Patel amounts to service and other appellants Nos.1(a) to 1(d) and respondent No.10, and they cannot plead non-compliance of section 31(5) of the Act. The Hon'ble Supreme Court finally dismissed the appeal.

11. The observations of the Hon'ble Supreme Court in the appeal were implicit that the original judgment debtor, Anilkumar, consciously participated in the arbitration proceedings and consented to the terms and conditions of the settlement.

12. The objection in the ground (C) that actually, as per Section 31(5) of the Arbitration Act, 1996, a signed copy shall be delivered to each party does not survive in view of the judgment of the Hon'ble Supreme Court in appeal.

13. The objection in the ground (G) is that there was no agreement and no appointment of arbitration to the auction of the property, so basically, the award was passed beyond the scope of arbitration. The arbitrators have no power to auction the properties and companies. So, the awards are null and void and not executable. The objection in clause (H) is that the award dated 07.07.1996 is a false, fabricated, manufactured, backdated document, which is called as an arbitral award. The signed copies of both awards were never served on the judgment debtors as required under Section 31(5) of the Act, 1996. The arbitral awards dated 07.07.1996 and 03.11.1996 are false, fabricated, manufactured and backdated documents. The ground No. (J) was about not signing the award dated 07.07.1996, as on that day, Anilkumar was out of the station. Therefore, his signature was forged. It was also objected the award was biased, partial and dis-honest and passed even after informing the arbitrators orally and in writing for withdrawal / cancellation / termination / revocation of the arbitration agreement, and there was no compliance with Sections 13 and 16 of the Act of 1996. The objections in

grounds Nos.(L) and (N) were that the principle of natural justice has not been followed and awarded in contravention of Section 10 of the Act of 1996 and objection in ground No.(O) was that the awards are in conflict with the public policy of India since the same is induced by fraud.

14. It is submitted the above objections were not considered in the judgment of the Hon'ble Supreme Court, and ultimately, the validity of the award was not decided. The judgment-debtors objected to the jurisdiction of this Court to execute the award, which is null and void.

15. The lengthy arguments of Mr. Sapkal, learned senior counsel for the petitioner, on referring to the number of documents may be summarized that the Executing Court can decide the legality and validity of the award and the issue of the delivery of the copies of the award. His entire efforts were to convince the Court that the impugned awards were false, fabricated, manufactured, and backdated. He has vehemently argued that since the awards were false and fabricated, they are null, void, and not executable. His objection seems to be under Section 47 of the C.P.C.

16. Section 47 of the C.P.C. has the basic limitation not to travel behind the judgment and decree. It presupposes the existence of a decree which is capable of execution. The

Executing Court has no right to vary the terms of the decree, howsoever erroneous it may be. The Executing Court cannot add or alter the decree and cannot add relief not granted by the decree. However, a question relating to the execution of the decree may be raised by the decree-holder or by the judgment-debtor in the execution proceeding covered under Section 47 of the C.P.C.

17. The learned senior counsel for the respondent/decree-holder has strongly opposed the objection and contended that all these issues have been implicitly covered in the appeal before the Hon'ble Supreme Court.

18. Before adverting to the objections of the judgment debtors, the question of whether the Executing Court can go into the nullity of the judgment and decree should answered first.

19. There is a series of judicial pronouncements that the Executing Court cannot go behind decree. The Court must take a decree as it finds it. However, the Executing Court can entertain the objection that it is a nullity for want of jurisdiction. The judgment-debtor has no objection that arbitrators pass the impugned awards without jurisdiction. They have an objection that the awards are false, fraudulent, manufactured and backdated.

20. The Supreme Court, in ***Kiran Singh and others v. Chamarn Paswan and others, AIR 1955 SC 340***, observed that

> "it is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity."

