

(2015) 11 KL CK 0009

In the High Court Of Kerala

Case No : C.R.P. No. 14 of 2015, (Arising Against the Order in E.P.No. 57 of 2006 of District Court, Manjeri Dated 4.12.2014)

C. Suresh

APPELLANT

Vs

India Cements Capital and Finance Limited Chennai

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Citation : (2015) 4 KerLJ 862 : (2015) 5 KHC 909

Hon'ble Judges : Mr. K. Abraham Mathew, J.

Bench : Single Bench

Advocate : Dr. George Abraham, Advocate, for the Respondent No. 1; Sri. J. Vivek George and Dr. George Abraham, Advocates, for the Respondent Nos. 2 to 7; Sri. Jamsheed Hafiz, Advocate, for the Revision Petitioner

Final Decision : Dismissed

Judgement

Mr. K. Abraham Mathew, J. - Applicability of Section 39 of the Code of Civil Procedure in executing the award passed under the Arbitration and Conciliation Act 1996 (hereinafter called the Act) is the pivotal question in this revision petition.

2. The award involved in this case was passed in favour of the respondent by an Arbitrator at Chennai. Execution Petition was filed in District Court, Manjeri. The contention of the petitioner that the court at Manjeri has no jurisdiction to execute the award as it has not been transferred to it by the court at Chennai was repelled by the learned District Judge.

3. The respondent relies on the decision of a learned Single Judge of this court in Ramaswamy v. Principal Subordinate Judge (1997 (2) KLT 393) in support of his argument that the award need not be transferred. But the question that came up for consideration in Ramaswamy's case was whether a person who has obtained an award in his favour should produce a decree drawn up by the court which has jurisdiction over the subject matter of the award before it can be executed by

another court. The court was not called upon to answer the question whether an award can be executed though it has not been transferred by the court concerned.

4. In *I.C.D.S Ltd. v. Mangala Builders (P) Ltd* (AIR 2001 Karn 364) a learned Single Judge of the Karnataka High Court held that an award should be transferred under Section 39 of the Code of Civil Procedure before it can be executed by a court other than the one which has jurisdiction over the subject matter of the award. This is one of the decisions relied on by the learned counsel for the petitioner. But the very same High Court appears to have taken a contrary view in *Chandrasekhar v. Tata Motors Finance Ltd. and others* (2014(4) KCCR 3397). The view taken by the Madhya Pradesh High Court in *Computer Sciences Corporation India Ltd. v. Harishchandra Lodwal* (AIR 2006 MP 34) is that Section 39 of the Code of Civil Procedure is applicable to the proceedings in which an award is sought to be executed.

5. Section 36 of the Arbitration and Conciliation Act reads as follows:

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 (5 of 1908) in the same manner as if it were a decree of the court.

Section 2(1)(e) of the Act defines court.

"Court" means 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.

6. The expression "the court" used in Section 36 makes it clear that it is the court mentioned in Section 2(1)(e) of the Act, the learned counsel for the petitioner submits. A literal interpretation of the section may incline one to accept the argument. But it should not be ignored that Section 2(1) commences with the expression "unless the context otherwise requires". So the meaning of the court may be different in different context.

7. In interpreting a provision the object of the legislation should be borne in mind. In *Bharat Sewa Sansthan v. Uttar Pradesh Electronics Corporation Limited* (AIR 2007 SC 2961) the Supreme Court has observed that one of the main objectives of the Act is to minimise the supervisory role of courts in arbitral process. In *Union of India v. Singh Builders Syndicate*, [(2009)4 SCC 523] the apex court has further observed that the object of expeditious disposal of arbitral matters would be defeated if the disputes remain pending in courts for months and years. The President of India while delivering the inaugural address of International Council for Commercial Arbitration at Delhi said: "Today, even in

India, this old system of arbitration is being overtaken by the review by courts making matters one of endless litigation." One of the main objects of the Act is to minimise the role of courts in arbitration proceedings.

8. An award may be passed at a place which is outside the jurisdiction of the court which has jurisdiction over the subject matter of the award. Take a case in which the award is passed in the State of Himachal Pradesh, the court having jurisdiction over the subject matter is in West Bengal and the debtor has property or resides at a place in Kerala. Should the creditor file an application in the court in West Bengal to transfer the award to the court in Kerala before it can be executed by the latter court. This appears to be unreasonable and illogical.

