
(2014) 11 JH CK 0049
In the Jharkhand High Court
Case No : W.P. (C) No. 5757 of 2013

IndusInd Bank Ltd.

APPELLANT

Vs

Dayanand Chourasia and Others

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 36

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 6, Order 21 Rule 8, 15, 16, 16, 16

Citation : (2015) 1 JLJR 385

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Kalyan Banerjee, Advocates for the Appellant

Judgement

S. Chandrashekhar, J.—Seeking quashing of order dated 04.02.2013 in Execution Case No. 12 of 2012 whereby the Trial Court declined to entertain the Execution Case No. 12 of 2012 and directed the decree holder to institute a case in the Court of competent jurisdiction, the present writ petition has been filed by the M/s. Indusind Bank Limited.

2. The brief facts of the case are that, the petitioner a banking company, is registered under the provisions of Companies Act, 1956 having its regional office at Dhanbad, State of Jharkhand. For purchase of a motor vehicle, AL-HYWA, the respondent No. 1 was granted loan of Rs. 13,30,000/- vide loan-cum-hypothecation agreement No. BH000507H dated 15.11.2005. When the respondent No. 1 failed to repay the loan amount, an arbitration proceeding was started at Kolkata and the learned arbitrator passed award dated 27.11.2009 in Arbitration Case No. AR/IBL/639/09. The petitioner-decree holder filed Execution Case No. 12, of 2012 in the Court of Civil Judge, Senior Division-I at Hazaribagh, in which the impugned order dated 04.02.2013 has been passed.

3. The learned counsel for the petitioner submits that the Execution Case was filed for execution of the arbitral award and since the judgment debtor resides and carries on business having immovable property within the local limits of

Hazaribagh Court, the said Court has jurisdiction to execute the award. It is further submitted that in view of the provisions in the Code of Civil Procedure also, the arbitral award can be executed at a place where the defendant/judgment debtor resides or carries on business however, this aspect of the matter has been completely ignored by the Trial judge and thus, the impugned order dated 04.02.2013 suffers from serious errors in law in as much as, the learned trial court has declined to exercise jurisdiction vested in it.

4. I have carefully considered the submission made on behalf of the petitioner and perused the documents on record.

5. The facts appearing from the records of the case are that, the petitioner is incorporated under the Companies Act, 1956 having its office at Kolkata and regional office at Dhanbad. The arbitration proceeding commenced at Kolkata and arbitral award has been made and signed at Kolkata. Section 15 to Section 25 of the Code of Civil Procedure deals with "place of suing". Section 16 CPC provides that subject to the pecuniary or other limitation, the suit shall be instituted in the Court within the local limit of whose jurisdiction the property is situated. Section 20 deals with the cases not covered under Section 16, 17, 18 and 19 and it provides that a suit can be instituted in a Court within the local limits of whose jurisdiction, the defendant actually and voluntarily resides or carries on business or personal works for gain or where the cause of action, whole or in part arises.

6. Section 20 CPC is subject to the provisions contained in Section 16-19 CPC and thus, only when a case is not covered under the provision of Section 16-19 CPC, Section 20 CPC comes into play. Section 38 CPC provides that a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution. Section 39 provides that the Court may on the application of the decree holder, send the decree for execution to another Court of competent jurisdiction. Order 21 Rule 6 provides the procedure for execution of a decree sent to another Court.

7. Relying on a decision of Karnataka High Court in W.P. No. 19828 of 2012 (GM-CPC), the learned counsel appearing for the petitioner submits that the arbitral award is not a decree passed by the Court and therefore, Section 38 of the Code of Civil Procedure would not apply rather, in view of Section 36 of the Arbitration and Conciliation Act, 1996, arbitral award can be executed at a place where the judgment debtor resides or carries on a business.

8. A bare reading of Section 36 of the Arbitration and Conciliation Act, 1996 makes it clear that arbitral award has to be executed in the manner provided under the Code of Civil Procedure, as if it were a decree of the Court. The manner in which a decree of the Court would be executed is provided under the Code of Civil Procedure under Section 38 and 39 and Order 21 Rule 6 and Rule 8.

9. I do not find any substance in the contention that since the arbitral award is only a deemed decree and not a decree of the Court, it can be executed by a

Court within the local limits of whose jurisdiction the defendant/judgment-debtor resides or the suit property is situated. The provision under Section 38-39 CPC takes care of a situation in which the suit property is situated outside the local limits of the jurisdiction of the Court which has passed the decree. No doubt Section 36 makes the arbitral award a deemed decree of the Court however, it also makes abundantly clear that arbitral award has to be enforced under provisions of the Code of Civil Procedure. Section 20 CPC which provides filing of the suit in the Court within the local limits of whose jurisdiction either defendant resides or cause of action in whole or in part arises, carves out exception to the general rule contained in Section 16 to 19 CPC.

10. I find no merit and accordingly, the writ petition is dismissed.