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

Date of decision: 12.09.2024

+ OMP (ENF.) (COMM.) 36/2024

M/S PRADEEP VINOD CONSTRUCTION CO.

.....Decree Holder

Through: Mr S.W. Haider and Ms Pooja Dua,
Advs.

versus

UNION OF INDIA

.....Judgement Debtor

Through: Mr Om Prakash, SPC for UOI with
Mr Nitish Pande, Ms Swati Mishra
and Mr Sarthak Udaipuria, Advs.
(through VC)

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

REVIEW PET. 331/2024

1. This is a petition seeking review of the order dated 02.08.2024 along with modification order dated 14.08.2024 wherein the objections under section 47, CPC of the judgment debtor were dismissed and the captioned enforcement petition was disposed of directing release of awarded amount in favour of the decree holder. The operative portion of the order dated 02.08.2024, as sought to be reviewed, reads as under:-

“3.The only objection filed by the judgment debtor is in the form of reply / objections under Section 47 read with Order 21, CPC to state that the decree holder is a partnership firm and the opening line of the award dated 23.09.2023 reads as under:-



- “Claimant i.e. M/s Pradeep Vinod Construction Co. is a registered company under the Companies Act, 1956.”*
4. Hence, the judgment debtor states that the award as made cannot be executed, as the decree holder is a partnership firm.
5. I have heard learned counsel for the parties.
6. The opening part of the award i.e. M/s Pradeep Vinod Construction Co. is a registered company under the Companies Act, 1956 seems to be a typographical error.
7. A perusal of the Award shows that the Cause Title (at page 22 of the paper book) states “M/s Pradeep Vinod Construction Co., 5C/51, New Rohtak Road, New Delhi, through its partner i.e. Mr. N.K. Agarwal (Partner).”
8. The petition under Section 11 of the Arbitration and Conciliation Act, 1996 filed by the decree holder in this court also stated the decree holder to be a partnership firm.
9. The contract, pursuant to which the disputes have arisen, also records M/s Pradeep Vinod Construction Co., as a partnership firm.
10. For the said reasons, the award referring to the decree holder as a company registered under the Companies Act, 1956, is purely a typographical error and does not effect the merits of the award.”

2. Thereafter, a typographical error in the order of 02.08.2024 was modified on 14.08.2024.
3. The judgment debtor submits that this court under section 36 of the Arbitration and Conciliation Act cannot rectify/correct a typographic error made by an Arbitrator. The power of rectification lies only with the Arbitrator under section 33 of the Arbitration and Conciliation Act, 1996, which was not preferred by the decree-holder and which could only be filed within 30 days from receipt of the arbitral award. Reliance is placed upon the judgment of the Division Bench of this court in *S.P.S Rana v. MTNL and*



Ors, 2010:DHC:182-DB. The operative portion reads as under:-

“9. Section 33 of the Act does not use the words “but not thereafter”. However, the period of 30 days is subject to “unless another period of time has been agreed upon by the parties”. In our view the said expression has to be read in the same manner as the expression “but not thereafter” was interpreted in M/s Popular Construction Co. (supra). Also, Section 32 inter alia provides for termination of the arbitral proceedings by the final award. Section 32 (3) lays down that the mandate of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings, subject inter alia to Section 33. It will thus be seen that unless a case is covered by Section 33, the mandate of the Arbitral Tribunal is terminated. Thus, unless an application/petition under Section 33(1) of the Act is preferred within 30 days of the making of the award, the mandate of the Arbitral Tribunal terminates. Once the mandate of the Arbitral Tribunal terminates, it is not possible to file the application / petition under Section 33 of the Act.”

4. Further reliance is placed upon the judgment of the Hon’ble Karnataka High Court in WPC 4845/2021 titled *M/S. Abhiram Infra Projects Private Limited v. The Commissioner Karnataka Slum Development Board* dated 31.03.2022 wherein in similar facts while placing reliance on the Division Bench of this court in *S.P.S Rana (supra)*, the Hon’ble Karnataka Court held that no application for rectification of typographical mistakes shall be entertained under section 33 of the Arbitration and Conciliation Act, 1996 after expiry of thirty days.

