

(2018) 10 CHH CK 0029

In the Chhattisgarh High Court

Case No : Writ Petition No.227 No. 299 Of 2018

A Suo Moto @APPELLANT@Hash State Of Chhattisgarh

Date of Decision : 12-10-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 1, 2, 2(1)(e), 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 36(1), 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86
Arbitration and Conciliation Act, 1940 — Section 2(1)(c), 2(1)(e), 21
Chhattisgarh Civil Courts Act, 1958 — Section 3, 7, 8
General Clauses Act, 1897 — Section 3(17)
Code of Civil Procedure, 1908 — Section 3, 24, 38, 39
Hindu Succession Act, 1956 — Section 2(bb)
Central Provinces Courts Act, 1917 — Section 17(c), 26(1)
Madhya Pradesh Municipalities Act, 1961 — Section 20
High Court of Chhattisgarh Rules, 2007 — Section 28(3)
Constitution of India, 1950 — Article 227

Citation : (2018) 10 CHH CK 0029

Hon'ble Judges : Prashant Kumar Mishra, J; Manindra Mohan Shrivastava, J; Ram Prasanna Sharma, J

Bench : Full Bench

Advocate : Dr. N.K. Shukla, Pramod Verma, Prafull N. Bharat

Judgement

Prashant Kumar Mishra, J.

1. This suo moto petition under Article 227 of the Constitution of India is a reference made to the Full Bench by Honâ??ble the Chief Justice on a

request made by the District & Sessions Judge, Durg, in its memo dated 5-3-2018 to the effect that 859 Arbitration Cases are pending before the

District & Sessions Judge i.e. the Principal Civil Court of Original Jurisdiction which cannot be transferred to the Court of Additional District Judge(s)

functioning within his jurisdiction in view of the judgment rendered by this Court in the matter of Raipur Development Authority v M/s Sarin

Construction Company, Raipur (AIR 2006 Chhattisgarh 12), therefore, requesting the High Court to issue guidelines for transfer of the pending

Arbitration cases.

2. Honâble the Chief Justice has, therefore, exercised the power under Rule 28 (3) of the High Court of Chhattisgarh Rules, 2007 to place the

following issue for consideration before the Full Bench :

âWhether applications for execution of Arbitration Awards under Section 36 of the Arbitration and Conciliation Act, 1996 and other applications

under that Act which could lie before the Principal Civil Court of Original Jurisdiction can be considered by any of the District Judges or Additional

District Judges of that Principal Civil Court of Original Jurisdiction ?â

3. On 16-4-2018 we took up the matter for consideration and appointed Dr. N.K. Shukla & Shri Pramod Verma, both learned Senior Advocates and

Shri Prafull N. Bharat & Shri Sunil Otmani, both learned Advocates to assist this Court as amicus curiae, who argued the matter at length on different

dates.

4. Referring to various provisions contained under the Arbitration and Conciliation Act, 1996 (for short âthe Act, 1996â), the Chhattisgarh Civil

Courts Act, 1958 (for short âthe Act, 1958â), the General Clauses Act, 1897 (for short 'the Act, 1897') and the Code of Civil Procedure, 1908

(for short âthe CPCâ), learned amicus curiae have argued that the majority of the judicial pronouncements by different High Courts have taken

the view that the Court of Principal Civil Court of Original Jurisdiction would include the Court of ADJ.

Submissions :

5. Dr. N.K. Shukla & Shri Pramod Verma, learned senior Advocates, Shri Prafull N. Bharat & Shri Sunil Otmani, learned Advocates appearing as

amicus curiae would place reliance on various decisions of the Supreme Court as well as the High Courts and also referred to the statutory provisions.

6. Learned amicus curiae have argued that in the matter of M/s Sarin Construction Company (supra), the Single Bench of this Court has relied on the

judgments rendered by the Allahabad High Court in M/s I.T.I. Ltd. Allahabad and others v District Judge, Allahabad and Others (AIR 1998 All 313)

and the Single Bench of the High Court of Madhya Pradesh in Vinod Kumar Jajodia and others v Brij Bhushan Agarwal (1993 MPLJ 603), however,

both the matters were on different points. According to them, High Courts of Calcutta, Bombay, Madhya Pradesh and Kerala have taken the view

that the Court of District Judge includes the Court of ADJ whereas the High Courts of Orissa, Karnataka and Andhra Pradesh have taken the view

that the Court of Principal Civil Court of Original Jurisdiction would mean the Court of District Judge only and does not include the Court of Additional

District Judge.

