



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

WRIT PETITION NO. 2186 OF 2024

The Amravati District Central
Co-operative Bank Ltd., Amravati
Through its Chief Executive officer,
R/O Irwin Chowk, Camp Road,
Amravati Tq. & Distt. Amravati.

....**PETITIONER**

....**VERSUS**....

M/S. Pronetsoft Solutions Pvt. Ltd.
105 Kalinga Arcade,
North Ambazari Road,
Shankar Nagar Nagpur, through its
Director Shri Milind Sudhakar Rao
Chavan, R/O Old Subhedar Layout
Nagpur Tq. & Dist. Nagpur.

....**RESPONDENT**

Shri V.A. Kothale, Advocate for petitioner through V.C.
Shri Y.B. Sharma, Advocate for respondent.

CORAM : SMT. M.S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 02/04/2025

DATE OF PRONOUNCING THE JUDGMENT: 06/05/2025

JUDGMENT

Heard learned counsel for the petitioner and
learned counsel for the respondent.

2] Being aggrieved and dissatisfied by the impugned

order dated 22.08.2023 passed below Exh. 7 and order dated 25.01.2024 passed below Exh. 20 in Arbitration Regular Darkhast No.160/2023 by learned 8th Joint Civil Judge, Senior Division, Amravati, the present petition is filed.

3. The facts of the case in brief are as under:-

The petitioner is body corporate, registered under Maharashtra Co-operative Societies Act, 1960 and respondent obtained arbitration award against petitioner Bank on 18.01.2010 for making recovery of Rs.8,19,900/- along with 12% interest per annum from 18.01.2010 and filed execution proceeding arising out of arbitration award vide Arbitration Regular Darkhast No. 160/2023 before learned 8th Joint Civil Judge, Senior Division, Amravati.

4. The Petitioner [J.D.] had filed objection regarding tenability vide Exh. 7, whereby issue of authenticity of Director of respondent Company as per latest position shown by company registrar was demanded and second objection regarding limitation of 12 years for execution of award was raised by considering starting point of limitation of 12 years

started from 18.05.2010 and expired on 18.01.2022. The respondent [D.H.] replied to the objection contending that Execution proceeding is under limitation period. Accordingly, the parties were heard and learned Joint Civil Judge Senior Division, Amravati, dismissed the objection raised by petitioner [JD] vide Exh. 7 as per order dated 22.08.2023.

5. Thereafter, the petitioner got knowledge about filing of R.D. No. 274/2010 by the respondent which came to be dismissed for want of prosecution on 21.03.2016 and hence, the petitioner had filed application below Exh. 20 regarding deciding non-tenability of Second Execution proceeding which was dismissed by the learned Trial Court vide order dated 25.01.2024. The execution proceeding initiated by the respondent is unsustainable in the eyes of law, hence, order passed below Exh. 7 and Exh. 20 are liable to be quashed and set aside. The aforesaid orders are subject matter of challenge in the present Writ Petition.

6. Learned Counsel for petitioner contended that The Trial Court ought to have considered the objection Exh.7

on the ground of limitation. So order passed vide Annexure-P-3 on 22.08.2023 is misconceived because Trial Court failed to consider that respondent is not entitled to count period of limitation after dismissal of Misc. Civil Application No. 203/2011 on 10.11.2017 by which arbitration award obtained by respondent on 18.01.2010 is maintained as it is.

7. It is also contended that as regards objection regarding authentic status of respondent [D.H.] applicant has demanded authority of D.H. regarding his status as representative of company from Company Registrar because of award is being executed after 12 years of limitation. So petitioner [J.D.] has sought clarification about lawfulness of status of decree holders. So considering provisions of Section 50 of Civil Procedure Code, trial court ought to have accepted objection No.1. However finding is given in Para No.5 that at the relevant point of time Milind Shankarrao Chavan was authorized person of decree holder company, hence erroneous finding is given that petitioner has no right to challenge the status of Executor on behalf of decree holder.

8. The learned counsel for the petitioner relied on the following citations:-

i) Hindustan Construction Company Ltd. and anr. V/s. Union of India and ors. [(2020) 17 SCC 324]

ii) Damodar Bhagwant Pande, since deceased, by legal representatives and ors. V/s. Narayan Bhagwant Pande, since deceased, by legal heirs and ors. [(1999) 1 Mh.L.J. 187]

iii) Pralhad S/o. Suryabhan Sapkal V/s. Gajanan S/o. Hari Marodkar [Judgment of this Court in WP 565/2024, d/d on 03/02/2025]

9. Learned Counsel for respondent supported the order passed by the learned District Judge and submitted that the judgement passed in M.C.A. No.203/2011 and arbitration award merged into order of M.C.A. No.203/2011 and the period of limitation has to be calculated from the date of said judgment in M.C.A. No.203/2011 that is from 10.11.2017 and not from the date of arbitral award.

