

MANU/DE/0995/2008

Equivalent Citation: 2008(3)ARBLR272(Delhi), 152(2008)DLT239, (2009)ILR 1Delhi305, (2008)152PLR63

IN THE HIGH COURT OF DELHI

Ex.P. 234/2008

Decided On: 02.07.2008

Appellants: S.K. Brothers

Vs.

Respondent: Delhi Development Authority
[Alongwith Ex. P. 235/2008]

Hon'ble Judges/Coram:

Rajiv Sahai Endlaw, J.

Counsels:

For Appellant/Petitioner/plaintiff: S.K. Jain, Adv

For Respondents/Defendant: Nemo

Case Note:

Civil - Maintainability - Whether present Court has jurisdiction to entertain present applications for execution of arbitral award? Held, civil Judge is competent to pass a decree for an amount not exceeding Rs 1 lac - Such a decree passed by Civil Court for an amount not exceeding Rs 1 lac could therefore, be enforced in same Court, i.e. in Court of Civil Judge - Therefore, for purpose of a suit/proceeding subject matter of which does not exceed Rs 1 lac Principal Civil Court or original jurisdiction in district would be Court of Civil Judge - Executions being less than Rs 20 lacs which is minimum pecuniary jurisdiction of this Court, executions ought to have been preferred before court of minimum pecuniary jurisdiction within meaning of CPC and which is Court of District Judge - This Court however, refraining from dealing with said subject, having held that these execution Applications lie before District Judge and not before this Court - Execution applications are accordingly held to be not maintainable before this Court and are ordered to be returned to decree holder for filing before appropriate court

JUDGMENT

Rajiv Sahai Endlaw, J.

1. The execution petition 234/2008 has been filed for execution of the arbitral award dated 16th January, 2008 and in para 7 of the execution application "amount of suit Along with interest as per decree or any other relief granted by the decree" is stated to be Rs 15,80,833.61 with interest at 18 % per annum from 2nd July, 2008 till the date of realization of the amount. The arbitral award is engrossed on stamp paper of Rs 500/-.

2. Execution petition 235/2008 has been filed for execution of an arbitral award dated 20th December, 2007. In para 7 of the application the "amount of suit Along with

interest as per decree or any other relief granted by the decree" is stated to be Rs 19,02,725/- with interest at 18% per annum from 2nd July, 2008 till the date of realisation of the amount. The arbitral award is engrossed on stamp paper of Rs 800/-.

3. Both the execution petitions came up before the court first on 1st July, 2008. It was pointed out to the counsel for the decree holder that since the amount in both the executions is less than Rs 20 lacs, the execution petitions would not lie before this Court and would lie before the District Court. It was further pointed out that the award did not appear to be duly stamped. The counsel sought time to satisfy on the two aspects.

4. The counsel for the decree holders has sought to justify the jurisdiction of this Court to entertain the execution petitions for the reason of this Court, in both the cases having exercised the jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996 (Act) and further for the reason of this Court having again exercised jurisdiction (again in both the cases) under Section 15(2) of the Act for substituting the arbitrator appointed earlier. The counsel for the decree holders has submitted that since the petitions under Sections 11(6) and 15(2) of the Act had been made to this Court, under Section 42 of the Act, notwithstanding the value of the pecuniary jurisdiction in both the cases being below the minimum pecuniary jurisdiction of this Court, this Court would have exclusive jurisdiction to entertain the execution applications. Reliance in this regard was placed on a judgment of a single Bench of this Court in *Damayanti Builders v. Union of India* reported as 2003 (3) Arb. LR 530. Undoubtedly it was held in the said judgment that the application under Section 34 of the Arbitration Act would lie before this Court only, for the reason of this Court having exercised jurisdiction under Section 11(6) of the Act. Reliance was also placed on certain observations to the same effect in order dated 13.12.2004 of another Single Bench of this Court in OMP 418/2004.

5. However, I find that the aforesaid judgment of the Single Judge of this Court is no longer good law. A contrary view has been taken by the Apex Court in *Rodemadan India Ltd. v. International Trade Expo Centre Ltd.* MANU/SC/1975/2006 : AIR2006SC3456 . It was held in the said judgment in para 8 that the power under Section 11(6) of the Act is the power of a designate referred to under the section and not that of the (Supreme) Court, albeit that it has now been held to have judicial characteristics by reason of the judgment in *SBP & Co v. Patel Engg Ltd.* MANU/SC/1787/2005 : (2005) 8 SCC 618. It was further held in para 25 of the judgment that neither the Chief Justice nor his designate under Section 11(6) is a "Court" as contemplated under Section 2(1)(e) of the Act and further that the bar of jurisdiction under Section 42 is only intended to apply to a "court" as defined in Section 2(1)(e).