7. Learned amicus curiae would emphatically submit that the matter is now set at rest by the Supreme Court in its very recent judgment in the matter

of Sundaram Finance Limited represented by J. Thilak, Senior Manager (Legal) v Abdul Samad and Another {(2018) 3 SCC 622}, therefore, the very

foundation of the judgment rendered by the Single Bench of this Court in M/s Sarin Construction Company (supra) is wiped off.

Discussion :

8. The Act, 1996 is arranged in four Parts. Part I consisting of Chapter I to X, Sections 1 to 43 deals with Arbitration Clauses. Part II from Sections

44 to 60, divided in two Chapters provides for enforcement of certain Foreign Awards namely; New York Convention Awards & Geneva Convention

Awards. Part III consisting from Sections 61 to 81 would make provision in respect of Conciliation proceedings whereas Part IV consisting from

Sections 82 to 86 and the Seven Schedules would provide for Supplementary Provisions. In the matter at issue we are concerned with Part I i.e.

Arbitration.

9. Before proceeding to take up the issue referred to the Full Bench it would be appropriate to refer to certain provisions of the Arbitration and

Conciliation Act, 1940 (for short 'the Act, 1940'), Act, 1996 and the Act, 1958.

10. The word 'Court' was defined under Section 2 (1) (c) of the Act, 1940 to mean a Civil Court having jurisdiction to decide the questions

forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration

proceedings under section 21, include a Small Cause Court. Thus, the definition of the 'Court' of the Act, 1940 would not use the expression

Principal Civil Court of Original Jurisdiction, but it refers to a Civil Court having jurisdiction to decide the question forming the subject matter of the

reference, if the same had the subject matter of a suit meaning thereby that all

Civil Courts in the hierarchy, in terms of its pecuniary jurisdiction, was included in the definition of the word 'Court'.

11. Under the Act, 1996 the word 'Court' has been defined under Section 2 (1) (e) to mean 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.

12. After the amendment in 2015 (w.e.f. 23-10-2015) the word 'Court' is presently defined thus :

2 (1) (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;

13. Section 8 enjoins a judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement, to refer the

parties to arbitration. Section 9 authorises the party to an arbitral agreement/proceedings to apply to a Court for any interim measure either before or

during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36. Thus,

provisions under Section 9 would be invocable before enforcement of award under Section 36.

14. Section 11 speaks about appointment of Arbitrators by agreement of parties or, if they failed to do so, to apply before the Chief Justice or any

person or institution designated by him for appointment of Arbitrator.

15. Section 14 would speak about the mandate of an Arbitrator whereas Section 15 would provide for termination of mandate and substitution of

Arbitrator. Sections 16 & 17 would make provision for jurisdiction of Arbitral Tribunals whereas Sections 18 to 27 would deal with the procedure

regarding Conduct of Arbitral Proceedings. Under Section 30 the Arbitral Tribunal has been empowered to encourage settlement of dispute whereas

Section 31 would provide for form and contents of arbitral award. Section 32 would make provision as to when arbitration proceedings would

terminate.

16. Section 32 of the Act, 1996 reads thus :

32. Termination of proceedings.â?"(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal

under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings whereâ?"

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in

obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings; or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral

proceedings.

17. The provisions contained in Section 32 of the Act, 1996, as quoted above, declares that the arbitral proceedings shall be terminated by the final

arbitral award or where the arbitral tribunal issues an order for the termination of the arbitral proceedings upon withdrawal of claim by the claimant

unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the

dispute; or the parties agree on the termination of the proceedings, or the arbitral tribunal finds that the continuation of the proceedings has for any

other reason become unnecessary or impossible with further stipulation under

sub-section (3) that the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

18. Section 34 of the Act, 1996 would make provision for an application for setting aside arbitral award, which is to be moved before the Court, as defined under Section 2 (1) (e) i.e. the Principal Civil Court of Original Jurisdiction.

19. Section 36, in respect of which the present reference mainly concerns makes provision in respect of enforcement of the award. The provisions of Section 36 of the Act, 1996 is quoted below for ready reference :

36. Enforcement.â?"(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.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

20. Section 36 (1) contemplates enforcement of an award in accordance with the provisions of the CPC, in the same manner as if it were a decree in the Court.

