
(2023) 07 OHC CK 0148

In the Orissa High Court

Case No : Writ Petition (C) No.1897 Of 2015

M/s. Indusind Bank Ltd., G. N. Chetty Road, Chennai

APPELLANT

Vs

Maheswar Rout And Another

RESPONDENT

Date of Decision : 19-07-2023

Acts Referred:

Code of Civil Procedure, 1908 — Section 39

Arbitration and Conciliation Act, 1996 — Section 20, 34, 34(4), 36, 42

Citation : (2023) 07 OHC CK 0148

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Prakash Kumar Mishra, Chiranjaya Mohanty

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. The writ petition was moved on contention by petitioner that it was claimant in the reference and award was made in its favour. Thereupon, it sought to file for execution before the Court below, rejected by impugned order dated 27th December, 2014 on direction for his client to move the principal civil Court having jurisdiction over seat of the arbitration, in Chennai.

2. There was direction for issuance of notice to opposite parties and Mr. Mohanty, learned advocate appears on behalf of opposite party no.1, respondent in the reference.

3. Mr. Mishra, learned advocate appears on behalf of petitioner and relies on judgment dated 15th February, 2018 of the Supreme Court in Civil Appeal no.1650 of 2018 (Sundaram Finance Limited vs. Abdul Samad). He submits, said Court concluded that enforcement of an award through its execution can be filed anywhere in the country, where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceeding.

4. Mr. Mohanty draws attention to paragraph 12 in impugned order. He submits, the Court below correctly formulated manner in which execution is to be obtained of an arbitral award. The Court said firstly, where place of arbitration has been specified, principal civil Court of that particular place has got power to entertain challenge under section 34 in Arbitration and Conciliation Act, 1996 and subsequently, same Court has got power to enforce the award as a decree, under section 36. Secondly, where there is no such mention, the arbitration agreement will yield place of arbitration as per section 20.

Accordingly, principal civil Court of that place would execute the award as a deemed decree. Thirdly, where any application with regard to the arbitral proceeding has already been filed, such Court will only have jurisdiction to include subsequent applications including execution petition, as per section 42. Lastly, in above three circumstances, concerned principal civil Court upon receiving execution petition may transfer the proceeding under section 39 of the Code of Civil Procedure, 1908.

5. He relies on judgment of the Supreme Court in Khaleel Ahmed Dakhani vs. The Hatti Gold Mines Co. Ltd., reported in (2000) 3 SCC 755 to submit, in that case execution petition had been filed before the principal District Judge, Raichur in Karnataka. The executing Court had issued warrants of attachment and, thereafter, refused to lift the orders of attachment at instance of award debtor. Award debtor filed for revision before the High Court of Karnataka, who set aside the orders of the executing Court. The Supreme Court dismissed the appeal against judgment of the High Court. Hence, by Khaleel Ahmed (supra) Supreme Court had confirmed quashing of order made in execution by the Court at Raichur, on contention that the principal Court at Bangalore had jurisdiction.

6. In Sundaram Finance (supra) ratio is that section 32 in providing termination of arbitral proceedings, makes provisions of the Act traverse a different path from earlier Arbitration Act, 1940. The latter mandated filing of an award in Court for decree to be passed in accordance therewith. In that context the Supreme Court said that section 42 operates in respect of arbitral proceedings and when the proceedings stand concluded on passing of award, there being no application made under sub-section (4) of section 34, execution petition can be filed anywhere in the country.

7. The earlier decision in Khaleel Ahmed (supra) does not go contrary to the later decision in Sundaram Finance (supra). There were two factual elements noticed by the Court in the earlier decision. Firstly, the arbitration agreement between the parties in that case had by clause 35, stipulation that only the Courts Bangalore would have jurisdiction to entertain any claim for enforcement of the award. However, the Court did not dismiss the appeal based on said fact. The appeal was dismissed because there was application pending in the civil Court at Bangalore on the question of its jurisdiction, in proceeding filed earlier in time than the execution petition at Raichur, Karnataka. The proceeding was challenge under section 34 by award debtor himself. As such, not only is Khaleel Ahmed

(supra) in line with subsequent declaration of law in Sundaram Finance (supra) but also there were distinguishing facts found for the High Court of Karnataka to have quashed the orders of executing Court at Raichur.

8. It is noticed Sundaram Finance (supra) was not cited in the Court below though Khaleel Ahmed (supra) was.

9. For reasons aforesaid, impugned order is set aside and quashed and the execution case restored. The Court below is directed to proceed with the execution case.

10. The writ petition is disposed of.

.....