



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3670 OF 2024

- 1) Shri Sunilkumar Prakashchandra Sahu,
(judgment-debtor), Proprietor,
M/s Sahu Bricks and Building Material
Suppliers, Off. at : Near Chitra Talkies,
Bharatsingh Chowk, Pulgaon,
Wardha – 442 302.
- 2) Anuradha Sunil Sahu,
Age 39 years, Occ. - Business,
Off. at : Near Chitra Talkies, Bharatsingh
Chowk, Pulgaon, Wardha - 442 302.
- 3) Hasim Mausad Ahmed,
Age about 42 years, Occ. - Business,
Off. at : 5141/3, Ward No. 3, Zanzari
Complex, Nachangaon, Tahsil – Deoli,
District Wardha.

.... **PETITIONERS**

VERSUS

Shriram City Union Finance Limited
(Decree-holder), A Company incorporated
under the Companies Act, 1956,
Off. at : 4, 5 and 6 Ground Floor, Neco
Chambers, Plot No. 48, Sector-11, CBD
Belapur, Navi Mumbai – 400 614.

.... **RESPONDENT**

Mr. R.P. Masurkar, Advocate for the petitioners,
Mr. V.R. Shah, Advocate h/f. Mr. R.V. Shah, Advocate for the
respondent.

CORAM : ABHAY J. MANTRI, J.

DATE : 07-08-2025.

ORAL JUDGMENT :

Heard. **Rule.** The rule is made returnable forthwith by consent of the learned Advocates for the parties.

2. The petitioners, being aggrieved by the common order dated 08-02-2023 passed below Exhibits 20 and 23 by the learned 2nd Civil Judge, Senior Division, Wardha in Arbitration Darkhast No. 281/2021, thereby rejecting the applications moved by the petitioners under Section 47 of the Civil Procedure Code (for short, “*the CPC*”), to dismiss the execution petitions, have preferred this petition.

3. The facts of the case in a nutshell are as under :

(a) Petitioner No. 1 is the proprietary firm run by Sunilkumar Prakashchandra Sahu, and Petitioners No. 2 and 3 are the guarantors to the loan borrowed by Petitioner No. 1. Petitioner No. 1 approached the respondent for grant of a Trade finance loan of Rs. 12,00,000/- for the purpose of his business expansion, which was sanctioned by the respondent on 01-04-2017. Pursuant to the sanction of the loan, petitioner No. 1 had entered into and executed the loan agreement with the respondent on the same day and petitioners No. 2 and 3 signed the said agreement as the guarantors. They had also executed a

demand promissory note and other documents in favour of the respondent. After execution of the documents, the respondent disbursed the loan of Rs. 12,00,000/- in favour of petitioner No. 1. Petitioner No. 1 agreed to repay the said loan amount along with monthly interest at the rate of 22.52% per annum and agreed to pay instalment of Rs. 33,590/- per month and same was payable in sixty equal instalments from 07-05-2017. Petitioner No. 1 also executed the mortgage of the house property in favour of the respondent towards the security of the loan amount.

(b) Petitioner No. 1 committed default in repayment of the instalment of the loan amount. Therefore, the respondent had issued a legal notice on 17-07-2019 and thereafter filed the dispute before the learned Arbitrator for recovery of the loan amount. It appears from the award that despite service of the notice on petitioner Nos. 1 to 3, they chose to remain absent. Therefore, the matter was proceeded *ex parte* against them. The learned Arbitrator, after considering the evidence and material before him, passed the award holding that the petitioners are jointly and severally liable to pay an amount of Rs. 12,75,519/- along with future interest at the rate of 18% per annum on the said amount from 10-08-2019.

(c) It is pertinent to note that the petitioners have not challenged the said Award till the filing of this writ petition. *Likewise*, the petitioners failed to comply with the order of the learned Arbitrator; therefore, the respondent filed execution proceedings bearing Arbitration Darkhast No. 281/2021 before the executing Court. During the pendency of the said proceedings, the petitioners appeared in the execution proceedings and filed an objection (Exhibit 20) under Section 47 of the CPC regarding tenability of the aforesaid Darkhast and urged for dismissal of the execution proceedings. Similarly, thereafter, the petitioners have filed an additional objection (Exhibit 23) to the maintainability of the arbitration execution proceedings.

(d) After hearing the parties and considering the material on record, the learned executing Court passed a detailed common order and thereby rejected both the applications, holding that the learned Arbitrator had not crossed his limits while passing the said order. Similarly, the learned Arbitrator had not passed the order in respect of the property mortgaged with the respondent by petitioner No. 1. Therefore, the award is not required to be compulsorily registered. Thus, held that both the applications are not tenable under Section 47 of the CPC and consequently, the same were rejected.