21. Section 42 of the Act, 1996 speaks about jurisdiction, providing that notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone

shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

22. There are provisions in the Act, 1958 describing the classes or hierarchy of Civil Courts. Section 3 of the Act, 1958 describes about classes of

Civil Courts whereas Section 7 is specific about Principal Civil Courts of Original Jurisdiction and Section 8 empowers for appointment of Additional Judges.

23. Sections 3, 7 & 8 of the Act, 1958 are relevant, hence reproduced hereunder :

3 - Classes of Civil Courts.--1. In addition to the Courts established under any other law for the time being in force, there shall be the following classes

of Courts, namely:--

(1) the Court of the District Judge;

(2)omitted;

(3) the Court of the Civil judge (Class II), and

(4) the Court of the Civil judge (Class I)

2. An Additional Judge to the Court of Civil Judge may be appointed from the cadre of Lower Judicial Service.

3. Every Court of the District Judge shall be presided over by a District Judge to be appointed by the High Court may also appoint Additional District

Judge from the Cadre of Higher Judicial Service to exercise jurisdiction in the Court of the District Judge.

4. The Court of the District Judge shall include the Court of Additional Judge and the Court of Civil Judge Class I or Class II shall include the Court of

Additional Civil Judge to that Court.

7 - Principal Civil Courts of Original jurisdictions.--(1) The Court of the District Judge shall be the Principal Civil Court of original jurisdiction in the civil district.

(2) An Additional District Judge shall discharge any of the functions of a District Judge, including the functions of Principal Civil Court of original

jurisdiction which the District Judge may, by general or special order, assign to him and in the discharge of such functions he shall exercise the same

powers as the District Judge.

8 - Appointment of Additional Judge.--(1) An additional Judge or Judges to the Court of District Judge, Additional District Judge, Civil Judge Class I

or Civil Judge Class II may, whenever it appears necessary or expedient, be appointed to the Court of District Judge or Additional District Judge or

Civil Judge Class I or Civil Judge Class II, as the case may be, and such Additional Judge shall exercise the jurisdiction of the Court to which he is

appointed and the powers of the Judge thereof, subject to any general or special orders of the authority by which he is appointed as to the Class or

Value of the suit which he may try, hear or determine.

(2) An officer may be appointed an Additional Judge of one or more Courts and an Officer who is a Judge of one Court may be appointed an

Additional Judge of another Court or of other Courts.

24. A plain reading of the above provisions of the Act, 1958 makes it apparent that the Court of the District Judge shall be presided over by a District

Judge and the High Court may also appoint ADJ from the cadre of Higher Judicial Service (HJS) to exercise jurisdiction in the Court of the District

Judge and that the Court of the District Judge shall include the Court of Additional District Judge and similarly the Court of Civil Judge Class I or

Class II shall include the Court of Additional Civil Judge to that Court.

25. It is further clear that the Court of the District Judge shall be the Principal Civil Court of Original Jurisdiction in the civil district and an Additional

District Judge shall discharge any of the functions of a District Judge, including the functions of Principal Civil Court of original jurisdiction which the

District Judge may, by general or special order, assign to him and in the discharge of such functions he shall exercise the same powers as the District

Judge (Section 7 of the Act, 1958). It is further apparent on a reading of Section 8 of the Act, 1958 that an Additional Judge to the Court of District

Judge, Civil Judge Class I or Civil Judge Class II may be appointed to the said Courts and such Additional Judge shall exercise the jurisdiction of the

Court to which he is appointed. Thus, the Act, 1958 mandates that an Additional Judge to the Court of District Judge may be appointed and such

Additional Judge shall exercise the same jurisdiction.

26. Under Section 3 (17) of the Act, 1897 the word "District Judge" has been defined to mean the Judge of a Principal Civil Court of Original

Jurisdiction.

27. Under Section 3 of the CPC provision has been made regarding subordination of Courts. It provides that for the purposes of this Code, the District

Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is

subordinate to the High Court and District Court. Thus, under the CPC also Civil Court of a grade inferior to that of a District Court is made

subordinate to the District Court. In other words the Court of Additional District Judge is not treated to be subordinate to the Court of District Judge.

28. A conjoint reading and interpretation of the provisions, referred above, would manifest that Principal Civil Court of Original Jurisdiction includes

the Court of ADJ, under the Act, 1958 as well as the CPC.

