

**Court No. - 20**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 2511 of 2023

**Petitioner :-** Sanjay Gupta

**Respondent :-** Suresh Kumar Mishra And Another

**Counsel for Petitioner :-** Prashant Singh Gaur,Vikrant Singh

**Counsel for Respondent :-** Virendra Mishra

**Hon'ble Manish Mathur,J.**

1. Heard Mr.Prashant Singh Gaur and Mr.Vikrant Singh, learned counsel for petitioner and Mr. Virendra Mishra, assisted by Ms. Shraddha Mishra, learned counsel for opposite party no.1. Opposite party no.2 being merely the Court concerned and being a proforma party, notices are dispensed with.

2. Petition under Article 227 of the Constitution of India has been filed challenging order dated 01.04.2023 passed in Misc. Case No.48 of 2023(Execution Case No.94 of 2020) whereby objections preferred by petitioner being judgment debtor, purportedly under Section 47 of the Code of Civil Procedure, 1908 has been rejected.

3. Learned counsel for petitioner submits that the parties to the dispute entered into a builders agreement dated 10.11.1996 with regard to the property in question but due to disputes arising out of the aforesaid agreement, the same was referred for adjudication to the sole arbitrator in an application filed under Section 11(6) of Arbitration and Conciliation Act, 1996(hereinafter referred to as the Act of 1996). Award in the same was pronounced on 12.01.2007 against petitioner and 19 others. Father of petitioner filed an Application under Section 34 of the Act of 1996 bearing Regular Suit No.11 of 2007 which was dismissed by means of judgment and order dated

25.07.2012. Against aforesaid judgment and order, Appeal under Section 37 of the Act was preferred bearing F.A.F.O. No.1040 of 2012 in which initially interim orders were passed but the same was dismissed in default of appearance on 30.01.2017. Restoration Application was also dismissed for want of prosecution whereafter a second application for restoration was filed. The same was also dismissed although a third Restoration Application is pending consideration.

4. Learned counsel for petitioner submits that subsequently an Application for execution of award was filed on 03.11.2017 in which petitioner being judgment debtor, filed an Application styled to be under Section 47 of the Code. It is submitted that the award of arbitrator was with regard to movable as well as immovable properties with movable being in the nature of a money decree. It is submitted that in the objections filed by petitioner, it was specifically stated that the relief as being prayed for in execution proceedings was not in consonance with the award with regard to immovable property inasmuch as possession of the properties being sought in execution proceedings were not decreed in favour of the decree holder. It is further submitted that objections regarding insufficiency of stamp duty pertaining to the award were also raised in the objections. Learned counsel for petitioner submits that in the award, learned sole arbitrator has specifically not awarded possession of five shops in the property in question and therefore their claim in execution proceedings would amount to granting a relief which has not been granted in the award itself. It is submitted that however by means of impugned order, objections regarding insufficiency of stamp duty were rejected on the ground that the aforesaid objections were earlier raised and rejected and, therefore, there is no question of adjudicating the same again. It is submitted that the other objections raised

by the petitioner were rejected only on the ground that an Application under Section 47 of the Code is not maintainable in proceedings seeking execution of an arbitration award.

5. Learned counsel for petitioner submits that once Section 36 of the Act of 1996 specifically provides execution of an award in accordance with the provisions of the Code of Civil Procedure in the same manner as if it was a decree of the court, then naturally the execution has to be sought under Order 21 of the Code due to which objections under Section 47 of the Code are clearly maintainable. It is thus submitted that the Code of Civil Procedure cannot be made applicable in a piecemeal basis and either applies in its entirety or not at all. It is therefore, submitted that once Section 36 of the Act of 1996 clearly prescribes enforcement of the arbitration award in terms of Code of Civil Procedure, all other provisions of the Code would therefore be attracted including the provisions of Section 47 of the Code.

6. To buttress his submissions, learned counsel has placed reliance on judgments rendered by Hon'ble the Supreme Court in **Punjab State Civil Supplies Corporation Ltd. and another v. Atwal Rice & General Mills** (2017) 8 SCC 116; **Firm Rajasthan Udyog and others v. Hindustan Engineering and Industries Ltd.**, reported in (2020) 6 SCC 660; and **M. Anasuya Devi and another v. M. Manik Reddy and others**, reported in (2003)8 SCC 565.