Being aggrieved by the same, the petitioners have preferred this petition.

4. Heard Mr. R.P. Masurkar, learned Advocate for the petitioners and Mr. V.R. Shah, learned Advocate for the respondent. Having gone through the impugned order and record, and the proceedings, the following points arise for determination.

- (i) *Whether the award can be termed as the decree of the civil Court?*
- (ii) *Whether the applications under Section 47 of the CPC are tenable before the executing Court before whom the award was placed for execution?*
- (iii) *Whether the award is required to be registered under Section 17 of the Act of 1908?*
- (iv) *Whether any interference is required in the matter in writ jurisdiction?*

5. The learned Advocate for the petitioners vehemently contended that the learned executing Court committed a grave error while rejecting the applications under Section 47 of the CPC, holding that those are not tenable. The said finding appears to be contrary to the law laid down by the Hon'ble Apex Court in *Ratan Lal Sharma v. Purshottam Harit*, (1974) 1 SCC 671; *Booz Alen and Hamilton Inc. v. SBI Home Finance Limited and others*, (2011) 5 SCC 532; and *Deccan Chronicle*

Holdings Ltd. v. L&T Finance Limited, 2013 SCC OnLine Bom 1005 and, therefore, the said finding cannot be sustained in the eyes of law.

a) Secondly, he argued that in the case of a decree relating to the property in question is required to be registered under Section 17 of the Registration Act, 1908 (for short, the “*Act of 1908*”). However, the learned executing Court committed an error while rejecting the said contention of the petitioners, holding that it is not required to be registered as the learned Arbitrator has passed the award in respect of the money only and not the property. Therefore, he urged to set aside the said finding.

b) He also pointed out the mortgage-deed executed by petitioner No. 1 in favour of the respondent and canvassed that the execution of the mortgage-deed itself indicates that same was executed towards the loan granted to petitioner No. 1 and based on the said mortgage-deed the respondent had sanctioned the loan to petitioner No. 1. It is contended that the nature of the loan was ‘secured loan’ and, therefore, the award passed by the learned Arbitrator is in respect of the same. However, the learned executing Court has erred in considering the said aspect in its proper perspective and discarded the contentions of the petitioners in that regard.

c) To buttress his submissions, he has relied on para 7 of the judgment in *Ratan Lal Sharma* (supra), paras 34 and 48 of the judgment in *Booz Allen and Hamilton Inc.* (supra) and paras 6, 7 and 8 of the judgment in *Deccan Chronicle Holdings Limited* (supra). Therefore, he urged that the impugned common order passed by the learned executing Court is contrary to the settled position of law laid down in the above-cited judgments. Hence, he urged allowing the petition.

6. *As against*, the learned Advocate for the respondent vehemently contended that the petitioners have not challenged the award passed by the learned Arbitrator till this date. Similarly, the applications filed under Section 47 of the CPC are not tenable before the executing Court as it is not a decree within the meaning of Section 2(2) of the CPC, and therefore, passing of the order by the learned executing Court is just and proper. *Likewise*, he drew my attention to the operative part of the award and canvassed that the Award was passed about the recovery of the money; therefore, the question of registration of the award under Section 17 of the Act of 1908 does not arise. He further argued that the respondent sanctioned the Trade business loan for the expansion of the business, and for that purpose, petitioner No. 1 executed the mortgage of his house property as a security, but the loan was not granted against the secured property i.e.

the mortgaged property, and, therefore, passing of the order by the learned executing Court is just and proper. Hence, he submitted that the judgments on which the petitioners are relying are not helpful to them in support of their contentions, as the facts in the said cases and the present case are distinct. As such, he urged for dismissal of the petition.

Point No.(i) :-

7. While dealing with this point, I would like to refer to the definition of the '**decree**' as contemplated under Section 2(2) of the CPC, which reads as under :

*"2. **Definitions** – In this Act, unless there is anything repugnant in the subject or context, -*

*(2) "**decree**" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [* * *] section 144, but shall not include-*

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation - A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

Upon perusal of the definition, it indicates that a '**decree**' means the formal expression of an adjudication with regard to the Court, expressing it and conclusively determining the rights of the parties.

8. I would like to refer to the definition of "**Court**" under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 (for short, the "**Act of 1996**").

"2. Definitions - (1) In this Part, unless the context otherwise requires, -

(e) "Court" means-

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court, in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court."