29. Way back in the year 1949 in Ganpat Pralhad and Others v Mahadeo Paikajee Kolhe and Others {AIR (36) 1949 Nagpur 408}, the Division

Bench of Nagpur High Court was considering the issue as to whether an ADJ can exercise the powers of a District Judge in the matter of granting

probate of a will. Justice Vivian Bose, CJ speaking for the Division Bench referred to the definition of "District Judge" contained in Section 2

(bb) of the Succession Act, which defined the term "District Judge" to mean the Judge of a principal Civil Court of original jurisdiction and

eventually held that the words "District Judge" have been used in the Act as a term of art to designate something wider than a District Judge. It

is held therein that District Judge does not mean merely the principal Judge of a District Court but is something wider. Referring to Sections 17 (c) and

26 (1) of the Central Provinces Courts Act, 1917; the predecessor of the Act,

1958; it was held that the Judges of the District Court include not only the District Judge properly so termed but also all the Additional Judges

appointed to that Court and that the jurisdiction of each of these Judges is co-extensive with that of the District Judge properly so called unless such

jurisdiction is specially curtailed by a general or special order.

30. In a Full Bench decision of the Madhya Pradesh High Court rendered in the matter of Babulal Bhikaji Mandloi v Dattatraya Narayan and Others

(AIR 1972 MP 1) the issue was whether the election petition filed before the District Judge under Section 20 of the Madhya Pradesh Municipalities

Act, 1961 can be transferred by the District Judge to a Court of ADJ within his jurisdiction in exercise of power under Section 7 of the Madhya

Pradesh Civil Courts Act or under Section 24 of the CPC.

31. After referring to the provisions contained in the Madhya Pradesh Civil Courts Act, Section 20 of the Madhya Pradesh Municipalities Act, 1961,

Section 24 of the CPC and the law laid down in the matter of K. Parthasaradhi Naidu Garu v C. Koteswara Rao Garu and Another {AIR 1924 Mad

561 (FB)}, Hanskumar Kishan Chand v The Union of India (AIR 1958 SC 947) and Collector, Varanasi v Gauri Shankar Misra and others (AIR 1968

SC 384), the Full Bench of the Madhya Pradesh High Court concluded that when a statute confers authority on a judicial officer, one should be slow

in saying that the legislature confers such authority on the said judicial officer as a persona designate, especially when a persona designate is ""a person

who is pointed out or described as an individual as opposed to a person ascertained as a member of class, or as filing a particular characterâ?

observing that, in the State of Madhya Pradesh the Civil Districts and the Revenue Districts are not co-extensive inasmuch as in certain cases two or

more Revenue Districts are included in the same Civil District. In conferring authority on the District Judge regarding election petitions arising from

the Revenue District where he holds his office while conferring similar authority on the Additional District Judge where he holds his Court in another

Revenue District the idea is to continue the disposal of the election petitions within the geographical area comprised in a Revenue District, therefore,

the Principal District Judge situate in another Revenue District would not act as persona designata and the District Judge or the Additional District

Judge as referred in the relevant provisions of the M.P. Municipalities Act, acts as a Judge, that is to say, a person holding a judicial office and not

person designate. The Full Bench eventually answered the reference in affirmative holding that an ADJ whose Court is situated at the same place

where the Court of District Judge is situated is competent to decide the election petition.

32. In a comparatively recent judgment the Division Bench of the Madhya Pradesh High Court in the matter of Madhya Pradesh State Electricity

Board and Anr. v ANSALDO Energia, S.P.A. And another (AIR 2008 MP 328), speaking through Hon'ble Shri Dipak Misra, J. (as His Lordship

then was), held that the Court of ADJ is competent to hear an application under Section 34 of the Act, 1996. In this matter before the Madhya

Pradesh High Court an application under Section 34 was preferred before the District Judge, Jabalpur, who transferred the same for adjudication to

9th ADJ before whom an objection was raised that the District Judge alone was competent as Principal Civil Court of original Jurisdiction as defined

under Section 2 (1) (e) of the Act, 1996, therefore, ADJ did not have the jurisdiction to dwell upon the lis.

