

(2014) 03 GUJ CK 0118

In the Gujarat High Court

Case No : Special Civil Application No. 13850 of 2012

Dilipsinh Kanubha Gohil

APPELLANT

Vs

Kotak Mahindra Bank Ltd.

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 2(1)(e), 34, 36, 42
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 5, Order 21 Rule 6, 19, 34, 36

Citation : (2014) 2 GLR 1675

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Vishwas S. Dave, Advocate for the Appellant; Ankur Y. Oza, Advocate for the Respondent

Judgement

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K.M. Thaker, J.—In present petition, the petitioner has prayed, inter alia, that:
5(b) Allow this Special Civil Application by issuing a writ or any other appropriate writ order or direction quashing and setting aside the order passed below Exh. 1 in Execution Petition No. 3 of 2012 dated 24th September, 2012 passed by 5th Additional District Judge, Bhavnagar and also be pleased to quash and set aside the arbitration award in Arbitration proceeding No. 995 of 2010 dated 5-5-2011.

(c) Pending admission, hearing and till final disposal of this petition, this Hon'ble Court may be pleased to stay the warrant issued in Execution Petition No. 3 of 2012 by order dated 24th September, 2012 passed by 5th Additional District Judge, Bhavnagar and also be pleased to stay the execution and implementation of order below Exh. 1 in Execution Petition No. 3 of 2012 dated 24th September, 2012 passed by 5th Additional District Judge, Bhavnagar.

This petition arises in connection with the arbitration proceedings instituted by the respondent-Bank which culminated into an award passed by the arbitrator.
1.1. Since the award was not honoured, the respondent-Bank commenced

execution proceedings by filing execution petition in the Court in whose local limits and jurisdiction the property against which the award is to be executed is situate i.e. at Bhavnagar.

1.2. During pendency of the execution proceedings, the defendants raised objection against the institution of the proceedings before the learned Court at Bhavnagar on the ground that the proceedings should have been instituted before the Court in whose local limits and jurisdiction the arbitrator passed the award and then the learned Court may transfer it at the place where property is situate.

1.3. The learned Court rejected the said objection and passed direction to issue attachment warrants.

1.4. The petitioner is aggrieved by the said order. Hence, present petition.

2. So as to consider the controversy raised by the parties, it is necessary and appropriate to take into account certain relevant facts.

2.1. From the material on record and from the submissions made by the learned Advocates for the contesting parties, it has emerged that the petitioner herein is a borrower of funds from present respondent-Bank, who extended loan facility to the said borrower.

2.2. In respect of said transaction, a loan agreement dated 22-9-2008 was executed between the parties.

2.3. Subsequently, some dispute arose between the respondent-Bank and the petitioner borrower in connection with the loan agreement dated 22-9-2008.

2.4. Consequently, in light of the provision under the said loan agreement, i.e. the arbitration clause/agreement, the respondent-Bank instituted arbitration proceedings.

2.5. Learned Arbitral Tribunal (comprising sole arbitrator, appointed by the Bank under and as per the agreed terms in the loan agreement) constituted under the provision of the arbitration agreement conducted the arbitration proceedings, which culminated into the award dated 5-5-2011.

2.6. Before proceeding further, it is relevant and necessary to mention that the arbitration proceedings were held and conducted at Chennai (Tamil Nadu) and the award also came to be passed at Chennai.

2.7. Since the award was not complied and honoured by the borrower, the respondent-Bank instituted execution proceedings.

2.8. It is pertinent that the respondent-Bank instituted the execution proceedings in the Court of learned Principal Civil Judge (S.D.) at Bhavnagar.

2.9. During the pendency of the said execution proceedings (which came to be registered as Execution Petition (Darkhast) No. 3 of 2012), the judgment-debtor,

i.e. present petitioner lodged objections on 11-5-2012 which came to be registered at Exh. 15 by the learned executing Court.