10. I have heard both the parties at length. Perused the impugned order and documents and considered citations

relied on by the parties. The main challenge in the present petition is arbitration award came to be passed on 10.01.2010 and excluding the appeal period of 30 days, time for execution of decree within 12 years starts from 18.05.2012. The execution proceedings against arbitral award dated 10.01.2010, initiated against present applicant/Judgment Debtor dated 15.02.2023. After giving appearance, present petitioner/Judgment Debtor (JD) filed objection on 29.04.2023. The Trial Court rejected the objection. The petitioner also filed application Exhibit-20 and requested for deciding and non-tenability of second execution proceeding. Both these exhibits came to be rejected.

11. It appears that there was no interim order during the course of proceedings challenging the arbitral award and ultimately there is a plain dismissal of M.C.A. No.203/2011 on 10.11.2017. Thus, the starting point of limitation is from arbitral award dated 10.01.2010 instead of 10.01.2017. Thus, the limitation stands expired on 18.01.2020. Even if, period of three months of appeal is included at the most limitation

would expire on 18.05.2022.

12. Learned Counsel for petitioner placed reliance on *Hindustan Construction Company Limited (supra)*, in support of his contention that just because application under Section 34 is filed, there cannot be any automatic stay or suspension of execution of award. It is held by Hon'ble Apex Court in above referred citation to read Section as inferred in *Hindustan Construction Company Limited (supra)*. The Hon'ble Apex Court held that there is no automatic stay or suspension of execution of award, if the same is challenged, whether the case pertains to period before 2015 amendment or to period subsequent thereto.

13. Learned Counsel for petitioner also relied on judgement of *Pralhad s/o Suryabhan Sapkal (supra)*, wherein the similar issue was involved. This Court relied on judgement in *Bimal Kumar and another Vs. Shakuntala Debi and others 2012 (3) Civil LJ 266*, wherein the Hon'ble Apex Court in the said matter held as under:

"40. We have already held that the decree was a final decree. Therefore, it was immediately executable. The question, thus, would be "was the time arrested?" On a query being made, it was fairly conceded at the Bar that at no point of time, there was any order by any Court directing stay of operation of the judgment and decree passed in PS No. 131 of 1962. The question that emanates for consideration is whether the period during which the suit and appeal preferred by the appellants remained pending is to be excluded for the purpose of limitation."

41. In this context, we may usefully refer to the dictum in Ratansingh v. Vijaysingh, (2001) 1 SCC 469 wherein, while dwelling upon the concept of enforceability of a decree and the effect of an order of stay passed by the Appellate Court, the Bench stated thus:

"8. When is a decree becoming enforceable? Normally a decree or order becomes enforceable from its date. But cases are not unknown when the decree becomes enforceable on some future date or on the happening of certain specified events. The expression 'enforceable' has been used to cover such decrees or orders also which become enforceable subsequently.

9. Filing of an appeal would not affect the enforceability of the decree, unless the Appellate Court stays its operation. But if the appeal results in a decree that would supersede the decree passed by the lower Court then it is the Appellate Court decree which becomes enforceable. When the appellate order does not amount to a decree there would be no super session and hence the lower Court decree continues to be enforceable."

14. Learned Council for petitioner placed reliance in *Damodar Bhagwant Pande (supra)*, wherein this Court held that there is no difficulty to come to the conclusion that the issue involved in Regular Darkhast No.329/1996 was directly and substantially an issue in the former execution proceedings initiated vide Regular Darkhast No.227/1992. The parties where the issues are same and the said execution proceedings came to be dropped. Then learned Lower Court held that there is no specific bar to file second execution proceedings. However this Court held that finding arrived at by the Court below is not just and proper and same is also not sustainable in the eyes of law. It is held that earlier order passed in execution would operate as *res judicata* and therefore, the subsequent execution is not maintainable.

15. In view of the ratio laid down in *Bimal Kumar and another (supra)* filing of an appeal would not affect the enforceability of a decree unless the Appellate Court, stays its operation. But if appeal results in a decree that would supersede the decree passed by the lower Court then it is the

Appellate Court decree which becomes enforceable. When the appellate order does not amount to a decree there would be no super session and hence the lower Court decree continues to be enforceable. The limitation as provided for filing of an execution of any decree in view Article 136 of the Limitation Act provides 12 year of limitation. The time from which period begin to run is when the decree or order becomes enforceable. As such, on perusal of the said Article, it is quite clear that the period of limitation begins to run from the date when the decree become enforceable.

16. In the present matter, award came to be passed on 10.01.2010, whereas execution is filed on 15.02.2023. The learned Trial Court, erroneously rejected the objections. Considering the date of dismissal of application under Section 34 in M.C.A. No.203/2011 i.e. 10.11.2017 as a starting point of limitation and held that application is within limitation. As such, the order passed below Exhibit-7 is patently erroneous and also contrary to the law position. As such, I proceed to pass the following order:

ORDER

- i) The Writ Petition is allowed.
- ii) The order dated 22.08.2023 passed below Exhibit-7, in Regular Darkhast No.160/2023 by learned 8th Joint Civil Judge Senior Division, Amravati, is hereby quashed and set aside.
- iii) The application below exhibit-7 is allowed.
- iv) It is also held that execution filed beyond limitation. As such, execution proceeding is liable to be dismissed.
- v) In view of the order passed below Exhibit -7, I do not think there is any need to pass any order below Exhibit - 20 as it doesn't survive.

(Smt. M.S.Jawalkar, J.)