33. The Division Bench followed the Single Bench judgment of Jammu and Kashmir High Court in B.V. Sharma v Skuast and Ors. {2007 CLC 1307 :

2007 (I) JKJ 161}, which, in turn, had disagreed with the judgment of the Allahabad High Court in M/s I.T.I. Ltd. Allahabad (supra). It is this

judgment of Allahabad High Court, which was relied by this Court in M/s Sarin Construction Company (supra), therefore, the Jammu and Kashmir

High Court impliedly disagreed with the view taken by this Court in M/s Sarin Construction Company (supra) and the judgment of Jammu and

Kashmir High Court has been approved by the Division Bench of the Madhya Pradesh High Court in ANSALDO Energia, S.P.A. (supra). The

Division Bench of the Madhya Pradesh High Court held, thus, in paras 21 & 22 :

21. In view of the aforesaid pronouncements of law, as far as Madhya Pradesh is concerned, the Additional District Judge is equated with the

Principal Civil Court of original jurisdiction. Section 2(1)(e) does not include any civil Court of grade inferior to such Principal Civil Court or any Court

Of Small Causes. As is evincible from the enunciation of law which we have referred to above, the Additional District Judge is not inferior to the

District Judge. Section 42 refers to the term 'Court'. The Court has to take the meaning from the definition. In this context, it is worth noting that the

dictionary clause refers to two categories of Courts, namely, the High Court which has the original civil jurisdiction and also the Principal Civil Court.

If any party to the agreement invokes the original jurisdiction of the High Court, he cannot thereafter go to the Principal Civil Court. He also cannot

approach any other Court having the jurisdiction after approaching once to the said Court. This view has been rendered in Strojexport Company Ltd.

v. Indian Oil Corporation, AIR 1997 Raj 120. We are in respectful agreement with the same.

22. In view of the aforesaid analysis on the bedrock of 1958 Act, the irresistible conclusion is that the Additional District Judge meets the requirements

as engrafted under Section 2(1)(e) of the 1996 Act. We also respectfully agree with the view expressed in the decisions rendered in *Globsyn*

Technologies Ltd. (supra) and *B.V. Sharma* (supra). Ergo, the objection raised under Section 34 of 1996 Act can be dwelled upon and dealt with by

the learned Additional District Judge. That being the position in law, the impugned order passed by the learned Additional District Judge is neither

vulnerable nor susceptible. We give the stamp of approval to the same.

34. The Division Bench also referred some earlier decisions of the Madhya Pradesh High Court rendered in *M/s Badrilal Jodhraj & Sons, Indore v*

Girdharilal & Anr. (AIR 1988 MP 24), *Rasheed Khan and Anr. v Peer Mohammad* (1992 MPLJ 607), *Malik Singh Chawla v Surendra Kumar*

Lakhera and Ors. (AIR 1998 MP 312), *N. K. Sexena and Anr. v State of M.P. and Anr.* 2008 (2) MPHT 365 where different Benches have taken

the same view that the Court of Additional Judge is empowered to discharge any of the functions of the District Judge including the functions of

Principal Civil Court of original jurisdiction which the District Judge may, by general or special order, assign to him and in the discharge of the same,

he shall exercise the same powers as the District Judge.

35. Another Division Bench of the Madhya Pradesh High Court in the matter of *Dr. Pratap Singh Hardia v Sanjay Chawreka* (AIR 2009 MP 73)

dissented from the view taken by this Court in *M/s Sarin Construction Company* (supra) to hold that an application under Section 34 of the Act, 1996

preferred before the 7th ADJ, Indore, would be maintainable.

36. In *Union of India v Arun Kumar Deedwania* (2017 SCC Online Bom 1717) the issue brought before the High Court of Bombay was whether

application for execution of award presented before the District Judge (ADJ) and not before the Principal District Judge was maintainable. The

objection was turned down holding that under Section 36 of the Act, 1996 if the execution petition is filed before the Principal District Judge, it can be

assigned by the Principal District Judge to any other Court including the Court of Civil Judge Senior Division. Dismissing the writ petition the Bombay

High Court held that the principal Civil Court of original jurisdiction has a wider connotation which includes Principal District Judge and so also of the

District Judges (ADJ), who collectively fall under the category of Judges having principal Civil Court of original jurisdiction. Hence, the challenge

cannot sustain.