2.10. Before the judgment-debtor filed the said objections, the learned executing Court, upon hearing the petitioner, had already issued attachment warrant on 3-4-2012 in respect of movable properties of the judgment-debtor i.e. the petitioner herein.

2.11. It was after issuance of the warrant that the petitioner-original defendant No. 1 filed the above referred objections dated 11-5-2012 and also requested the learned executing Court to stay the attachment warrant.

2.12. In that view of the matter, learned executing Court stayed the attachment order on the condition that the petitioner shall deposit Rs. 50,000/- with the Nazir of the learned Court.

2.13. It appears that in compliance with the said order, the judgment-debtor deposited the amount with the Nazir of the learned Court.

2.14. Subsequently, the execution petition and the objections raised by the petitioner were heard by the learned executing Court and vide impugned order dated 24-9-2012, learned executing Court rejected the said application and directed that the attachment warrant should be reissued for attachment of the movable properties of the opponents-judgment-debtor.

2.15. The defendants have challenged the said order in present petition.

3. Learned Advocate for the petitioner submitted that the applicants before the learned executing Court have not followed the required procedure viz. the procedure prescribed under Sec. 36, Order 21, Rule 5 and Order 21, Rule 6 of C.P.C., and therefore, the proceedings are not maintainable. Learned Advocate for the petitioner also submitted that the petitioner does not challenge the jurisdiction of the learned executing Court at Bhavnagar in entertaining the execution petition, but the petitioner challenges the breach in following the procedure prescribed for executing the decree inasmuch as the procedure prescribed for the said purpose is not followed, and therefore, the proceedings are not tenable and the impugned order is bad. In support of his case, learned Advocate for the petitioner has relied on the decision in the case between Computer Sciences Corporation India Pvt. Ltd. Vs. Harishchandra Lodwal and Another, .

4. Per contra, learned Advocate for the respondent-Bank submitted that the learned trial Court, Bhavnagar has jurisdiction to execute the decree. He also submitted that in view of the provision under the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act"), the Principal Civil Court of the concerned district has jurisdiction to execute the decree, and therefore, the learned Court at Bhavnagar who passed the impugned order is competent to execute the same. Learned Advocate for the respondent also submitted that the learned executing Court has followed relevant and applicable provision for

executing the award passed under the Act, and there is neither any illegality nor irregularity in the procedure followed by the learned executing Court and the impugned order does not deserve to be interfered with.

5. In order to decide the contentions raised by the learned Advocate for the petitioner and the respondent-Bank, it is necessary to take into account certain provisions under the" Act and the Code of Civil Procedure.

Arbitration & Conciliation Act, 1996:

Sec. 2(1)(e) - "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.

Sec. 19 - Determination of rules of procedure:- (1) The Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral Tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-sec. (2), the arbitral Tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral Tribunal under sub-sec. (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Sec. 36 - Enforcement:- Where the time for making an application to set aside the arbitral award under Sec. 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.

Sec. 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.

The relevant provisions under the Code are Sees. 37, 38 and 39. The petitioner relied on Rules 5 and 6 of Order 21 of the Code, which read thus:

Code of Civil Procedure, 1908:

Sec. 37 - Definition of Court which passed a decree:- The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution

of decrees, unless there is anything repugnant in the subject or context, be deemed to include, -

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Explanation:- The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

Sec. 38 - Court by which decree may be executed:- A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Sec. 39 - Transfer of decree:- (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court (of competent jurisdiction), -

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

[(3) For the purposes of this Section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.]

[(4) Nothing in this Section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local

limits of its jurisdiction.]

Order 21, Rule 5 : Mode of transfer:- Where a decree is to be sent for execution to another Court, the Court which passed such decree shall send the decree directly to such other Court whether or not such Court is situated in the same State, but the Court to which the decree is sent for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction.

Order 21, Rule 6 : Procedure where Court desires that its own decree shall be executed by another Court:- The Court sending a decree for execution shall send -

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate in that effect.