'**Court**' means, in the case of an arbitration other than the international commercial arbitration, the *principal Civil Court of original jurisdiction in a district, and subject matter of the suit*, but it does not include any Civil Court.

9. On the conjoint reading of Section 2(1)(e) of the Act of 1996 and Section 2(2) of the CPC, it reveals that the '**Court**' means the Civil Court of original jurisdiction in a district and '**decree**' means the formal expression of an adjudication which so far as regards the Court expressing it, conclusively determines the rights of the parties. The aforesaid definitions do not indicate that '**decree**' and '**Award**' have similar meanings. Still, it appears that formal expression of an adjudication by the civil court which determines the rights of the parties is termed as the 'decree' and undisputedly the learned Arbitrator is not a Civil Court and, therefore, the 'Award' passed by him cannot be termed as a 'decree' under the CPC and, therefore, in my view, the '**Award**' and '**decree**' are two distinct legal terms or concepts. They cannot be termed as the same. Hence, *I answer point No. (i) accordingly.*

Point Nos. (ii) and (iii) :

10. As per '**Section 36**' of the Act of 1996, after the expiry of the period for preferring the application under Section 34 of the Act of 1996, the Award passed by the learned Arbitrator could be enforced in accordance with the provisions of CPC in the manner as if it were a decree of the Court. I would like to reproduce the provisions of **Section 36(1)**

“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.”

In view of the said provisions, the ‘**Award**’ can be enforced by the party before the civil Court.

11. Undisputedly, the petitioners have not challenged the Award passed by the learned Arbitrator under Section 34 of the Act of 1996; therefore, the said award has attained finality, and after expiry of the period, the respondent has filed the execution proceedings before the civil Court for enforcement of the said Award as contemplated under Section 36 of the Act of 1996. It is further evident that during the pendency of the said execution proceedings, the petitioners raised the objection under Section 47 of the CPC before the learned executing Court regarding the tenability of the Darkhast proceedings filed by the respondent, which was rejected. The respondent has strenuously argued that the Award passed by the learned Arbitrator in the arbitration proceedings is not a ‘**Decree**’ within the meaning of Section 2(2) of the CPC. Hence, the objection under Section 47 of the CPC in the proceedings filed for execution of the Arbitral Award is not tenable. I would like to reproduce the provisions of Section 47 of the CPC 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.] ”

12. A bare perusal of the above provisions indicates that a question arising between the parties to the suit in which the decree was passed can only be determined by the Court executing the decree and not by a separate suit. I have already held that the ‘**Decree**’ and ‘**Award**’ are two distinct legal concepts. *Undisputedly*, the Civil Court has not passed the Decree in the present matter, but the respondent filed the execution proceedings executing the Award passed by the learned Arbitral Tribunal and, therefore, in my view, the objections under

Section 47 of the CPC are not tenable before the Court executing the Decree/Award. On that ground alone, the applications were liable to be rejected.

13. The next submissions advanced by the learned Advocate for the appellant was that the Award creates the right in favour of the appellants over the immovable property worth more than Rs. 100/-, therefore, it requires registration under Section 17 of the Act of 1908 and, as such, the said award is not executable and is void *ab initio* and liable to be set aside. While dealing with the above submissions, I would like to reproduce the opening paragraph of the Award (Paragraph above para 1) and the operative part of the award.

“This instant claim petition was referred to this Tribunal by the claimant on 10-08-2019 seeking to pass an Award for recovery of Rs. 1275519/- (RUPEES TWELVE LAKH SEVENTY FIVE THOUSAND FIVE HUNDRED NINETEEN ONLY) against the Respondent No. 1 to 3 herein.”

Operative Part of the Award.

*“Therefore, this Award is passed holding that the Respondents No. 1 to 3 are jointly and **severally liable to pay the following amounts to the Claimant Company:***

*i) The Respondents No. 1 to 3 **shall pay the claim amount of Rs. 1275519/- (RUPEES TWELVE LAKH SEVENTY FIVE THOUSAND FIVE HUNDRED NINETEEN ONLY) along with future interest @ 18% P.A. on the said amount from, 10.08.2019 the date of reference of this claim petition till the date of this Award and thereafter @ 18% P.A. from the date of Award till date of realization and in case of default claimant is entitled to recover the entire amount payable by the Respondents by due process of***

execution of this award from Respondent no.1 to 3 in accordance with applicable law.