5. The judgment debtor submits that the award is not liable to be executed since it is not in the name of the decree holder herein, i.e. a partnership firm but in the name of M/s. Pradeep Construction Co., a company registered under the Companies Act, 1956.



6. Further, the judgment debtor alleges that the decree-holder is not a registered partnership firm and therefore cannot enforce the award passed in its favour in terms of section 69 of the Partnership Act, 1932.

7. I have heard the submissions raised on behalf of the parties.

8. The issue that arises for consideration of this court in the present proceedings is that once the statutory period of 30 days (or as decided between the parties) for seeking correction, clarification and/or interpretation of an Award under section 33 of the Arbitration Act, 1996 has passed and the award has attained finality, can the executing court under the section 47 of CPC consider questions arising with respect to execution, discharge and/or satisfaction of the Award?

9. Section 36(1) of the Arbitration and Conciliation Act, 1996 deals with enforceability of an Award. It 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.”

(Emphasis Supplied)

10. A perusal of above provision shows that if the period for setting aside the Award under section 34 of the Arbitration and Conciliation Act, 1996 has expired, then the award shall be enforceable in the same manner as if it were a decree of the court under the provisions of the Civil Procedure Code, 1908. The said provision serves as a legal fiction, aimed to ensure that an Award rendered by an arbitral tribunal affords equal benefits of enforcement/execution, as one would get from a decree of the court. The



Hon'ble Supreme Court in *Union of India v. Vedanta Ltd.*, (2020) 10 SCC 1 in this regard has observed as under:-

“69. Section 36 of the Arbitration Act, 1996 creates a statutory fiction for the limited purpose of enforcement of a “domestic award” as a decree of the court, even though it is otherwise an award in an arbitral proceeding. By this deeming fiction, a domestic award is deemed to be a decree of the court, even though it is as such not a decree passed by a civil court. The Arbitral Tribunal cannot be considered to be a “court”, and the arbitral proceedings are not civil proceedings. The deeming fiction is restricted to treat the award as a decree of the court for the purposes of execution, even though it is, as a matter of fact, only an award in an arbitral proceeding. In Paramjeet Singh Patheja v. ICDS Ltd., this Court in the context of a domestic award, held that the fiction is not intended to make an award a decree for all purposes, or under all statutes, whether State or Central. It is a legal fiction which must be limited to the purpose for which it was created. Paras 39 and 42 of the judgment in Paramjeet Singh Patheja read as :

“39. Section 15 of the Arbitration Act, 1899 provides for “enforcing” the award as if it were a decree. Thus a final award, without actually being followed by a decree (as was later provided by Section 17 of the Arbitration Act of 1940), could be enforced i.e. executed in the same manner as a decree. For this limited purpose of enforcement, the provisions of CPC were made available for realising the money awarded. However, the award remained an award and did not become a decree either as defined in CPC and much less so far the purposes of an entirely different statute such as the Insolvency Act are concerned.

42. The words “as if [Ed. : The words “as if” have been emphasised in original as well.] ” demonstrate that award and



decree or order are two different things. The legal fiction created is for the limited purpose of enforcement as a decree. The fiction is not intended to make it a decree for all purposes under all statutes, whether State or Central.”
(emphasis supplied)”

70. A Constitution Bench of this Court in *Bengal Immunity Co. Ltd. v. State of Bihar*, held that legal fictions are created only for some definite purpose. A legal fiction is to be limited to the purpose for which it was created, and it would not be legitimate to travel beyond the scope of that purpose, and read into the provision, any other purpose how so attractive it may be. In *State of Karnataka v. State of T.N.*, this Court held that :