5.1. At this stage, it is also necessary to refer to the relevant clause in the loan agreement executed between the petitioner (i.e. the borrower) and the respondent-Bank.

Clause 10.16 - Unless the same falls within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, any and all claims and disputes arising out of or in connection with this agreement or its performance shall be settled by arbitration by a single Arbitrator to be appointed by the Bank. The arbitration shall be held in Chennai in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

5.2. It was in light of the provision under said clause 10.16 that the proceedings came to be instituted at Chennai and the said proceedings were instituted, conducted and concluded at Chennai by the learned sole arbitrator appointed by the Bank under the provisions of the loan agreement.

5.3. It is clarified by the learned Counsel for me petitioner and the respondent that the arbitration proceedings were instituted and the learned arbitrator was appointed without taking recourse of Sec. 11 of the Act.

Besides this, before or after the commencement of the arbitration proceedings, or during the proceedings, any application under Sec. 9 of the Act was not filed.

6. According to the provisions contained under the Arbitration & Conciliation Act, more particularly under Sec. 36 of the Act, the execution proceedings can be instituted after the time-limit for making the application to set aside the arbitral award under Sec. 34 expires.

6.1. Under the provision of the Act, an application against an award can be made to a "Court" in accordance with and under Sec. 34 of the Act and the "award" can be executed by a "Court" in same manner as a "Court" would execute a "decree".

6.2. According to Sec. 2(1)(e) of the Act "Court" means, the Principal Civil Court of original jurisdiction in the district 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 Principal Civil Court or Small Cause Court.

6.3. As mentioned earlier, by virtue of the said provision, the award itself is to be considered as a "decree" and the award i.e. the "deemed decree" can be executed under the Code of Civil Procedure treating the award as a decree i.e. "in the same manner as if it were a decree of the Court" and the Principal Civil Court of original jurisdiction in a District would be the Court competent for the said purpose except in the cases where any application (under Part-I of the Act) with reference to arbitration agreement is made in a Court, then in such cases all subsequent applications would lie before such other Court.

6.4. Section 38 of the Code provides, inter alia, that the Court which passed the decree or the Court where it is sent for execution, may execute the decree and Sec. 37 of the Code provides, inter alia, that the expression "Court which passed a decree" shall mean, in relation to the execution of decrees, the Court of first instance where the decree to be executed is passed in exercise of appellate jurisdiction whereas in the cases where the Court of first instance has ceased to exist, then the said expression would mean and include the Court which would have jurisdiction to try the suit (if the suit in which the decree is passed was instituted at the time when the execution petition is filed).

6.5. Learned Advocate for the petitioner has placed reliance on provision under Rule 5 and Rule 6 of Order 21 of C.P.C.

6.6. The Rule 5 of Order 21 prescribes the mode of transfer of decree. According to the said provision, where decree is required to be sent for execution to another Court, the Court shall send the decree directly to such other Court. Rule 6, Order 21 provides the procedure for transferring the decree for execution. The said provision would be attracted when a decree passed by one Court is required to be forwarded for execution to some other Court, however, when the decree (the deemed decree i.e. the award, in this case) is not required to be transferred, then the said provisions will not be attracted and will not be applicable.

6.7. The petitioner would, however, contend that in present case the respondent-Bank should have followed the said procedure for getting the award enforced, but it did not.

6.8. In this context, it is relevant to take into account Sec. 39 of the Code which, inter alia, provides that the Court which passed a decree may, on the application of the decree holder, send it for execution to another Court of competent

jurisdiction, if the judgment-debtor actually and voluntarily resides or carries on business within the local limits and jurisdiction of such other Court or if such person has no property within the local limits of the jurisdiction of the Court which passed the decree. It is pertinent that sub-sec. (2) of the said Section also provides that the Court which passed the decree may on its own motion send the decree for execution to any subordinate Court of competent jurisdiction.