21. The law regarding the powers of an executing court and the questions that can be determined by the Court executing a decree is now settled to a large number of decisions of the Privy Council and the Supreme Court. It is an established rule that a court executing a decree cannot go behind the decree but must take the decree as it stands *(vide Bank of Bihar Limited v. Sarangdhar Singh and another, 75 1.A. 300, 304 (P.C.)(18) V. Ramaswami Aivanagar and others v. T. N. V. Kailasa Thevar and Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others)*. It cannot go into any question as to the correctness or legality of a decree, the reason being that a decree, though it may not be correct or according to law, is binding and conclusive between the parties until it is set aside either in appeal or revision (vide Girish Chander Lahir v. Shoshi Shikhaiesw.ir Roy. 27 1.A. 110, 124 (P.C.) (21). Sri Rajah Papamma Rao Bahadur v. Sri Vira Pratapa Korkonda. 23 1.A. 32. 35 (P.C.) (22), Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehinan and others, and Bahadur Singh and another v. Muni

Subrat Dass & another). It can, however, entertain an objection that the decree is a nullity because the Court which passed the decree has no inherent jurisdiction to pass it, and the decree is, therefore, incapable of execution (vide Jnanenora Mohan Bhaduri v. Rabindra Nath Chakravarti, 60 T.A. 71, 75 (P.C.) (24), and Hira Lal Patni v. Sri Kali Nath. But, lack of territorial or pecuniary or personal jurisdiction does not make a decree a nullity, and so an executing Court cannot go into such an objection (vide Hira Lal Patni v. Sri Kali Nath).

22. An objection that the decree was obtained by fraud cannot also be raised before an executing Court (vide Jalandhar Thakur v. Jharula Das, AIR 1914 P.C. 72, Khagendra Nath Mahata v. Pran Nath Roy, 29 Calcutta 395, 400 (P.C.), Dhani Ram Mahta v. Luchmeshwar Singh, 23 Calcutta 639, 641, Suikeena Katum Sahiba v. Mahomed Abdul Aziz, A.I.R. 1916 Madras 792, 793, Sudindra v. Budan, 9 Madras 80, 83, and Karamat Ali and another v. Mt. Sogra, AIR 1961 Patna 434, 435.

23. A Division Bench of this Court in the case of ***Rana Harkishandas Lallubhai and others v. Rana Gulabdas Kalyandas and another*** was pleased to consider the question as to what pleas can be entertained under Section 38 of the C.P.C. Gajendragadkar, J., speaking for the Court, was

pleased to observe:

> *"In determining the jurisdiction of the executing Court to entertain pleas under section 38 it is always necessary to make a distinction between pleas that tend to show that the decree in question is a nullity and pleas that merely challenge the validity or the propriety of the decree on the ground that it is contrary to the provisions of law. If the plea is that the decree is a nullity, and so cannot be executed, it would be open to the executing Court to entertain the plea.*
>
> *On the other hand, if the plea is that the decree is contrary to law in the sense that in passing the said decree, certain provisions of the law have been ignored or contravened, that would not necessarily make the decree a nullity and allegations about the impropriety or the illegality of the decree cannot be entertained in execution proceedings."*

24. In ***Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others***, the Sureme Court considered the question of the ambit of the power of the executing Court regarding the inquiry as to the validity of a decree and was pleased to observe:

> "*A Court executing a decree cannot go behind the decree; between the parties or their representatives, it must take the decree according to its tenor and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an*

> *appropriate Court in appeal or revision, a decree, even if it is erroneous, is still binding between the parties.”*

25. What decree would be a nullity on the ground of want of jurisdiction is a vexed question. The jurisdiction of a Court is firstly to be examined at the commencement of the proceedings, and if the jurisdiction is properly assumed, non-consideration of a fact or provision of law will not make the order or decree without jurisdiction.

26. The Supreme Court, in the case of ***Bahadur Singh and another v. Muni Subrat Dass and another (1969) 2 S.C.R. 432***, was dealing with the objection filed on the executability of the decree. In this case, two main objections were raised before the executing Court. Those were :

(i) The award was beyond the scope of the reference and was invalid, and the decree based on the invalid award was void;

(ii) The decree was passed in contravention of the Delhi and Ajmer Rent Control Act, 1952 and was void.