“74. The Report of the Commission as the language would suggest, was to make the final decision of the Tribunal binding on both the States and once it is treated as a decree of this Court, then it has the binding effect. It was suggested to make the award effectively enforceable. The language employed in Section 6(2) suggests that the decision of the Tribunal shall have the same force as the order or decree of this Court. There is a distinction between having the same force as an order or decree of this Court and passing of a decree by this Court after due adjudication. Parliament has intentionally used the words from which it can be construed that a legal fiction is meant to serve the purpose for which the fiction has been created and not intended to travel beyond it. The purpose is to have the binding effect of the Tribunal's award and the effectiveness of enforceability. Thus, it has to be narrowly construed regard being had to the purpose it is meant to serve.”

(emphasis supplied)””

11. In view of the above, a domestic award is enforceable as a decree after the expiry of three months (extendable by 30 more days) by way of the



deeming provision under section 36(1) of the arbitration and Conciliation Act, 1996. Thereafter, the court has the power to enforce/execute an Award as a decree under the provisions of the Civil Procedure Code, 1908.

12. In the present case, the judgment debtor filed objections to the Award under Section 47 read with Order 21, CPC on the ground that the decree holder is a partnership firm and the opening line of the award records the decree-holder as a registered company under the Companies Act, 1956. Hence, the award, as made, cannot be executed. No application under section 33 of the Arbitration and Conciliation Act, 1996 seeking clarification or modification was preferred by either of the parties and the statutory period in pursuing the same expired. The judgment of the Hon'ble Division Bench of this court in SPS Rana (*supra*) has held that the period of 30 days for filing an application under section 33 of the Arbitration and Conciliation Act, 1996 seeking correction in the Award is not extendable since the Arbitrator becomes *functus officio*. The operative portion of SPS Rana (*supra*) reads as under:-

“10... Seen in this light, it will be found that the period of 30 days provided for preferring the application under Section 33 of the Act is not extendable inasmuch as unless the application is so preferred, there is no Arbitrator thereafter. We find that the same conclusion has been reached in UOI Vs. Saboo Minerals Pvt. Ltd. 106 (2003) DLT 92 and in Ircon International Ltd. Vs. Budhraj Mining & Constructions Ltd. MANU/DE/8647/2007 by Single Judges of this Court.”

13. Additionally, the parties have not challenged the award under section 34 of the Arbitration and Conciliation Act, 1996. It is now a settled law that the courts cannot condone delay in filing/pursuing objections under section



34 of the Arbitration and Conciliation Act, 1996. Hence, the award passed in favour of the decree-holder has attained finality and is now enforceable as a decree.

14. In these circumstances, what happens to the Award if an application is not preferred under section 33 of the Arbitration and Conciliation Act, 1996? Will the party, who has an award in his/her favour, have no remedy? The answer is no.

15. Under the vires of section 47, CPC, the executing court has the power to determine questions arising for execution of a decree. Section 47 of the Civil Procedure Code, 1907 reads as under:-

“47. Questions to be determined by the Court executing decree.—

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

..

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation I.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]”



16. The Hon'ble Supreme Court in *Pradeep Mehra v. Harijivan J. Jethwa*, 2023 SCC OnLine SC 1395 explained the scope of section 47 of CPC. The operative portion of the same reads as under:-

“10. A bare perusal of the aforesaid provision shows that all questions between the parties can be decided by the executing court. But the important aspect to remember is that these questions are limited to the “execution of the decree”. The executing court can never go behind the decree. Under Section 47, CPC the executing court cannot examine the validity of the order of the court which had allowed the execution of the decree in 2013, unless the court's order is itself without jurisdiction. More importantly this order (the order dated 12.02.2013), was never challenged by the tenants/judgment debtors before any forum.

*11. The multiple stages a civil suit invariably has to go through before it reaches finality, is to ensure that any error in law is cured by the higher court. The appellate court, the second appellate court and the revisional court do not have the same powers, as the powers of the executing court, which are extremely limited. This was explained by this Court in *Dhurandhar Prasad Singh v. Jai Prakash University*, (2001) 6 SCC 534, in para 24, it had stated thus:*

“24. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing.”