6.9. From sub-clause (4) of Sec. 39, it emerges that if the property against which or the person against whom the decree is to be executed is outside the local limits and jurisdiction of the Court which passed the decree, then, the provision under sub-sees. (1) to (3) of said Sec. 39 will not authorise such Court to execute the decree.

6.10. The said provision makes it clear that the territorial jurisdiction of the executing Court (i.e. jurisdiction of the Court for the purpose of execution of the decree) is, ordinarily, determined, on the basis of the place where the property - against which the decree is to be executed - is situate.

7. When the factors relevant for the purpose of execution of decree are considered in light of the aforesaid provision, it emerges that in present case --

(a) undisputedly, the property against which the decree is to be and/or can be executed is situate within the local limits and jurisdiction of the Court at Bhavnagar; and

(b) the judgment-debtor ordinarily resides within the local limits and jurisdiction of the Court at Bhavnagar;

(c) and carries on his business and his place of business is within local limits and jurisdiction of the Court at Bhavnagar;

(d) Furthermore, even the loan agreement was executed at Bhavnagar; and

(e) above all, most important fact is that, the judgment-debtor does not have any property (against which the decree is to be or can be executed) and/or the judgment-debtor does not reside and/or he does not carry on his business and does not have any place of business, within the local limits and jurisdiction of the Court where the award came to be passed i.e. at Chennai.

8. The above mentioned factors establish that, if one proceeds on the premise that all provisions under the Code which apply to execution of a decree would be applicable *stricto-sensu* to the process of execution of an award i.e. "deemed decree", then also, even the provision under Sees. 37, 38 and 39 of the Code and/or provision under Order 21, Rule 5 and/or 6 and/or Sec. 36 of the Act (a) do not impose - either individually or conjointly - any obligation on the judgment-creditor to file execution petition in a Court within whose jurisdiction and local limits the arbitrator passed the award; and (b) since, undisputedly, the property against which the decree is to be and/or can be executed is situate at Bhavnagar, it is the "Court" (which would come within the purview of Sec. 2(1)(e) of the Act)

at Bhavnagar who would have jurisdiction to execute the decree.

9. The relevant provisions under the Code and/or the Act do not oblige the holder of the "deemed decree" to file the award - for execution - in the Court within whose local limits and jurisdiction the arbitrator passed the award and then get it transferred to the Court within whose local limits and jurisdiction the property is situate and/or the judgment-debtor resides or carries on business.

10. If the property against which the award is to be enforced and executed is situate within the local limits and jurisdiction of the Court where the execution petition is filed, then the executing Court cannot refuse to entertain the execution petition on the ground that the decree-holder should first file an application for execution at the place where the arbitrator passed the award, and therefore, the decree-holder should seek transfer of the said petition from said Court to other Court i.e. the Court where the property (against which the decree is to be or can be executed) is situate.

11. On the other hand, when the provisions under the Act are taken into account, it gives out that, the provisions under the Act prescribes that the award is deemed to be and has to be treated as decree, however, there is no provision in the Act in light of which, or on the strength of which, the arbitrator gets the status of a "Court". The Act does not provide that the arbitrator is deemed to be a "Court".

11.1. Thus, the award i.e. the "deemed decree" cannot be termed as decree passed by a "Court". Consequently, the qualification prescribed under Sec. 38 of the Code would not govern or determine the "Court" where the "deemed decree" i.e. the award should be filed for execution. The said aspect has to be considered and settled in light of the provision under Sec. 2(1)(e) read with Sec. 36 and Sec. 42 of the Act.