27. In respect of the first objection, that the award was in excess of the authority of the arbitrators or was otherwise invalid, the Supreme Court was pleased to observe:

> "The award was filed in Court under Section 14 of the Arbitration Act, and on notice to the tenants and

in their presence, a decree was passed according to the award under Section 17. It is not open to the tenants now to take the objection that the award was in excess of the authority of the arbitrators or was otherwise invalid. Having regard to the scheme of Sections 14 to 17 and 31 to 33, all questions regarding the validity of the award had to be determined by the Court in which the award was filed and by no other Court. An award which is invalid on any ground can be set aside under section 30. After a decree is passed on the award, it is not open to the parties to the reference to raise any objection as to the validity of the award. Between them, the decree conclusively determines that the award is valid. Nor can the decree be pronounced to be a nullity on the ground that the award was invalid."

28. The learned senior counsel for the judgment debtors relied on the following case laws to support his contention that the executing Court can consider the nullity of the decree as fraudulent, manufactured, or backdated.

i) *Vasudeo Dhanjibhai Modi v Rahabhai Abdul Rehman and Others 1970 (1) SCC 670,*

ii) *Sundar Dass V Ram Prakash (1977) 2 SCC 662*

iii) *Sushil Kumar Mehta V Gobind Ram Bohara (Dead) through his Lrs. 1990 1 SCC 193*

iv) *Rafique Bibi (Dead) By Lrs V Sayyad Waliuddin (Dead) By Lrs. And Others, (2004)1 SCC 387*

v) *M/s R.S. Bajwa and Company through R, S, Bajwa V State of Chhattisgarsh and Ors AIR 2008 CHH 75*

vi) *Knanna Traders V Sholar Publishing House P Ltd. And Ors 2017 SCC On line Del 7684*

vii) *India Cement Capital V William S/o John 2015 SCC Online Ker 248 05*

viii) *S. P. Chengalal Varaya Naidu (Dead) By Lrs. V Jagganath (Dead) By Lrs and Others (1994) 1 SCC 1.*

29. The Court has carefully gone through the above case law. However, in the above cases, the law is that the decree can be declared null and void under section 47 of C.P.C. if the judgment and decree has been passed without inherent jurisdiction. The objection of obtaining the decree by fraud would not be entertained under the said section. The remedy is the civil suit.

30. The law is well settled that the Executing Court cannot entertain the objection against the executability of the decree on the grounds of fraud and nullity except the decree passed without inherent jurisdiction. The grounds that were raised in the application under Section 34 of the Act, 1996, have attained finality. Therefore, there is no force in the arguments of the learned counsel for the judgment-debtor that they may raise every objection that goes to the root of the dispute.

31. While passing the impugned order, the executing Court observed that considering the rival submission, in my opinion, the objection in respect of signatures of all the decree-holders,

insufficient stamp, and award is inexecutable, have been decided in the earlier application.

32. On reading the objections in-toto, it appears that the allegations of fabrication, manufacturing, and backdated document have been pleaded in the context that the original judgment-debtor Anilkumar did not sign the awards as well as during 1998-2003, multifarious proceedings were filed and pending between the decree-holder and deceased judgment-debtor relating the properties which are the subject matter of award. However, in none of the litigations, the decree-holder makes any reference or mention of the alleged award. The litigation is of Special Civil Case No.3358 of 1998, R.C.S.No.226 of 1999, R.C.S.No.223 of 1999, R.C.S. No.69 of 1999, and R.C.S. No.106 of 2003. The allegations of bias also appear to be raised in the context of fraud.

