
(2015) 03 JH CK 0063

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4648 of 2014

L and T Finance Ltd.

APPELLANT

Vs

Radhey Shyam Sahu and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 15, 19, 2(1)(e), 20, 25
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 6, Order 21 Rule 8, 16, 16, 17

Citation : (2015) 3 AJR 496

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Bharat Kumar, for the Appellant

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—The petitioner-LandT Finance Limited is aggrieved by order dated 16.07.2014 passed in Execution Case No. 08 of 2013 whereby, the Civil Judge, Senior Division No. 1 Hazaribagh has held that the City Civil Court, Mumbai has original jurisdiction to entertain the Execution Case and the Court at Hazaribagh can entertain the Execution Case, only if the Execution Case is transferred under Order XXI Rule 6 and 8 C.P.C. to the Court of Principal District and Sessions Judge, Hazaribagh.

2. The petitioner-Company is registered under the Companies Act, 1956 and its registered as well as corporate offices are situated at Mumbai. The petitioner is one of the largest Non-Banking Financial Company (NBFC) in India and it is engaged in providing finance for the commercial vehicles and equipments. A loan cum hypothecation agreement dated 09.01.2007 was executed between the petitioner and the respondent No. 1 at Ramgarh within the territorial jurisdiction of the Hazaribagh Court. The respondent Nos. 2 and 3 are the guarantors for the said loan to the respondent No. 1. The cost of the vehicle, one Tractor and Tiller was Rs. 530476/- for which a loan of Rs. 3, 35,000/- was given to respondent No. 1, which was to be repaid in 48 months. The E.M.I. was Rs. 9771/-. At the

time of agreement, the respondent No. 1 executed one demand promissory note for the loan amount of Rs. 3,35,000/- and irrevocable power of attorney for the vehicle. The guarantors have executed letter of guarantee. After the respondent No. 1 failed to make payment of the loan amount, the petitioner repossessed the vehicle on 13.07.2009 and sold the vehicle for Rs. 1,50,000/-. An Arbitration proceeding was initiated by the petitioner and one Mr. Subodh P. Sirur was appointed as arbitrator vide notice dated 23.01.2012. A statement of claim for recovery of a sum of Rs. 1,31,391/- as on 07.09.2001 and interest at the rate of Rs. 36% per annum on the said amount from 08.09.2009 was filed on 23.01.2012. The sole arbitrator passed award on 31.03.2012 directing the loanee and the guarantors to pay jointly and severally to the claimant a sum of Rs. 1,31,395/- with further interest at the rate of 24% per annum from 08.09.2009 till, payment or realisation. Consequently, the petitioner filed Execution Case No. 08 of 2013 under Section 36 of the Arbitration Act in the Court of Civil Judge, Senior Division No. I, Hazaribagh which has been dismissed as not maintainable.

3. The learned counsel for the petitioner submits that, the object and purpose of the Arbitration and Conciliation Act, 1996 are reflected in provisions contained in Section 5, Section 9, Section 35, Section 36 and Section 42. The various provisions under Arbitration and Conciliation Act, 1996 are intended at minimizing the supervisory role of the Courts in Arbitration proceedings. It is further submitted that, the award passed by the arbitrator under the Arbitration and Conciliation Act, 1996 is not a decree under Section 2(2) C.P.C. and Section 19 of the Arbitration and Conciliation Act, 1996 provides that Arbitral Tribunal is not bound by the provisions of the Code of Civil Procedure, 1908 and therefore, the legal fiction created under Section 36 that "the award shall be enforced in the same manner as if it were a decree of the Court" would not mean that the award can be executed only by the Court under whose jurisdiction it was made. Further elaborating his contention, the learned counsel submits that, since the respondents are residing within the territorial limit of the Hazaribagh Court and the subject matter in the Execution Case is situated within the territorial limit of the Hazaribagh Court, though the Court at Mumbai also may have jurisdiction to execute the award, the Execution Case filed in the Hazaribagh Court cannot be dismissed as not maintainable.

4. In *Paramjeet Singh Patheja Vs. ICDS Ltd.*, , while examining section 36 of the Arbitration and Conciliation Act, 1996, the Hon"ble Supreme Court held that section 36 of the 1996 Act goes further than section 15 of the Arbitration Act, 1899 and makes it clear beyond doubt that enforceability is only to be under the Code of Civil Procedure. The legal fiction thus created under section 36 is for the limited purpose of enforcement as a Decree. In "*Paramjeet Singh*", it has been held that award made by an arbitrator is not a decree of the Court as contemplated under Section 2(2) C.P.C. however, Section 36 of the Arbitration and Conciliation Act, 1996 creates a legal fiction in as much as, the award under the Act shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. The legal fiction thus, created under

Section 36 though, recognises that the award is not decree of a Court still, it has to be enforced under the provisions of the Code of Civil Procedure, 1908. The expression "the award shall be enforced under the Code of Civil Procedure" makes it abundantly clear that in so far as, enforcement of the award is concerned, the provisions of the Code of Civil Procedure would govern the proceeding. The contention of the learned counsel for the petitioner that Section 19 of the Act excludes the application of the Code of Civil Procedure is misconceived. Section 19 merely provides that the Arbitral proceeding may not be conducted strictly following the provisions of the Code of Civil Procedure and the Indian Evidence Act. Moreover, Section 19 cannot be extended to cover the proceeding in the Court. It is apparent from the scheme of the 1996 Act that what is contemplated under the 1996 Act is minimum intervention of the Courts in the arbitration process and it does not restrict the provisions and applicability of other enactments after the award is rendered by the arbitrator. The provisions under the Arbitration and Conciliation Act, 1996 do not lay down a specific procedure of execution of the award. Though, Section 19 of the Act restricts the applicability of the code of Civil Procedure and the Indian Evidence Act insofar as, proceeding before the arbitral tribunal is concerned however, the restriction contained under Section 19 of the Act cannot be extended to the procedure in the execution proceeding.