11.2. Besides this, the provision under the Act, more particularly Sec. 36 of the said Act, merely provides that for the purpose of execution of the award, the award itself has to be treated as decree but there is no provision in the said Act which provides that the arbitration award will be deemed to be decree of that Court within whose local limits and jurisdiction the award came to be passed (i.e. the said provision does not prescribe that the award has to be treated as a "decree" of and by the Court in whose local limits and jurisdiction it came to be passed). When in Sec. 36 of the Act it is provided that the award may be executed as a decree, then, the fact that the arbitrator, (who passes the award) is not a Court, cannot be lost sight of. Consequently, the place at which the arbitrator passes the award will not have any bearing on the issues related to the jurisdiction of the Court which should and which can execute the decree.

11.3. Thus, though an award is deemed to be decree, the said "deemed decree" is not a decree passed by a "Court" and that therefore, the provision under Sec. 38 of the Code, which applies to the "decree" passed by a "Court" and provides, inter alia, that the Court which passed the decree can execute it, cannot take

away or restrict the judgment-creditor's/decreed holder's right to file execution petition in the Court in whose local limits and jurisdiction the judgment-debtor's property is situate and which also comes within the purview of Sec. 2(1)(e) of the Act.

12. Actually, the said provision under Sec. 36 of the Act is deviation from the Act of 1940 which required that the award should first be made Rule of the Court and then it can be executed by the Court, whereas under the Act of 1996, the award itself is to be treated as decree and would be executed by the Court "as if it were a decree".

13. However, the said provision does not prescribe and cannot be read to mean that the award i.e. the "deemed decree" can be said to be of, and by, only that Court within whose local limits it came to be passed and the award, for execution, should be first submitted only in that Court within whose local limits and jurisdiction the award came to be passed and only that Court will have the jurisdiction for execution of the award.

14. In absence of such provision under the Act, it cannot be said that since the award is passed at place "A" (in present case at Chennai), the petition for execution of the award should first be presented before the learned Court having jurisdiction over the place "A" (i.e. before the learned Court within whose local limits the place "A" is situate, in present case at Chennai), though the judgment-debtor neither resides nor has his place of business at place "A" nor the property (against which the deemed decree i.e. award is to be executed) is situate at place "A" (where the award came to be passed), but he ordinarily carries on his business and ordinarily resides, and even the property (against which the decree is to be executed) also is situate, at some other place e.g. place "B".

14.1. Besides this, in those cases where prior to the submission of execution petition any other application under the Act is not filed in any Court and the execution petition is the first application which is submitted in a Court then in light of the provision under Sec. 42 of the Act, the Court for the purpose of enforcement of the award would be the Court in whose local limits and jurisdiction the property against which the award i.e. the deemed decree is to be executed is situate and/or the judgment-debtor against whom the decree is to be executed ordinarily resides or carries on business and which comes within the purview of Sec. 2(1)(e) of the Act and such Court will have the authority to receive, try and decide the execution petition.

15. As mentioned hereinabove earlier, in present case, the judgment-debtor's property is situate at Bhavnagar and he ordinarily resides there and even the loan agreement was executed at Bhavnagar and that therefore, that Court at Bhavnagar which comes within the purview of Sec. 2(1)(e) of the Act, will have the jurisdiction to execute the award.

16. In this view of the matter, when, having regard to the relevant aspects viz. the place of residence and place of business of the judgment-debtor and the

place where the contract was executed and the place where the property is situate, the execution petition is filed at Bhavnagar by the holder of the award even otherwise, it would not be necessary or just and equitable to now require the holder of the award to present the execution application before the learned Court having jurisdiction over the place where the award came to be passed (i.e. Chennai in present case) and then to request the said Court to transfer the proceedings to the Court at Bhavnagar.

17. In view of this Court, such course of action would militate against the object of the Arbitration and Conciliation Act, viz. speedy resolution of the dispute between the parties. The Arbitration & Conciliation Act, 1996 contemplates speedy procedure. One of the objects stated under the Statement of Objects is speedy resolution of the dispute between the parties. When such is the object of the Act, then, to direct the holder of the award and that too after the execution application is filed at a place where judgment-debtor's property is situate and he ordinarily resides or carries on business, to go and file the execution petition in the Court within whose local limits and jurisdiction the arbitration award came to be passed and then get it transferred to the place where the property is situate and/or the place where the defendant resides and carries on business would be not only unjust and unfair, but also contrary to the scheme of the Act and the Code. There is no provision in the Act or the Code which imposes such obligation on the judgment-creditor to follow such procedure.