33. The petition filed under Section 34 of the Act of 1996 dealt with various factual objections, including the lack of signature of the original judgment-debtor on the awards and the lack of knowledge of the petitioners since they were not parties to the award. The Hon'ble Supreme Court explicitly observed that the High Court had rightly observed that Anilkumar Patel (original judgment-debtor) had disputed his signatures in the award dated 7.7.1996 by drafting a

choreographed petition. Having accepted the award through Anilkumar Patel, being the head of the family, appellants No.1(a) to 1(d) and respondent No.10 cannot turn around and contend that they have not received the copy of the award.

34. In earlier proceedings before the Hon'ble High Court, it was observed that the respondents, obviously, wherever it was possible for them, at several places, took advantage of the arbitration award, and now, since obligations are on their part to be complied with in favour of petitioners have started challenging the award after nine years. The Hon'ble Supreme Court also affirmed the observations of the High Court in the petition under Section 34 of the Act of 1996. The observations of the Hon'ble Supreme Court in the said case bind the parties.

35. The next objection of the judgment debtor was that the copy of the award signed by the parties and the Arbitrator had not been attached to the application for the enforcement of the awards. As against this, the learned senior counsel for decree-holders states that a similar objection was raised in an application under Section 34 of the Act of 1996. Therefore, the District Court had called upon the original awards to verify the genuineness of those awards produced on record. The copies of the award attached to the application for execution were compared and found true and correct. The certified copies of

the award are attached to the execution application. The objection that the awards were fraudulently obtained has been discarded by the Hon'ble Supreme Court. Hence, the petitioner has no right to doubt the authenticity of the copies of the awards attached to the application. The vehement argument of the learned counsel for the decree-holder was that the original awards were lying with the District Court in arbitration proceedings. The decree-holder has applied to bring those awards. However, their application was rejected.

36. For the enforcement of award under Section 36 of the Act of 1996, the provisions of the C.P.C. apply in the same manner as if it were a decree of the Court. Therefore, Order XXI of the C.P.C. would apply to the enforcement of the award. Order XII, Rule 11(2) of the C.P.C. provides for a written application for execution of the decree. Sub-rule (3) provides that where a written application is made for the execution of enforcement, the applicant should produce a certified copy of the decree. The certified copy of the impugned awards was placed on record. Rule (3) of Order XXI of the C.P.C. permits the decree-holder to produce the certified copy of the decree/award. Therefore, there is no force in the objection that the execution proceeding was bad for not producing the original award supplied to the parties to the arbitration.

37. Since the objection was raised that all awards should have been put for the execution, the Court asked both learned senior counsels whether one award affected the other. They replied that there was no such case. The judgment debtors objected to the decree-holders executing the two awards on one side but not acting as per the awards. The decree-holders have to allot the property to the judgment-debtors and obey the awards first. Then, the decree-holders are entitled to execute the awards against the judgment debtors. The decree-holders are making hurdles in mutations of the properties allotted to the share of Anilkumar.

38. The next objection of the learned senior counsel for the decree-holder was that the decree-holder ought to have filed two separate applications for the execution of distinct awards.

39. Considering the objections and counter-allegations against each other about passing the third award dated 01.03.2005, it appears proper to discuss the nature of the arbitral awards. After going through the contents of all three arbitral awards, I found those on agreed terms. Though the documents have been titled as 'arbitral award', it is actually a mutual partition and settlement of accounts between two brothers. In the first award dated 07.07.1996, both brothers i.e. decree-holder and deceased judgment-holder Anilkumar,

