

(2021) 09 CHH CK 0066
In the Chhattisgarh High Court
Case No : CVLREF No. 1 Of 2021

Court On Its Own Motion

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Civil Procedure, 1908 — Section 113, Order 46 Rule 1
High Court of Chhattisgarh Rules, 2007 — Rule 28, 29
Arbitration and Conciliation Act, 1996 — Section 36
Indian Stamp Act, 1899 — Section 19(a), 33, 35, 57, 60

Citation : (2021) 09 CHH CK 0066

Hon'ble Judges : Prashant Kumar Mishra, J; Manindra Mohan Shrivastava, J; Goutam Bhaduri, J

Bench : Full Bench

Judgement

1. Heard.

2. This is an office reference by District Judge- Raigarh.

3. The brief facts which cropped up for this reference are that an award was passed by the Arbitration Tribunal, Chennai. It was put to execution under Section 36 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996'). In the said application, the District Judge, Raigarh by order dated 03.12.2019 held that the award would attract the ad valorem Court fee and since along with the award a Stamp of Rs.150/- was only attached and was put to execution within the jurisdiction of C.G. State, consequently, according to District Judge as per Section 19 (a) of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act, 1899') Court fees of Rs.10550/- would be leviable and accordingly the order was passed to levy such stamp. The said order was subject of challenge before the High Court. The High Court by its order dated 24.03.2021 passed in WP (227) No.129/2020 and WP (227) 131/2020 held that the order passed by the learned District Judge cannot be sustained and set aside the said order and directed the executive Court to proceed with execution in accordance

with law.

4. Learned District Judge being disturbed by such setting aside of the order, made a reference to High Court on the following six grounds:-

1. Whether an arbitration award is required to be properly stamped under the Act, 1899 ?

2. Whether, when the arbitration award has not been properly stamped or it has not been written on stamp, in that case also, enforcement of the award can be made under Section 36 of the Arbitration and Conciliation Act, 1996 (for short 'the Act, 1996') ?

3. Whether certified copy, true copy of signed copy or photocopy of the award which is not properly stamped, can be impounded under Section 33 of the Act, 1899 ?

4. Whether an unstamped or not properly stamped arbitration award can be subjected to charges and penalty under Section 35 of the Act, 1899 for its enforcement ?

5. Whether an application under Section 36 of the Act, 1996 is required to be registered as civil execution case or as an arbitration case ?

6. Whether the Presiding Officer who has passed an order in relation to payment of stamp duty under the Act, 1899, should be arrayed as a party in the proceedings ?

5. Hence this reference for answer.

6. Shri Vivek Ranjan Tiwari, learned Additional Advocate General with Shri Vikram Sharma, learned Deputy Government Advocate on behalf of the State were heard.

7. The State on its initial submission raised the ground of admissibility and maintainability of the reference. Learned State counsel would submit that the reference is not maintainable for the reason that raising doubt on the judgment of the Hon'ble High Court in WP (227) No. 131 of 2020 and other such ground for making reference is not available in view of the language employed under Order 46 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'). They would further submit that as per the law laid down by the Supreme Court the Presiding Officer cannot be arrayed as party for the reason that while deciding a lis the Presiding Officer cannot be made a party before the Court. Consequently, he cannot be made a party when the appeal is filed against its order. They would further submit that the issue which is tried to be raised by the learned Court is an administrative issue for which a register is maintained in the civil Court and it would be a ministerial proceeding to make an entry in the particular register. Referring to Section 60 of the Act, 1899 they would submit that the learned Court should have obtained the signature of the Registrar to the Chief Controlling Revenue Authority before making such reference but

the same having not been complied, the reference under Section 60 of the Act, 1899 is not maintainable. They would further submit that as per Rules 28 & 29 of the High Court of Chhattisgarh Rules, 2007(hereinafter referred to as 'the Rules, 2007') when valid reference is made under Section 57 & 60 of the Stamp Act, 1899, the reference is required to be heard by a Full Bench.

8. We have heard learned counsel for the parties and perused the documents and the orders passed by this Court on the earlier occasion on 24.03.2021 in WP (227) No.129/2020 and WP (227) 131/2020.

9. Section 113 and Order 46 Rule 1 CPC deals with the issue of reference. Section 113 CPC speaks of Reference to High Court. For the sake of brevity Section 113 CPC is reproduced hereinunder:-

Section 113 CPC - Reference to High Court.- Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.

10. Likewise Order 46 Rule 1 CPC reads as under:-

"Order 46 Rule 1 CPC. Reference of question to High Court.- Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court."

11. Likewise Section 60 of the Act, 1899 which touches upon this issue of reference is reproduced hereinunder:-

"60. Statement of case by other Courts to High Court.-(1) If any Court, other than a Court mentioned in section 57, feels doubts as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court to which, if he were the Chief Controlling Revenue-Authority, he would, under section 57, refer the same.

(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue-Authority and other like copy to the Judge making the reference, who shall, on receiving such copy dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior."

12. Plain reading of Section 113 CPC suggests that the reference to High Court can be made subject to such conditions and limitations and the conditions and limitations are contained in the proviso clause that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case and the Court is of the opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.

13. Likewise, Order 46 Rule 1 CPC postulates that where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, and the reasonable doubt comes to fore, the Court may refer to the High Court to remove the doubt.