*ii) The Respondents No. 1 to 3 do pay a sum of **Rs. 8140/-** towards the costs of this arbitration proceeding, to the Claimant Company as stated herein above.*

11. a) The Award is full and final in terms of the claim of the claimant referred for adjudication, and it is binding on both the parties and the persons claiming under them respectively.

b) The Award is made on a non-judicial stamp worth Rs. 500/-

c) The Award shall be enforced under the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the Court, as per Sec. 36 of the Arbitration and Conciliation Act, 1996.

d) A signed copy of the Award shall be delivered to each party under acknowledgement.

This Award is made, corrected and signed by me at C.B.D. Belapur, Navi Mumbai, on this 31st OCT., 2020”

14. Upon perusal of the above Award, it is evident that the respondent had filed the claim application for recovery of the amount of Rs. 12,75,519/- against the petitioners and while passing the Award, ***the learned Arbitrator categorically held that respondent Nos. 1 to 3 are jointly and severally liable to pay the amount of Rs. 12,75,519/-.*** It does not indicate that the Award was passed in respect of the immovable property or rights of the petitioners created over the immovable property have been affected. The Award categorically demonstrates that the claim was filed for recovery of the amount only, i.e. in respect of the monetary relief only.

15. In *Deccan Chronicle Holdings Limited* (supra), the application under Section 9 of the Act of 1996 was filed, wherein the Division Bench of this Court had confirmed the order passed by the Single Judge for issuing the direction for furnishing the security. The petitioners relies on para 6 of the said decision, which dealt with the observations made by the Hon'ble Apex Court in *Booz Allen and Hamilton* (supra) that "a suit on a mortgage is not a mere suit for recovery of moneys but constitutes an action in rem which is to be decided by the Court and not by an arbitral tribunal as it involves the transfer of right in rem but creates only a personal obligation and if the plaint for recovery of the money dues and outstanding is filed, then the arbitrator can deal with the same. Similarly, in the case of *Ratan Lal Sharma* (supra), the award which created rights in favour of the appellant therein over the immovable property worth over Rs. 100/-, therefore, the Hon'ble Apex Court held that the registration under Section 17 of the Act of 1908 is required.

16. On bare perusal of the impugned award passed by the learned Arbitrator, it is apparent that the application was filed for recovery of money dues only, and no claim had been sought in respect of the immovable property in the said claim. No relief had been claimed for the sale of the mortgaged property in auction, and,

therefore, in my view, the mandates laid in the above three judgments are hardly of any assistance to the petitioners in support of their contentions. *Hence, I answer point No. (ii) in the negative.*

17. During the argument, the learned Advocate for the petitioners tried to point out the schedule of the property, description of the mortgaged property and argued that the respondent is trying to sell a mortgaged property and, therefore, their rights have been affected. It is pertinent to note that the mortgage of the property is not a part of the award, or the learned Arbitrator has not passed any order for the sale of the mortgaged property. Similarly, the respondent had not filed the suit for the sale of the mortgaged property. Therefore, I do not find any substance in the contention of the learned Advocate for the petitioners that during execution proceedings if the mortgaged property is sold by the respondent, in that case, their rights over the immovable property could be affected. As against, it appears that only an Award for recovery of the claim was passed, and no direction was given to sell the mortgaged property. Therefore, I do not find any substance in the contention of the learned Advocate for the petitioners that the Award is required to be registered under the Act of 1908. In my view, to register the award under section 17 of the Act of 1908, registration is not required. Hence, *I answer point No. (iii) in the negative.*

Point No. (iv) :

18. I have gone through the impugned order passed below Exhibit Nos. 20 and 22. The learned executing Court has dealt with all the controversies that arise before it in para 5 of the order. In para 8 of the order, the learned Judge has categorically held that the grounds raised by the petitioners are not available to them to get the order under Section 47 of the CPC. Similarly, in para 9 of the order, it is held that it has every jurisdiction to execute the Arbitral Award. In para 14, it is held that the applications filed by the petitioners under Section 47 are not tenable and are rejected those applications. While discussing the third point, I have also categorically held that the *Award* cannot be equated with the terminology *decree*. Likewise, the learned Arbitrator cannot be equated with the Court and, therefore, the objections under Section 47 of the CPC are not tenable. Similarly, it is held that the respondent has filed the claim for recovery of money dues only; therefore, the question of registration of the award under Section 17 of the Act of 1908 does not arise. Thus, the findings recorded by the learned executing Court are just and proper and no interference is required in it in writ jurisdiction. ***Hence, I answer point No. (iv) in the negative.***

19. As a result, the petition being bereft of merit, stands dismissed. No order as to costs. Rule stands discharged.

(ABHAY J. MANTRI, J.)

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