5. In *Bharat Aluminium Company and Others Vs. Kaiser Aluminium Technical Service, Inc. and Others etc. etc.*, , the Hon'ble Supreme Court dealt with the distinction between the term "subject matter of the arbitration" and the term "subject matter of the suit". With reference to section 2(1)(e) of the Arbitration and Conciliation Act, 1996 it has been held that the definition of the expression "Court" under section 2(1)(e) includes "subject matter of arbitration" to give jurisdiction to the Courts where the arbitration takes place. Its purpose is to identify the Courts which have supervisory control over the Arbitration proceeding. It infact, refers to a Court which would essentially be a Court of the seat for the arbitration purpose. In "*Bharat Aluminium Company*" the Hon'ble Supreme Court has observed that the provisions under Section 2(1)(e), Section 20 and Section 28 r/w Section 45 of the 1996 Act have to be interpreted by keeping the principle of territoriality at the forefront. In a case in which arbitration is held at place A though, the subject-matter of the suit is situated at place B, it has been held that both the courts would have jurisdiction i.e., the Court within whose jurisdiction the "subject-matter" of the suit is situated and the Court within the jurisdiction of which the dispute resolution i.e. arbitration is located. The contention that the decree-holder must have a choice of seeking execution of the award at a place where either the judgment-debtor is residing or ordinarily carries business or at a place where the subject-matter of the "execution" is situated, merits no acceptance.

6. The Code of Civil Procedure deals with "place of suing" in Section 15 to Section 25. Section 16 of the Code of Civil Procedure is invoked when the controversies pertain to recovery of immovable property, partition of immovable

property, foreclosure sale or redemption of immovable property, determination of any other right to immovable property, for determination of compensation for wrong to immovable property and/or for the recovery of movable property under distraint or attachment. Section 20 CPC provides for institution of suit in a Court within the local limits of whose jurisdiction either the defendant/defendants reside or cause of action arises. However, Section 20 CPC begins with the expression "subject to the limitations aforesaid" and the limitations are provided under Section 16-19 of the Code of Civil Procedure. Thus, a suit can be instituted in a Court within the local limits of whose jurisdiction either the defendant/defendants reside or cause of action arises, only if, the Court in which the suit can be instituted is not covered under Section 16-19 of the Code of Civil Procedure. The contention that the defendants are residing within the local limits of the Hazaribagh Court and the property which would be sold in execution of the award is also situated within the local limits of the Hazaribagh Court and therefore, the execution of the award dated 31.03.2012 can take place in the Hazaribagh Court, is untenable. Section 36 of the Code of Civil Procedure provides that the provisions of the Code relating to the execution of decree including provisions relating to payment under a decree shall be applicable to the execution of orders including payment under order. 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. The contention that Section 38 CPC is not applicable in case of execution of an award because award is not a decree by the Court, is liable to be rejected. In view of specific language of Section 36 of the Arbitration and Conciliation Act, 1996 and judgment in Paramjeet Singh Patheja case, though the award is not a decree by the Court, it has to be executed under the provisions of the Code of Civil Procedure.

7. In the present case an Arbitration proceeding was initiated vide notice dated 23.01.2012 issued from Mumbai. The arbitrator fixed the place of arbitration at Mumbai. The award dated 31.03.2012 was made and signed at Mumbai. However, the arbitration agreement was signed at Ramgarh and copy of award dated 31.03.2012 was sent to the loanee and the guarantor to their place of residence within the jurisdiction of the Hazaribagh Court. From the claim petition and award dated 31.03.2012, it is apparent that the subject matter of the award was an amount of Rs. 1,31,395 with interest due and payable to the petitioner-LandT Financial Limited. The subject matter of the award was thus, not an immovable property situated within the local limits of the Hazaribagh Court. Since, the petitioner filed application for execution giving details of immovable property situated within the local limits of the Hazaribagh Court, the Hazaribagh Court would have jurisdiction to execute the award, but, only after the award is transferred under Section 39.

8. The contention that while the explanation to Section 49 for enforcement of foreign award provides that the award shall be deemed to be decree "of that Court" whereas, Section 36 uses the expression "as if it were a decree of the Court", and thus, the legislative intent was not that the arbitral award has to be

treated as decree of "that Court only" which would have the jurisdiction to entertain the suit, is also liable to be rejected. The expression "of that Court" used in Section 49 of the Arbitration and Conciliation Act, 1996 has been used in the context of Section 48 under which the Court can examine the validity of the foreign awards, before its enforcement. Section 35 of the Arbitration and Conciliation Act, 1996 makes the arbitral award final and binding on the parties and persons claiming under them and the arbitral award becomes enforceable under Section 36 after the time for making an application under Section 34 expires, or such application has been refused. The application under Section 34 of the Arbitration and Conciliation Act, 1996 can be filed at a place where award has been given or the place where the subject matter of arbitration is situated. In the present case as noticed above, the subject matter of arbitration was a sum of Rs. 1,31,395/- with interest and not the immovable property situated within the local limits of the Hazaribagh Court and therefore, the application under Section 34 of the Arbitration and Conciliation Act, 1996 would have been filed only in the Court of competent jurisdiction at Mumbai. Merely because the property which has been sought to be sold for satisfying the award is situated within the local limits of the Hazaribagh Court, the execution application can not be filed in the Hazaribagh Court though, the Court at Hazaribagh can execute the award in the manner provided under the Code of Civil Procedure, after its transfer for execution.

9. Considering the above facts, I am not persuaded to take the view taken by the Hon"ble Judges of other High Courts. I find no merit in the writ petition and accordingly, it is dismissed.