14. In the instant case in hand, the order of the learned District Judge when was subject of challenge before the High Court that was adjudicated by order dated 24.03.2021 by the High Court and it was found that the finding recorded by the learned District Judge is not correct and at the motion stage it was set aside. In order to send the reference to the High Court the ingredients of Section 113 CPC or Order 46 Rule 1 CPC are required to be satisfied. In this instant reference neither the question arose for consideration of validity of the Act nor its application was in question or the District Court was of the opinion that the Act is not operative or any question of law or usage having the force of law arises was in doubt. The issue on which the District Judge formed his opinion was set aside by the High Court, therefore, there was no occasion or iota of doubt should have been there.

15. Under Section 113 CPC, Court can state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court. Such an opinion is to be sought when the Court itself feels some doubt about the question and not when the Court has formed an opinion and acted upon it and when the

opinion is discarded by the higher Court. Therefore, the reference has to satisfy the ingredients which are enumerated under Section 113 and Order 46 Rule 1 CPC, which is completely absent in the instant reference. The proviso appended to Section 113 CPC makes it clear that in absence of validity of any Act, Ordinance, Regulation which in the opinion of the Court is invalid or become inoperative then only the Civil Court may state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court. In this case none of the ingredients are present.

16. The reference to the High Court under Section 113 CPC is settled by the Calcutta High Court in the case of *Ranadeb Choudhuri Vs. Land Acquisition Judge, 24-Parganas and others* {AIR 1971 Calcutta 368}. We are also agreeable to the proposition laid down by the Calcutta High Court at para 22 and are in respectful agreement with the aforesaid dictum. Which is reproduced hereinunder:-

"22. Section 113 of the Code of Civil Procedure provides for reference to the High Court in these terms:--

"Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court."

Scrutinizing this provision of the Civil Procedure Code, the following features should be emphasised. In the first place, ordinarily this power of reference belongs to the subordinate court. Secondly, such, power of reference is discretionary in the sense that in such a case the court may state a case and refer the same for the opinion of the High Court. Thirdly, the subordinate court has to be satisfied that a case pending before it involves a question as to the validity of any Act. Fourthly, the subordinate court has to be satisfied that the determination of that question of the validity of the Act is necessary for the disposal of the case. Fifthly, the subordinate court has to be of the opinion that such Act is invalid or inoperative. Sixthly, the subordinate court has to be of the opinion that such invalidity or inoperativeness has not been declared either by the High Court to which the court is subordinate or by the Supreme Court. If these conditions are satisfied, then the subordinate Court's power to refer is no longer discretionary but mandatory and the subordinate court shall state a case setting out its opinion and the reasons therefor. In this event the subordinate

court will have to express its opinion whether the Act is invalid or inoperative. Unless he comes to that conclusion, the subordinate court is not bound to make a reference to the High Court. The disposal of the application in the present case under Section 113 of the Code of Civil Procedure does not dispose of the pending case before the Special Land Acquisition Judge."

17. Further reference to Section 60 of the Act, 1899 purport that when the Court feels doubts as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court as would have been referred by Chief Controlling Revenue Authority under Section 57 of the Act, 1899.

18. In the case in hand the opinion of the District Judge which was reflected in the original order dated 03.12.2019 was superseded by the order of the High Court while it was set aside. Therefore, there was no occasion for the District Judge to doubt the order passed by the High Court. A reference under the provisions of Order 46 CPC is not to be made because a Judge thinks that a certain direction by the District Judge or by the High Court is wrong. If any consequences of want of jurisdiction flow from some such illegal direction, a party may as well raise the point at the appellate stage or in any other proper proceeding before the Courts. A reference is to be made only when an important issue of law arises in the suit. This is something which has to do with the merits of the suit. It is wrong for any Judge to take up a contentious attitude and adopt the role of a litigant. In a net result of the applicant Judge's attitude appears that he was not happy with the order of the High Court, therefore, he could not have been stepped into the shoes of de facto litigant. If such practice is encouraged, in certain cases, a party despite losing a case may succeed in making a reference in the like nature, which would eventually shelve the fruits of the order without any sufficient cause.

19. Now turning to the learned District Judge has also made a point of reference that he was not heard. The Courts time and again has held that impleading the judicial officer to dispose of the matter is not justified in any manner. The Supreme Court in the case of Savitri Devi Vs. District Judge, Gorakhpur and others {(1992) 2 SCC 577} has held that there was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties and the same has not been approved as it would cause unnecessary disturbance to the functions of the judicial officers concerned. The Court further held that it is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or Special Leave Petition was stopped and that practice was strongly deprecated. Against such judicial verdict the learned District Judge has raised a point. In the routine cases in a proceeding the orders of the district courts are challenged before the High Court. Can we accept the

submission of the District Judge that he was not heard and he should have been heard by the High Court before his order was set aside. Certainly, the answer is in negative. It appears that the judicial officer i.e. the District Judge against the judgment and the law laid down by the Supreme Court has projected the issue, which we deprecate.

20. Now coming back to the way the reference has been made the contentions would show that the order passed by the Judicial Officer of the District Judiciary was set aside by the High Court. In cases a Judicial Officer, who passed the order may not be satisfied with the verdict by the High Court but in our judicial system the order of the High Court in such cases are required to be followed. Otherwise it would result into the failure of the system as the personal opinion of a judicial officer cannot hold the sway.

21. In view of the aforesaid discussion, the Reference made by the District Judge in the teeth of the order of the High Court would be inadmissible and is required to be dismissed.