12. This Court noted further:

“..... The validity or otherwise of a decree may be



challenged by filing a properly constituted suit or taking any other remedy available under law on the ground that the original defendant absented himself from the proceeding of the suit after appearance as he had no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.

13. The reality is that pure civil matters take a long time to be decided, and regretfully it does not end with a decision, as execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay, which is universally caused throughout India in the execution of a decree, has been a cause of concern with this Court for several years. In *Rahul S. Shah v. Jinendra Kumar Gandhi*, (2021) 6 SCC 418, this Court had observed that a remedy which is provided for preventing injustice (in the Civil Procedure Code) is in fact being misused to cause injustice by preventing timely implementation of orders and execution of decrees. Then, it had observed as under:

“23. The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.”

14. The above judgment is an important judgment in respect of Section 47 as well as Order XXI, CPC as the three Judge Bench decision of this Court not only condemned the abuse of process done in the garb of exercise of powers under Section 47 read with Order XXI, CPC, but also gave certain directions to be followed by all Civil Courts in their exercise of powers in the execution of a decree. It further directed all the High Courts to update and amend their Rules relating to the execution of decrees so that the decrees are executed in a timely manner. As far as Section 47 is concerned, this Court had stated as under:

“24. In respect of execution of a decree, Section 47 CPC



contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment-debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution



proceedings indefinitely.””

(Emphasis Supplied)

17. In view of the above, the executing court has the authority to decide all questions arising between the parties for execution of a decree, though the scope of interreference is inherently limited. The executing court cannot go beyond the decree. However, when such a case arises wherein an Award has been passed and the same has attained finality and it is to be executed as a decree, it is the duty of the executing court to ensure that the decree is given its due effect. The Hon’ble Supreme Court in *Meenakshi Saxena v. ECGC Ltd.*, (2018) 7 SCC 479 has observed as under:-

“17. The whole purpose of execution proceedings is to enforce the verdict of the court. Executing court while executing the decree is only concerned with the execution part of it but nothing else. The court has to take the judgment in its face value. It is settled law that executing court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree. At that juncture the executing court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree. The executing court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree.”

18. To enforce the award dated 23.09.2023, this court in the impugned order dated 02.08.2024, while dismissing the objections under section 47 read with Order 21 CPC filed by the judgment debtor, has held that the error in the Award is merely a typographical error and it does not affect the merits of the award in any manner. The said determination has been made, in exercise of its power under section 47 of CPC, which permits this court to



determine questions arising between the parties for the purpose of satisfying the decree. The order dated 02.08.2024 is passed in exercise of those powers.

19. Additionally, the judgment of the Hon'ble Division Bench of this court in *SPS Rana (supra)* does not provide any benefit to the respondent since in that matter the issue in consideration was whether the time of 30 days as provided under section 33(1) of the Arbitration and Conciliation Act, 1996 is extendable and further whether the submission that the various documents and submissions in writing of the party had not been considered by the Arbitrator fall within the ambit of Section 33(1)(a) or (b) of the Act. The inter-relation of section 36(1) of the Arbitration and Conciliation Act, 1996 and section 47 of CPC was not dealt by the Hon'ble Division Bench.

20. Further, the objections raised by the judgment debtor that the decree-holder is not a registered partnership firm and therefore cannot pursue suits/proceedings in terms of section 69 of the Partnership Act, 1932 is a question of fact. The same does not seem to have been raised before the learned Arbitrator in the Statement of Defence and no petition under section 34 of the Arbitration and Conciliation Act, 1996, raising the said grounds, has been filed. Therefore, these objections cannot be raised at this juncture before an executing court.

21. In view of the above finding, the review petition is found meritless and is dismissed.

JASMEET SINGH, J

SEPTEMBER 12, 2024/sr/dj
(Corrected and released on 05.10.2024)