9. The purpose behind Section 39 of the Code of Civil Procedure is relevant. It is the duty of the court which passes a decree to execute it. The records of the case are maintained and available only in that court. Section 41 of the Code makes it mandatory for the court which has received a decree by transfer for execution to certify to the transferee court the result of the execution. The reason is obvious. These provisions have been made to obviate foul play. Thus, the provision in the Code of Civil Procedure for transfer of decrees serves a purpose. On the other hand, no purpose is served by transfer of award since no records are maintained by the court having jurisdiction over the subject matter in respect of the arbitration proceedings which is only a private affair.

10. It is also pertinent to note that there may be more than one civil court having jurisdiction over the subject matter of an award. Is it necessary that the creditor should get the award transferred from every such court. There is also a likelihood of the respondent creditor raising a contention that the court which transferred the decree had no jurisdiction over the subject matter. Insistence on transfer of awards will make the procedure cumbersome, will create confusion and cause delay in executing the award, which will defeat one of the objectives of the legislation.

11. Under Section 36 of the Act before an execution petition is entertained the court has to satisfy itself that 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.

12. Section 34(3) of the Act provides that an application for setting aside an arbitral award may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter. Section 33 deals with the power of court to correct errors in the award if a request is made by a party within 30 days from the receipt of the

arbitral award unless another period of time has been agreed upon by the parties.

13. It is submitted by the learned counsel for the petitioner that unless execution petition is filed before the court in which a petition under Section 34 has to be filed, the court cannot satisfy itself about the requirements mentioned in Section 36.

14. When an E.P is filed in the court in which a petition under Section 34 has to be filed how can it satisfy itself that the conditions mentioned in Section 36 have been satisfied before a judgment debtor appears except on the information given by the decree holder in his E.P. As mentioned earlier, the court does not maintain any records for the passing of the awards by arbitrators in respect of which it has jurisdiction. Only on the basis of the particulars given by the creditor the executing court can satisfy itself that the conditions mentioned in Section 36 have been satisfied. This can be done even if the E.P is filed in a court other than the court in which the petition under Section 34 has to be filed. So there is no merit in the argument that Section 36 indicates that a petition for execution shall be filed only in a court in which a petition under Section 34 can be filed.

15. There is yet another reason to take the view that Section 39 of the Code of Civil Procedure is not applicable in the case of execution of an arbitral award. Section 36 of the Arbitration and Conciliation Act only says that the award may be executed in the same manner as if it were a decree of the court. The manner in which the decree of a court may be executed is given in Section 51 of the Code of Civil Procedure. Section 39 of the Code has nothing to do with the mode of execution. Section 36 of the Arbitration and Conciliation Act does not declare that all the provisions in the Code of Civil Procedure which are applicable to execution of decrees are applicable to execution of awards.

16. In Computer Sciences Corporation India's case (supra) the Madhya Pradesh High Court held that Section 39 is applicable in the case of execution of arbitration awards in view of Section 42 of the Act. Section 42 runs as follows:

42. Jurisdiction: 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.

17. To attract Section 42 there must be an earlier proceedings in a court. When a proceedings is instituted for the first time in a court the Section has no application. The section is applicable only when an application is filed with respect to an arbitration agreement. An execution petition is not in respect of an arbitration agreement. Coming to the subsequent applications, they should arise out of the arbitration agreement and arbitral proceedings. It can be seen from Section 32 of the Act that the arbitral proceedings come to an end with the passing of the final award by the arbitrator. So the execution petition cannot be

said to be part of the arbitral proceedings. Section 42 does not seem to apply to execution proceedings.

18. The long and short of the above discussion is this:

Section 39 of the Code of Civil Procedure is not applicable in an execution proceedings arising out of an award passed under the Arbitration and Conciliation Act 1996. The question of transfer of arbitral award does not arise at all. The learned District Judge has rightly come to the conclusion that the EP filed by the respondent can be executed.

In the result, this Civil Revision Petition is dismissed.