7. Learned counsel appearing on behalf of opposite party has refuted submissions advanced by learned counsel for petitioner with the submission that provisions of the Act of 1996 clearly indicates that an arbitration award is to be enforced as if it were a decree and therefore, the arbitration award does not come within the definition of a decree as envisaged under Section

2(2) of the Code of Civil Procedure since it would only have the status of a deemed decree due to which objections under Section 47 are clearly barred. It is submitted that by virtue of Section 36 of the Act of 1996, it has only been prescribed that, only for the purposes of enforceability of the award, recourse can be taken to Order 21 of the Code while the application itself would be deemed to be under Section 36 of the Act of 1996 and not under Order 21 of the Code. As such, it is submitted that the basic purpose of applicability of the Code is only for providing a procedure for enforcement of the award and the Code itself has not been made applicable in its entirety due to which objections under Section 47 of the Code would not be maintainable as has rightly been held in the impugned order. Learned counsel has placed reliance on following decisions:-

(1) Decision of Hon'ble Supreme Court in **Paramjeet Singh Patheja v. ICDS Ltd.** reported in (2006) 13 SCC 322;

(2) Decision of Hon'ble Supreme Court in **Morgan Securities & Credit (P) Ltd. v. Modi Rubber Ltd.** reported in (2006) 12 SCC 642;

(3) Decision of Hon'ble Supreme Court in **Government of India v. Vedanta Limited and others**, reported in (2006) 12 SCC 642;

(4) Decision of Hon'ble Supreme Court in **Amazon.Com NV Investment Holdings LCC v. Future Retail Ltd and others**, reported in (2022) 1 SCC 209;

(5) Decision of this Court in **M/s Bharat Pumps and Compressors Ltd. v. M/s Chopra Fabricators and Manufacturers Pvt. Ltd.**, reported in MANU/UP/1432/2022[Civil Revision No.53 of 2022];

(6) Decision of Delhi High Court in **Hindustan Zinc Ltd. v. National Research Development Corporation**, reported in 2023 SCC OnLine Del 330;

(7) Decision of Delhi High Court in **M/s Larsen & Toubro Limited v. M/s Maharai Educational Trust**, reported in 2010 SCC OnLine All 1866;

8. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that objections to the execution proceedings were filed by petitioner being judgment debtor in Execution Case no.94 of 2020 in the shape of objections under Section 47 of the Code of Civil Procedure. The objections pertaining to deficiency of stamp duty in the award as raised by petitioner was rejected by means of impugned order on the ground that such an objection was earlier raised by petitioner and was rejected on 03.12.2020 whereafter it was reiterated and again rejected on 17.10.2022. It is admitted that the aforesaid two orders have not been challenged by petitioner, which therefore have attained finality and therefore rejection of such objections having been raised for the third time and being rejected on that ground, are not required to be interfered with particularly in view of the settled law that principles of resjudicata are applicable at various stages of the same proceedings as has been held in **Y.B. Patil & others v. Y.L. Patil** reported in AIR 1977 SC 392 : (1976) 4 SCC 66.

9. So far as objections raised by petitioner with regard to enforceability of award pertaining to immovable property are concerned, the same have been rejected by impugned order on the ground that objections under Section 47 of the Code are not maintainable in execution proceedings for the purposes of enforcement of arbitration award.

10. So far as the question of maintainability of objections under Section 47 of the Code in execution proceedings for the purposes of enforcement of arbitration award are concerned, Hon'ble the Supreme Court in a plethora of judgments starting from **Paramjeet Singh Patheja**(supra) onward has clearly held that awards rendered in arbitration proceedings are not covered under the definition of decree as defined under Section 2(2) of the Code and therefore objections which can be taken under Section 34 of the Act of 1996 cannot be taken in execution proceedings taking resort to Section 47 of the Code. The relevant paragraphs of the judgment are as follows:-

*"28. It is settled by decisions of this Court that the words "as if" in fact show the distinction between two things and such words are used for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created.'*

*"29. Section 36 of the Arbitration and Conciliation Act, 1996 which is in pari materia with Section 15 of the 1899 Act, is set out hereinbelow:"*

*"36. Enforcement.—Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, 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."*