18. It emerges from the foregoing discussion that, neither according to the provisions under the Act nor according to the provisions under the Code, there is any obligation on the judgment-creditor to first file the award, for the purpose of execution, in the Court in whose local limits and jurisdiction the arbitrator passed the award, and then to get it transferred to the Court within whose local limits and jurisdiction the property against which the award, is to be executed, is situate.

19. In present case, in view of the fact that (a) the loan agreement, which contains the arbitration clause (in light of which the arbitration proceedings commenced) was executed at Bhavnagar; and (b) the judgment-debtor ordinarily resides at Bhavnagar; and (c) the judgment-debtor also has his place of business at Bhavnagar; and (d) the person and the property against whom the award is to be/can be executed are at Bhavnagar and neither the judgment-debtor's property are at Chennai, the Court which would have the jurisdiction to try and decide the execution application is the Court at Bhavnagar which is within the purview of Sec. 2(1)(e) of the Act. Therefore, there is no irregularity or illegality in the action of the respondent-Bank viz. filing the execution petition at Bhavnagar. So far as the decision in the case on which the learned Counsel for the petitioner relied is concerned, in view of the facts of this case viz. the place where judgment-debtor's property is situate, and also in light of the foregoing discussion, the said judgment does not render help in supporting petitioner's contention. Moreover, in the decisions in the case between Kotak Mahindra Bank

Ltd. v. Ram Sharan Gurjar of Rajasthan High Court dated 18-10-2011 and the decision dated 15-11-2012 in the case between Indusind Bank Ltd. v. M/s. Bhullar Transport Company, of Punjab & Haryana High Court and in the case between G.E. Money Financial Services Ltd. v. Mohd. Azaz, of Allahabad High Court dated 2-8-2013, the learned Courts have taken different view and in light of the foregoing discussion, I respectfully agree with the other view taken in the said other decisions. The petitioner has essentially challenged the order whereby the learned Court has passed the direction to issue attachment warrant. Of course, while challenging the said direction, the petitioner has, as mentioned and discussed hereinabove, also raised contention about the procedure followed by the respondent-Bank in instituting the execution petition before the learned Court at Bhavnagar. So far as the direction to issue attachment warrant is concerned, in view of the fact and circumstances of the case and when undisputedly the petitioner has, after having been served with the award passed by the arbitrator, not honoured and has not discharged the same by paying the amount as per the award (despite the fact that the award has attained finality) any fault cannot be found with the impugned order.

19.1. In light of the above discussion and for the foregoing reasons, it cannot be said that the learned Court at Bhavnagar has committed any error in passing the impugned order. In the facts of the case, this Court is not inclined to entertain present petition and to disturb the impugned order.

19.2. The petitioner has failed to make out any ground or justification to interfere with the impugned order. The petition fails and deserves to be rejected and is, accordingly, rejected. Notice is discharged. If any ad-interim relief is in operation, it stands vacated. No cost.

19.3. It is, however, clarified that in present petition, the petitioner raised only one contention i.e. the objection only as regards the procedure followed by the respondent-Bank while instituting the execution petition and for the foregoing reasons, the said contention is rejected. However, the issue as to whether the Court of learned Principal Civil Judge where the judgment-debtor has filed the execution petition comes within the purview of Sec. 2(1)(e) of the Act is not raised in the petition, and therefore, it is not examined and not decided. Actually, learned Advocate for the petitioner has clarified that the petitioner's challenge is restricted only against the procedure followed by the respondent-Bank. Therefore, other issues are not considered in this decision.

Present petition accordingly stands disposed of.