
(2005) 07 KL CK 0032
In the High Court Of Kerala
Case No : C.R.P. No. 330 of 2004

Maresh B. Shah

APPELLANT

Vs

C.V. Joseph

RESPONDENT

Date of Decision : 29-07-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(e), 34, 36
Civil Procedure Code, 1908 (CPC) — Section 38

Citation : (2005) 3 ARBLR 483 : (2005) 3 ILR (Ker) 653 : (2005) 2 KLJ 577 :
(2005) 3 KLT 787 : (2006) 1 RCR(Civil) 387

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Advocate : Joy Thattil Ittoop, for the Appellant; Joby Cyriac, for the Respondent

Final Decision : Dismissed

Judgement

S. Sankarasubban

1. The Civil Revision Petition is filed against the order passed by the Additional Munsiff's Court Cherthala in E.P. No. 209 of 2000 in Ref: SE/AB/055/98. Decree holder has come in revision. There was a dispute between the decree holder and judgment debtor. That dispute was placed before the Arbitration Committee and the Arbitration Committee passed an award for Rs. 38,544/- together with interest at the rate of 12% per annum from the date of payment, i.e., 31-12-1995 to the revision petitioner within 21 days from the date of receipt of the award. Since the amount was not paid, the holder filed the E.P. before the Munsiff's Court, Ernakulam for the enforcement of the award. That E.P. was transferred to Cherthala, since the judgment debtor was staying within the jurisdiction of that Court. Before the Munsiff's Court, Cherthala, the respondent contended that the Munsiff's Court has no jurisdiction. The lower court held that the court is defined as Principal Civil Court, which is a District Court and hence, the Munsiff's Court is not having the jurisdiction. It is against the above order that the present revision is filed.

2. Learned counsel for the petitioner submitted that it is true that the court has been defined under the Arbitration and Conciliation Act, 1996. But according to the petitioner, the definition is subject to the context. According to the petitioner, usually a claim below Rs. 1 lakh is laid in the Munsiff's Court and execution is also laid in the Munsiff's Court. Hence, learned counsel submitted that the Munsiff's Court has got jurisdiction. The only question to be decided in this case is which is the court where an award can be enforced. Section 36 of the Arbitration and Conciliation Act states as follows:

Where the time for making an application to set aside the arbitral award u/s 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". u/s 36, the award is enforced as a decree of the court. The Section is not clear as to decree of which court. The court is defined u/s 2(e) of the Arbitration and Conciliation Act, which is as follows:

"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.

Question is whether that definition is to be applied to Section 36. A decree of a civil court is executed as per Section 38 of the Code of Civil Procedure. It states as follows: "A decree may be executed either by the court which passed it, or by the court to which it is sent for execution." Here the court does not pass a decree. The award is passed by the arbitration committee which has got the force of the decree. The award is to be challenged in the court as defined under the above Act. According to me, the court mentioned in Section 36 also to be interpreted according to Section 2(e). If that be so, the award is to be executed in the District Court. Hence, the court below is correct in holding that the Munsiff's Court has no jurisdiction.

Civil Revision Petition is dismissed.