*(emphasis supplied)*

*In fact, Section 36 goes further than Section 15 of the 1899 Act and makes it clear beyond doubt that enforceability is only to be under CPC. It rules out any argument that enforceability as a decree can be sought under any other law or that initiating insolvency proceeding is a manner of enforcing a decree under CPC. Therefore the contention of the respondents that, an award rendered under the Arbitration and Conciliation Act, 1996 if not challenged within the requisite period, the same becomes final and binding as provided under Section 35 and the same can be enforced as a decree as it is as binding and conclusive as provided under Section 36 and that there is no distinction between an award and a decree, does not hold water.' "*

*"42. The words "as if" 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. "*

11. The aforesaid proposition of law has also been enunciated by Hon'ble the Supreme Court in **Government of India v. Vedanta Limited**(supra) as well as **Amazon.Com NV Investment Holdings LCC**(supra), which also holds that an application to enforce an award is in fact an Application under

the Arbitration Act and not an Application under Order 21 of the Code. The relevant portion of the judgment is as follows:-

*"77. The application under Sections 47 and 49 for enforcement of the foreign award, is a substantive petition filed under the Arbitration Act, 1996. It is a well-settled position that the Arbitration Act is a self-contained code. [Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178; Kandla Export Corpn. v. OCI Corpn., (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664; Shivnath Rai Harnarain (India) Co. v. Glencore Grain Rotterdam, 2009 SCC OnLine Del 3564 : (2009) 164 DLT 197; Usha Drager (P) Ltd. v. Dragerwerk AG, 2009 SCC OnLine Del 2975 : (2010) 170 DLT 628; Sumitomo Corpn. v. CDC Financial Services (Mauritius) Ltd., (2008) 4 SCC 91; Conros Steels (P) Ltd. v. Lu Qin (Hong Kong) Co. Ltd., 2014 SCC OnLine Bom 2305 : (2015) 1 Arb LR 463 : (2015) 2 Bom CR 1] The application under Section 47 is not an application filed under any of the provisions of Order 21 CPC, 1908. The application is filed before the appropriate High Court for enforcement, which would take recourse to the provisions of Order 21 CPC only for the purposes of execution of the foreign award as a deemed decree. The bar contained in Section 5, which excludes an application filed under any of the provisions of Order 21 CPC, would not be applicable to a substantive petition filed under the Arbitration Act, 1996. Consequently, a party may file an application under Section 5 for condonation of delay, if required in the facts and circumstances of the case."*

12. The same analogy has been followed by a coordinate Bench of this Court in **M/s Larsen & Toubro Limited**(supra) which has also been followed by another coordinate Bench in **M/s Bharat Pumps and Compressors Ltd.**(supra) as well as by Delhi High Court in **Hindustan Zinc Ltd.**(supra). Even in judgment relied upon by learned counsel for petitioner in **Punjab State Civil Supplies Corporation Ltd.** (supra), it has been held by Hon'ble the Supreme Court in paragraph 27.3 that all objections referred and ought to have been raised by the respondents before arbitrator or under Section 34 of the Act of 1996 cannot be allowed to be raised in execution once the award became final and attained finality as a decree of a Civil Court. The relevant paragraph of aforesaid judgment is as follows:-

*"27.3. Thirdly, all the objections referred above ought to have been raised by the respondents before the arbitrator or/and the Additional District Judge under Section 34 of the Act but certainly none of them could be allowed to be raised in execution once the award became final and attained finality as decree of the civil court. In other words, having regard to the nature of objections, it is clear that such objections were not capable of being tried in execution proceedings to challenge the award. It is for the reason that they were on facts and pertained to the merits of the controversy, which stood decided by the arbitrator resulting in passing of an award. None of the objections were in relation to the jurisdiction of the court affecting the root of the very passing of the decree. If the executing court had probed these objections then it would have travelled behind the decree, which was not permissible in law. An inquiry into facts, which ought to have been done in a suit or in an appeal arising out of the suit or in proceedings under Section 34 of the Act, cannot be held in execution proceedings in relation to such award/decree."*

13. Upon perusal of aforesaid judgments, the single thread running through all of them with regard to maintainability of objections under Section 47 of the Code is that such objections are not maintainable in execution proceedings for the enforcement of an arbitration award on the twin analogies that: (a) an arbitration award not having been passed by a 'court', does not come within definition of a decree as envisaged under Section 2(2) of the Code; and (b) once the award attains finality, objections thereto can be taken only in proceedings under Section 34 of the Act of 1996 and the same cannot be bypassed to be taken in execution proceedings for the purposes of enforcement of the award.