determined the prices/ market values of the lands for equal shares and divided the immovable properties as mentioned in the charts, and a few properties were kept joint. In the said award, it was agreed that Anilkumar adjusted certain amounts from the accounts of the division of companies and firms. It was a little bit of a settlement of accounts. The arbitral award was agreed upon and approved by both parties. In the second award dated 03.11.1996, both brothers have literally settled the accounts of the firms and the companies. However, the third award, dated 01.03.2005, was in the form of the future settlement about some accounts and a few disputes were left on them. Both accepted the liabilities and agreed to settle the account. However, a few immovable properties bearing Gat No.41/1/1, 41/1 of Mauja Pimprala Shivar, Gat No.19/1 of Nimkhedi, Gat No.15 of Nemkhedi Khurd came to the share of the decree-holder was agreed to handed over to judgment-debtor Anilkumar. However, there is mention of Gat No.14, but it does not find a place in the chart of the first award. Same way, Gat No.12/1, 12/2, which was gone to the share of J.D. Anilkumar. Out of it, half share was agreed to be transferred to D.H. Pravinkumar except for the area occupied by the factory building. Again, they have mutually made the changes and adjustments in the earlier awards. The last award, dated 01.03.2005, agreed to be a supplementary award.

40. The terms of the awards mentioned above impose the duties and responsibilities on each of them. Admittedly, the award dated 01.03.2005 was not put for execution, nor did the execution applications mention it. As per the said award, the decree-holder had to perform his obligations. Though it was argued that the awards have no effect on each other, the contents of these awards are explicit, indicating that they are part and parcel of each other. The awards were passed on different dates. However, those were between the same parties and in the form of partition of the immovable properties and settlement of the account. The Court is of the view that all these awards should be asked for execution by a single execution application. There appears substance in the submission of the learned counsel for the judgment-debtor that unless the third award dated 01.03.2005 is considered, there shall be no complete execution.

41. The next limb of the argument of learned senior counsel for the judgment debtor was that the award is also inexecutable as it was not duly stamped.

42. Learned senior counsel for decree-holder states that though the settlement is in the form of the award, it is a family arrangement. Therefore, the stamps would not be required.

43. Considering the rival contentions, it appears that some

disputed issues arose after passing the first two awards as the parties to the awards did not perform their parts, and they filed suits against each other. Though the dispute arose between them, they again settled it amicably by way of the third award dated 01.03.2005.

44. Section 30(4) of the Act of 1996 provides that an arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the disputes.

45. Learned senior counsel for the Judgment debtor has referred to Section 2(14) with Entry No.12 of Schedule 1 of the Indian Stamps Act, 1899 and argued that the award is an instrument. Therefore, Sections 33 and 38 of the said Act would necessarily apply to the arbitral award when it is sought to be enforced. Section 35(a) is unambiguous and states that if an instrument produced before the Court is found to be not duly stamped, the same can neither be admitted nor acted upon, irrespective of its purpose.

46. To bolster his argument, he has placed on record a bunch of case laws on this point. However, to avoid repetition, only the case of ***Mohini Electricals Limited Vs. Delhi Jal Board, 2021 SCC OnLine Delhi, 3506*** has been referred. In that case, it has been held that an award passed at the conclusion of arbitration is an 'instrument' within the meaning

of Section 2(14) of the Indian Stamp Act read with Entry 12 of Schedule I thereof, and, therefore, Sections 33 to 38 of that Act would necessarily, we applicable to an arbitral award when it is sought to be enforced. In that case, the case ***SMS Tea Estates (P) Ltd. Vs. Chand Mari Tea Co. P. Ltd. (2011) 4 SCC 66*** was relied upon. It was also held in the case of ***SMS Tea*** (supra) that the Court should, before admitting any document into evidence or acting upon such document, examine whether the instrument/document is duly stamped and whether it is an instrument that is compulsorily registered. If the document is found to be not duly stamped, Section 35 of the Stamp Act bars the said document from being acted upon. Consequently, even the arbitration clause therein cannot be acted upon. The Court should then proceed to impound the document under Section 33 of the Stamp Act and follow the procedure under Sections 35 and 38 of the Stamp Act.

47. The Delhi High Court, in the case of ***Mohini*** (supra), held that the Arbitration Act does not create a legal obligation on the parties in arbitration to pay stamp duty on an award. It is only when they begin taking steps to enforce the award that the parties are obligated to ensure that the instrument has been duly stamped, at which point the Court shall be guided by the provisions of Sections 33, 35, and 38 of the Indian Stamp Act.

