
(2011) 08 KL CK 0152

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24314 of 2008 and Connected Cases

M/s Maharashtra Apex Corporation Ltd.

APPELLANT

Vs

Balaji, G. and another

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Arbitration Act, 1940 — Section 17
Arbitration and Conciliation Act, 1996 — Section 35, 36
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11(2), 39
Kerala Arbitration and Conciliation (Court) Rules, 1997 — Rule 9
Stamp Act, 1899 — Section 19

Citation : (2011) 4 ILR (Ker) 450 : (2011) 4 KLJ 408

Hon'ble Judges : P.Q. Barkath Ali, J

Bench : Single Bench

Advocate : S.R. Dayananda Prabhu, for the Appellant;

Final Decision : Allowed

Judgement

Mr. Justice P.Q. Barkath Ali

1. As a common question is involved, these three writ petitions are disposed of by a common judgment. Challenge in these writ petitions are the orders of the District Court, Kozhikode directing the revision petitioners to pay the balance stamp duty on the award passed by the Arbitrators at Udupi in Arbitration proceedings which were transmitted by the District Court, Udupi to the District Court, Kozhikode for execution.

2. Writ petitioners are the petitioners in arbitration proceedings A.P. No. 257/2003, A.P.37/2000 and A.P.14/2001 respectively before the Arbitrators, Udupi, Karnataka State. In the above arbitration proceedings awards were passed on 5-6-2003, 21-7-2001 and 9-6-2001 respectively which have become final u/s 35 of the Arbitration and Conciliation Act, 1996. Ext.P-1 in all these writ petitions are the copies of the said awards. Petitioners filed applications u/s Order 21, Rule 11(2) of the CPC read with Section 36 of the Arbitration and

Conciliation Act 1996 along with the original of Ext.P-1 award before the District Court, Udupi for enforcement of the award and to transfer the same to the District Court, Kozhikode for execution. Ext.P-2 in all these writ petitions are the said order passed by the District Judge, Udupi. Pursuant to the said order, decrees were transferred to District Court, Kozhikode for execution u/s 39 of CPC. The petitioners filed Execution Petitions before the District Court, Kozhikode for execution of the decree. The District Court, Kozhikode by the impugned order in E.P.No. 86/2006 in A.P.No. 257/2003, dated June 7,2008, in E.P.No. 30/2002 in A.P.No. 37/2000, dated June 7,2008 and in E.P.No. 22/2005 in A.P.No. 14/2001, dated June 7,2008 respectively directed the petitioners to pay additional stamp duty for enforcement of the award in Kerala. The petitioners have challenged the said orders in these writ petitions.

3. Respondents remained absent in all these writ petitions. Heard the counsel for the petitioners.

4. Counsel for the petitioners argued that the District Court, Kozhikode is only an executing court which cannot go beyond the decree and that as only certified copy of the award need be produced before the executing court for execution, the lower court cannot insist for payment of additional stamp duty. I find force in the above contention.

5. The lower court relied on a decision in Cochin Shipyard Ltd. v. Hattigudur 1980 KLT Case No. 125. It was a decision rendered u/s 19 of the Kerala Stamp Act and under Arbitration Act, 1940 wherein it has been held that when an instrument is executed outside Kerala State and received for use in Kerala, u/s 19 of the Stamp Act, the additional stamp duty, if any, payable as per Kerala Stamp Act has to be paid. But in my view, the principles laid down in the above decision do not apply to the facts of the present case. In that case, the award was passed under the Arbitration Act, 1940. Section 17 of Arbitration Act, 1940 provides that original award has to be produced before the court and a decree has to be drawn in accordance with the award. In this case, the award was passed under Arbitration and Conciliation Act, 1996. Section 36 of Arbitration and Conciliation Act, 1996 provides that the award itself is executable as if it were a decree and there is no requirement of producing it before any court to pass a decree so as to execute the same. The petitioners have produced the award before the District Court, Udupi and the said court has transferred the decree to the lower court for execution.

6. A Single Bench of this court in Ramaswamy v. Principal Subordinate Judge 1997 (2) KLT 393 has held thus:

Section 17 of the Arbitration Act, 1940 provided for a decree to be drawn by the court concerned. But Section 36 of the Arbitration and Conciliation Act, 1996 provides that the award shall be considered as a decree and shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. In such case, the respondent court cannot insist for a decree

to receive the execution application to its file. u/s 36, the executing court is duty bound to accept the execution petition with a certified copy of the award. If the petitioner produces a certified copy of the award along with execution petition that shall be received and disposed of in accordance with law.

7. That apart, Rule 9 of Kerala Arbitration and Conciliation (Court) Rules, 1997 provides that only copy of the award need be produced for execution.

8. Thus, as such in this case, it is the decree of the District Court, Udupi that has been transferred to the lower court for execution. Only copy of the award need be produced before the lower court for execution as provided under Rule 9 of the Kerala Arbitration and Conciliation (Court) Rules, 1997 and as held by this court in Ramaswamy's case (supra). That being so, the lower court cannot insist for payment of stamp duty as is required under the Kerala Stamp Act. It follows that the impugned orders of the lower court directing the petitioner to pay the balance stamp duty as provided under the Kerala Stamp Act cannot be sustained and the same are hereby set aside. The lower court is directed to proceed with the execution of the said award.

In the result, all the above writ petitions are allowed as found above.