

(2013) 11 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1010, 1288 and 1291 of 2012 (O&M)

Mahindra and Mahindra Financial Services Limited

APPELLANT

Vs

Manjeet Singh

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) 2 PLR 437

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Paramjeet Singh, J.—By this common order, all the aforementioned civil revisions are being disposed of together as common questions of facts and law are involved in these petitions. For the sake of convenience, facts are being taken from Civil Revision No. 1010 of 2012.

2. Instant civil revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 26.11.2011 passed by learned Additional District Judge, Karnal in Execution Application No. 85/2011, titled M/s. Mahindra & Mahindra Financial Services Ltd. v. Manjeet Singh and another" whereby the execution application filed by the petitioner for enforcement of arbitral award dated 24.02.2011, has been dismissed.

3. Shorn of unnecessary details, the facts relevant for disposal of the present petition are to the effect that the petitioner filed execution application for enforcement of arbitral award dated 24.02.2011 u/s 36 of the Arbitration and Conciliation Act, 1996 (in short "the Act"). On notice, the respondent put in appearance and raised an objection regarding maintainability of execution application before the Executing Court at Karnal without it being transferred from the Court in Mumbai within whose jurisdiction the award was passed. Vide impugned order dated 26.11.2011, the Executing Court dismissed the execution application observing that it has no jurisdiction to entertain and execute the

award in question directly without being transferred by court at Mumbai, as neither the arbitration proceedings were held nor the award in question was made within its jurisdiction. Hence, this revision petition.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner contended that although an arbitral award has to be executed as decree of civil court but it cannot be technically equated with decree of a Civil Court. Since no intervention of the Court is required for an arbitral award to be converted into a decree, normal rule of the Code of Civil Procedure, 1908 (in short "the Code") under which the Court which passes the decree alone is competent to execute the decree or transfer the decree, would not apply. The learned counsel has further contended that the arbitral proceedings come to an end when the time for making an application to set aside the arbitral award expires and the execution application is merely an enforcement of the award. The learned counsel has further contended that merely because the award was passed at Mumbai, it cannot be deemed to be decree passed by Court at Mumbai so as to require its transfer for execution from Mumbai Court to Karnal. In support of his contentions, the learned counsel has relied upon *Daelim Industrial Co. Ltd. v. Numaligarh Refinery Ltd.* 2010(8) R.C.R. (Civil) 1662; 2009(159) DLT 579, *Kewal Arora & Anr. v. M/S. Ashok Leyland Finance now IndusInd Bank CR No. 8075 of 2011* decided on 28.01.2013 and *Indusind Bank Ltd. Vs. M/s. Bhullar Transport Company and Another*, .

6. None has appeared on behalf of the respondents.

7. I have considered the contentions of learned counsel for the petitioner.

8. Admittedly in the instant case the award was passed on 24.02.2011 at Mumbai, however, the respondents against whom the award has to be executed are the residents of District Karnal. Keeping in view provisions of Section 36 of the Act that an award can be enforced like a decree of civil court, the question to be determined is whether execution application can be filed in a court within whose jurisdiction the judgment debtor resides/holds property without it having been first filed and transferred from the court within whose jurisdiction the award was made.

9. Considering identical question, the Division Bench of Delhi High Court in *Daelim Industrial Co. Ltd. (supra)* observed as under:

19. Section 38 of the CPC applies only to a decree passed by the court. In the present case no court has passed the decree. What is to be the position in such cases ?, which court is empowered to execute the award, which is a decree by a legal fiction and which has not been passed by any court?

25....The purpose of execution is realization of money from the property or the property of the judgment debtor. Thus while territorial jurisdiction for suits is determined by place of occurrence of cause of action, residence of defendant, locus of property etc, the territorial jurisdiction for execution is determined only

by locus of judgment debtor or the property. The agreement between the parties restricting jurisdiction of one, amongst many courts also does not extend to execution and is applicable to the court which will adjudicate the lis. I do not see any reason, why where an award has been made executable as a decree, the execution cannot lie at a place where the property against which the decree is sought to be enforced is situated. That court in my view would have inherent jurisdiction to execute the decree and in the absence of applicability of mandate of Section 38 of CPC, pedantic insistence on first applying for execution to one court, merely to obtain transfer would be also contrary to intent of expedition in the 1996 Act.

10. The observations of Madras High Court in *Kotak Mahindra Bank Ltd. Vs. Sivakama Sundari S. Narayana S.B. Murthy*, are also relevant in this regard. The Court observed as under:

19. While the award passed by an arbitral tribunal is deemed to be a decree of a civil court u/s 36 of the 1996 Act, there is no deeming fiction anywhere to hold that the court within whose jurisdiction the arbitral award was passed, should be taken to be the court which passed the decree. Therefore, the whole procedure of filing an execution petition before the court within whose jurisdiction the arbitral award was passed, as though it is the court which passed the decree, is pathetically misconceived.

11. Considering the aforesaid judgments co-ordinate bench of this court in *Indusind Bank Ltd.* (supra) has summarized the law as under:

12....There is no provision in the Act stipulating that the arbitration award, which is treated as decree for the purpose of enforcement u/s 36 of the Act, shall be deemed to be decree of the court of the place where the award was passed. In the absence of any such provision, in the instant case, it cannot be said that since the award was passed at Chennai, it shall be deemed to be decree to have been passed by the court at Chennai. On the other hand, Section 42 of the Act provides that where with respect to an arbitral agreement, any application under this part of the Act has been made in a court, that court alone shall have jurisdiction" over the arbitral proceedings and all subsequent proceedings arising out of the said agreement and the arbitral proceedings shall be made in that court and no other court. This provision, thus, stipulates that subsequent application shall be moved in the same court in which an earlier application has been moved. In the instant case, however, no earlier application was moved regarding arbitration agreement or regarding arbitral proceedings and execution petition filed at Amritsar was the first lis brought before any court relating to the arbitration agreement and the arbitration award. Since respondents/judgment debtors are residing and are holding property within territorial jurisdiction of the court at Amritsar, the court at Amritsar certainly has territorial jurisdiction to enforce the arbitration award.

In view of above, I find that the impugned order dated 26.11.2011 is illegal and

suffers from jurisdictional error. The executing court has refused to exercise jurisdiction which vested in it to enforce the arbitration award. The instant revision is allowed and the impugned order dated 26.11.2011 is set aside. Execution application is restored to its original number of the Executing Court at Karnal. Petitioner is directed to appear on 10.01.2014. The Executing Court at Karnal shall now proceed with the execution application in accordance with law.