37. In *Akola Janata Commercial Co-operative Bank Ltd. v Raju Natthujbadhe and Others* (2010 SCC Online Bom 1949) the Division Bench of the

Bombay High Court at Nagpur has held that from a conjoint reading of these provisions, it is clear that an award must be treated as a decree passed

by the District Judge and, therefore, it may be executed either by the District Judge himself or by any Court to which it may be sent by such District

Judge for execution vide Section 38 of the Code of Civil Procedure. The transfer of decree by the District Judge would be governed by Section 39 of

the Code of Civil Procedure. Thus, a decree holder must apply for execution of an award to the Court of District Judge, who may either execute the

award as a decree himself or send it for execution to another Court including a subordinate Court of competent jurisdiction.

38. Similar view has been taken by the Division Bench of the Patna High Court in *Shivam Housing Pvt. Ltd. v Mithilesh Kumar Singh* {(2015) SCC

Online Pat 6005} holding that application under Section 34 of the Act, 1996 can be heard by the District Judge or any other ADJ to whom the file has

been transferred.

39. Full Bench of the High Court of Calcutta in *West Bengal Housing & Infrastructure & Development & Corporation & v Impression* (AIR 2016 Cal

236) has taken the same view that the Court of ADJ is also the Principal Civil Court in District. As a necessary corollary, an application under Section

34 or 36 of the Act, 1996 can be transferred to the Court of ADJ.

40. Similar view has been taken by the Full Bench of the Bombay High Court at Nagpur in *Gemini Bey Transcription Private Ltd. v. Integrated Sales*

Service Ltd. {(2018) SCC Online Bom 255} answering the reference that an award made under Part-I of the Act, 1996 can be executed not only by

the Court as defined by Section 2(1)(e)(i) but also by the Court to which it is sent for execution under Sections 38 and 39 of the CPC.

41. Having chartered the judgments by the different High Courts on the issue we may now profitably refer to a latest judgment of the Supreme Court

in *Sundaram Finance Limited* represented by J. Thilak, Senior Manager (Legal) (*supra*) observing, with reference to Section 32 that when an award is

already made, of which execution is sought, the arbitral proceedings already stand terminated on the making of the final award. Thus, it is not

appreciated how Section 42 of the said Act, which deals with the jurisdiction issue in respect of arbitral proceedings, would have any relevance. It

does appear that the provisions of the said Code and the said Act have been mixed up.

42. Here it would be pertinent to mention here that the very basis of the Single Bench judgment of this Court in M/s Sarin Construction Company,

Raipur (supra) out of which this issue has been referred to the Full Bench has based its conclusion in view of Section 42 of the Act, 1996. The

Supreme Court in Sundaram Finance Limited represented by J. Thilak, Senior Manager (Legal) (supra) has held, in categorical terms, that the

provisions contained in Section 42 applies with respect to an application being filed in Court under Part I. The jurisdiction is over the arbitral

proceedings, which terminates upon passing of an award and any subsequent application arising from that agreement and the arbitral proceedings are

to be made in that Court alone and that Section 42 would not apply to an execution application, which is not an arbitral proceedings and that Section 38

of the Code would apply to a decree passed by the Court, while in the case of an award no court has passed the decree. The Supreme Court

eventually concluded that enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed

and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceedings.

43. To sum up, as an upshot of the above discussion, M/s Sarin Construction Company, Raipur (supra) based on Section 42 of the Act, 1996 and the

judgment of Allahabad High Court in M/s I.T.I. Ltd. Allahabad (supra) sailed on the reasoning that the Principal Civil Court of Original Jurisdiction i.e.

the Court of District Judge alone has jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement, however,

the judgments rendered by the different High Courts in preceding paragraphs and the decision of the Supreme Court in Sundaram Finance Limited

represented by J. Thilak, Senior Manager (Legal) (supra) would categorically pronounce that the word 'Court' defined in 2 (1) (e) not only includes the

Principal Civil Court of Original Jurisdiction i.e. Court of Principal District Judge or District Judge(s), but also includes the Court of Additional District

Judge(s), therefore, any application filed under any provision of the Act, 1996 before the Court after passing of the award, including applications under

Section 34 or 36 of the Act, 1996, can be heard and decided not only by the District Judge(s), but also by the Court of Additional District Judge(s), upon being made over by the District Judge by a general or special order. In respect of application with regard to an arbitration agreement where the award is yet to be passed, such application may be moved before the District Judge and can be made over to the Court of Additional District Judge by general or special order but in such eventuality any subsequent application till passing of award is to be decided by the same Court, which has dealt with the earlier application, by virtue of Section 42 of the Act, 1996.

44. The reference is answered accordingly.