6. The said judgment of the Apex Court was followed by another Single Judge of this Court in *Union of India v. S.R. Constructions Company and Anr.* 144(2007) DLT 580 and it was held that the mere passing of an order under Section 11(6) of the Act by this Court would not vest this Court with the exclusive jurisdiction under Section 42 of the Act to entertain the objections under Section 34 of the Act, if otherwise this Court did not have the pecuniary jurisdiction to entertain the said objections.

7. The Apex Court in *Pandey & Co Builders (P) Ltd. v. State of Bihar and Anr.* MANU/SC/8643/2006 : AIR2007SC465 has further held that Section 42 only applies to applications and not to appeals under Section 37 of the Act. Applying the same reasoning, Section 42 would also not apply to execution applications. The execution application is not "arbitral proceedings" within the meaning of Section 42 of the Act

and is not a subsequent application arising out of the agreement and the arbitral proceedings. In fact, the arbitral proceedings come to an end when the time for making an application to set aside the arbitral award expires and the execution application is an enforcement of the award which takes the colour of a decree under the CPC, by virtue of the provisions of Section 36 of the Act.

8. So, the execution applications do not lie before this Court for the reason propounded by the decree holders. The exercise of jurisdiction by this Court under Section 15(2) of the Act, being in continuation of exercise of power under Section 11(6) of the act, would also not attract Section 42.

9. It has otherwise been held by this Court in *Kinetic Capital Finance Limited v. Anil Kumar Misra* 87 (2000) DLT 405:

9. The words used in the definition of 'Court', "having jurisdiction to decide the question forming the subject matter of the arbitration if the same had been the subject matter of a suit" and the expression used in Section 36, "award shall be enforced under the Code of Civil Procedure in the same manner as if it were a decree of the Court" have also relevance for the purpose of deciding the issue arising before me. Taking notice of the ratio laid down by the aforesaid decisions and the words used in the definition of 'Court' and in the provision of Section 36 of the Act it appears that an award made under the provisions of the Arbitration and conciliation Act, 1996 could be enforced under the Code of Civil Procedure in the same manner as if it were a decree of the Court. A civil Judge is competent to pass a decree for an amount not exceeding Rs 1 lac. Such a decree passed by the Civil Court for an amount not exceeding Rs 1 lac could Therefore, be enforced in the same Court, i.e. in the Court of Civil Judge. Therefore, for the purpose of a suit/proceeding the subject matter of which does not exceed Rs 1 lac the Principal Civil Court or original jurisdiction in the district would be the Court of the Civil Judge. In arriving at the aforesaid conclusion I am fortified by the decision of this Court in *Bakshi Lochan Singh's case* (supra).

10. Applying the aforesaid principles, the subject matter of both the executions being less than Rs 20 lacs which is the minimum pecuniary jurisdiction of this Court, the executions ought to have been preferred before the court of minimum pecuniary jurisdiction within the meaning of the Code of Civil Procedure and which is the court of the District Judge, Delhi.

11. It has been held by the Apex Court in *M. Anasuya Devi v. M Manik Reddy* MANU/SC/0837/2003 : (2003)8SCC565 that the objection as to non-stamping of the Award are to be dealt with at the stage of enforcement of the arbitral award, and not at the stage of objections under Section 34 of the Act. The award, under Article 12 of the Schedule 1A as applicable to Delhi, of the Stamp Act, attracts stamp duty of 0.1% of the value of the property to which the Award relates. The Awards in both the cases did not appear to be duly stamped. It was the submission of the counsel for the decree holders that the arbitral award was duly stamped according to the principal amount awarded. I am, however, refraining from dealing with the said subject, having held that these execution petitions lie before the District Judge and not before this Court.

12. The execution applications are accordingly held to be not maintainable before this Court and are ordered to be returned to the decree holder for filing before the

appropriate court. If the decree holder so desires, the original awards in both the cases filed before this Court may also be returned to the decree holder in accordance with law.

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