14. So far as aforesaid twin analogies are concerned, it is now settled law as seen herein above that award passed by the arbitrator does not come within definition of a decree in terms of Section 2(2) of the Code and therefore objections under Section 47 of the Code are clearly not maintainable in execution proceedings for the purposes of enforcement of the arbitration award. Nonetheless, the second aspect of the matter on which it has been held that application under Section 47 of the Code would not be maintainable arises in such situations where objections to the award can be taken in proceedings under Section 34 of the Act of 1996. As a natural corollary, objections which cannot be taken under Section 34 of the Act of 1996 can very well be examined and decided by the executing court if they do not touch upon the merits of the award. In case these twin conditions apply, a judgment debtor cannot be left remediless.

15. A situational aspect with regard to aforesaid proposition would be in a case such as the present one where objections have been taken by judgment debtor to the fact that by means of



execution application, a relief which was never awarded is being sought. In such a situation where objection is being raised to aforesaid extent, naturally cause of action arises only upon filing of an execution application for enforceability of award and in such circumstances there can be no occasion for the judgment debtor to raise such objections to award under Section 34 of the Act of 1996. However, in such circumstances also, a word of caution is required that such objections would be maintainable only in case they do not touch upon the merits of the award or where such objections can be taken under Section 34 of the Act of 1996. Although for the purposes of enforceability of an arbitration award in terms of Section 36 of the Act of 1996, recourse can be taken to Order 21 of the Code of Civil Procedure, but in the circumstances delineated herein above, the execution court, in the considered opinion of this court, would have an inherent right even exercising such powers under Section 151 of the Code to examine that such objections are raised by judgment debtor which do not pertain to merits of the award or which cannot be taken under Section 34 of the Act of 1996.

16. The aforesaid proposition would find support from judgment of Hon'ble Supreme Court in **Punjab State Civil Supplies Corporation Ltd.**(supra) in which it has been held that it is a well-settled principle of law that the executing court has to execute the decree as it is and cannot go behind the decree but can undertake limited enquiry regarding jurisdictional issue which goes to root of the decree and has the effect of rendering the decree a nullity. Aforesaid enunciation of law although would not be completely applicable where enforceability of an arbitration award is concerned but nonetheless the aspect that the executing court can only execute the decree as it is and cannot go behind the decree would still

be applicable.

17. In **Hindustan Zinc Ltd.**(supra), Delhi High Court has also held that for execution or enforceability of an arbitration award, the court can draw sustenance and guidance from the principles underlying the provisions contained in Order 21 of the Code as also that challenge to award on its merits cannot be made particularly when the scope of objections pertain to extending such objections to trial of questions touching upon the merits of award.

18. Even in **Paramjeet Singh Patheja**(supra), it has been held that objections under Section 47 of the Code are not maintainable in proceedings for the purposes of enforcement of an arbitration award. Aforesaid enunciation of law is particularly on the aspect that validity of the award can be raised only in proceedings under Section 34 of the Act of 1996 and not by taking resort to Section 47 of the Code.

19. In view of discussions made herein above, as such it is evident that although objections under Section 47 of the Code are not maintainable in proceedings for the purposes of execution or enforceability of an arbitration award but nonetheless objections raised by judgment debtor which do not touch upon the merits of the award or raise questions which cannot be raised under Section 34 of the Act of 1996 can very well be raised in such proceedings and to be adjudicated upon.

20. In terms of aforesaid, it is clear that in the present case, the petitioner being judgment debtor has raised objections to the effect that the relief sought in execution proceedings are beyond the scope of arbitration award and as such ignoring the fact that such objections have been filed purportedly under Section 47 of the Code, in the considered opinion of this Court, the executing

court would have an inherent right to decide such objections in view of what has been held herein above. However, the said determination would necessarily exclude objections raised to insufficiency of stamp duty which even otherwise was barred under the principles of res judicata.

21. In view of aforesaid, while not interfering with order dated 01.04.2023 so far as it holds that objections under Section 47 of the Code are not maintainable, the executing court is directed to decide the objections raised by petitioner excluding those pertaining to insufficiency of stamp duty and decree pertaining to movable property by the award.

22. In view of aforesaid, the Petition is partly **allowed** to aforesaid extent. The parties to bear their own costs.

23. The executing court is also directed to expedite hearing of the execution application in conformity with directions issued by Hon'ble the Supreme Court with regard to expeditious disposal of proceedings for enforcement of arbitration awards.

**Order Date :- 5.7.2023**

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