48. The next objection of the learned senior counsel for the judgment debtor was that the award was required to be registered compulsorily under Section 17(1)(b) of the Registration Act, 1908. It's an arbitral award affecting immovable property. Therefore, it is not exempted from registration under Section 17(2)(vi) of the Registration Act, 1908. Since the arbitral award deals with immovable property and is not registered, it is hit by Section 49 of the Registration Act and is not admissible in the Court as evidence.

49. To bolster his argument, he relied on the case of (i) ***Rameshkumar and another vs. Furu Ram and another, 2011(8) SCC 613,*** *(ii)* ***M.Venkata Ratnam vs. N. Chelamayya, A.I.R. 1967 A.P. 257 and (iii) Ratanlal Sharma vs. Puruhuttam Harit, 1974(1) SCC 671.***

50. To counter the arguments of the learned counsel for the petitioner, the learned senior counsel for the respondent argued that the awards were providing for effectuating a division of joint family property in the future fall under Section 17 (v) of the Registration Act, 1908.

51. To bolster his argument, he relied on the case of ***K.Arumuga Velaiah versus P.R. Ramasamy and another, (2022) 3 Supreme Court Cases 757.***

52. In the case of ***Rameshkumar (supra),*** Hon'ble Supreme Court held that Section 17(2)(vi) of Registration Act excludes the decrees and orders of the Court but does not exclude the awards of Arbitrator, any arbitration awards which purports or operates to create, declare any right, title or interest in any immovable property of the value of more than Rs.100/- is compulsorily registrable. In that case, the ratio of ***Ratanlal*** case (supra) was followed. Similar was the view taken in that case also. Considering the judgments on the issue directly involved in the case about registration of the award and contents of the award, the case of ***K.Arumuga (supra)*** does not assist the decree-holder.

53. The objection raised to application Ex-31 does not mention the objection of compulsory registration of the award and should be required to be stamped as per the Stamps Act. This objection was raised for the first time before this Court. The Executing Court should do the procedure for impounding and registering of the document in view of the law that it is to be done when the award is placed for enforcement. However, another ground challenging the illegality and validity of the awards was beyond the powers of the Executing Court and those were implicitly rejected by the Hon'ble Supreme Court in a petition filed by the petitioner under Section 34 of the

Arbitration Act. Those objections stand discarded. In view of that matter, in order to comply with the procedure under the Stamp Act and the Registration Act, the matter needs to be remitted to the Executing Court.

54. This Court has observed that all the awards have an effect on each other. Therefore, the decree-holder is directed to add the award (Original or Certified copy) dated 01.03.2005 for the complete execution. If the decree-holder fails, the judgment debtor should place its certified copy/original on record with an application to make it part of the record. This Court is not oblivious to the law that the decree-holder is a master of execution, and the judgment-debtor cannot be advised or allowed to put some papers in. However, in this case, the award is a partition among the brothers. In a partition suit, all the parties are plaintiffs and defendants, and their status is equal. Hence, the order directing the judgment debtor to add or put the award dated 01.03.2005 for execution is passed, and the liberty is granted to the judgment debtor to produce its copy for complete execution of those awards.

55. In view of the above discussion, the following order is passed:-

ORDER

i) The writ petition is partly allowed.

ii) The impugned order below Exhibit-31 in Special Darkhast No.1351 of 2015, dated 16.09.2023, is modified.

iii) The matter is remitted to the Executing Court to follow the procedure under Sections 37 and 38 of the Indian Stamp Act and Section 17 of the Registration Act and then sent precept to the Collector for effecting the mutation entries in the names of the decree-holder and judgment debtors of the undisputed properties came to their shares.

iv) The Executing Court shall appoint a Chartered Accountant as Court Commissioner to settle the accounts as per the Awards.

v) Rule is made absolute in above terms.

vi) No order as to costs.

(S. G. MEHARE)
JUDGE

rrd