

(2017) 08 AP CK 0014
In the Andhra Pradesh High Court
Case No : 3826 of 2008

M/s. Shriram Transport Finance Co.Ltd., Kadapa	APPELLANT
Vs	
S.Salauddin and another	RESPONDENT

Date of Decision : 07-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 39](#), [Section 45](#), [Section 37](#), [Section 38](#), [Order 21 Rule 10](#)
[Order 21 Rule 10](#), [Order 21 Rule 10](#)

Citation : (2017) 08 AP CK 0014

Hon'ble Judges : V. Ramasubramanian, T. Rajani

Bench : DIVISON BENCH

Advocate : B. Vijaysen Reddy

Judgement

1. The petitioner, who secured an award in their favour in an arbitration case, has come up with the above civil revision petition, challenging the rejection of their application by the executing Court for transmission of the award to the District Court, Kadapa.
2. Heard Mr. B. Vijaysen Reddy, learned counsel for the petitioner.
3. Notice was ordered in this revision petition way back on 12.09.2008. Service of notice on the respondents was completed long time ago. But, there is no appearance for the respondents.
4. The petitioner herein raised a dispute with regard to the amounts that became due and payable from the respondents and the dispute was referred to arbitration. The sole arbitrator passed an award on 04.04.2006 in Arbitration Case No.17 of 2015. The arbitration was held at Tirupati and the award was passed there.
5. Thereafter, the petitioner filed an execution application before the District Court, Chittoor, under Section 36 of the Arbitration and Conciliation Act, 1996

seeking transmission of the award to the District Court, Kadapa, on the ground that the properties, against which execution could proceed, were located within the territorial jurisdiction of the District Court, Kadapa.

6. The said application was rejected by the District Court, Chittoor, on the ground that it was not the Court which passed the decree, so as to enable the said Court to transmit the same, under Section 39 of C.P.C., to another Court. In other words, the Court below held that the award was not a decree passed by that Court, as the same was also not filed before the Court.

7. But, after the advent of 1996 Act, the question of filing of the award into Court for the purpose of making the award a rule of Court, does not arise. The award passed by the arbitrator is deemed to be a decree which can be directly executed. Therefore, one set of reasoning given by the executing Court for rejecting the application was wrong.

8. There appears to be a great deal of confusion about whether an award passed by the arbitrator should be transmitted by one Court to another Court in which it can be executed. The High Courts of Bombay, Delhi and Madras have already taken the position that there is no necessity to have the award transmitted from one Court to another Court for execution. But, the Kerala and Karnataka High Courts appear to have taken a view that transmission was necessary.

9. One of us (VRS,J) had an occasion to consider this question in great detail, while being part of the Madras High Court, in a decision rendered in Kotak Mahindra Bank Limited Vs. Sivakama Sundari . The relevant portion of the said judgment, which contains a detailed analysis of the provisions of Sections 38 to 45 of the Code of Civil Procedure and the provisions of the Arbitration and Conciliation Act, 1996, is extracted for useful reference.

7. Section 38 of the Code of Civil Procedure states that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. Section 37 of the Code defines the expression "Court which passed the decree", to include (i) the Court of first instance where the decree was passed by a Court of appellate jurisdiction, and (ii) the Court which would have had the jurisdiction to try the suit, if the Court of first instance had ceased to exist or ceased to have jurisdiction to execute it.

8. Section 39(1) of the Code enables the Court which passed a decree to send it for execution to another Court of competent jurisdiction. This may be done on an application of the decree holder and it may be done if any of the four contingencies in clauses

(a) to (d) of Sub-section (1) of Section 39 arises. They are:

(a) If the judgment debtor resides or carries on business within the local limits of jurisdiction of such other Court;

(b) If the judgment debtor has no property within the local limits of jurisdiction

of the Court which passed the decree, but has property within the local limits of the jurisdiction of the other Court to which it is sought to be transferred;

(c) If the decree is for sale or delivery of immovable property situate outside the local limits of jurisdiction of the Court which passed the decree; and

(d) If the Court considers it fit to transfer the decree for any other reason to be recorded in writing.

9. Sub-section (2) of Section 39 enables the Court which passed a decree to transfer it to any Subordinate Court, even of its own motion, without an application by the decree holder. Sub-section (3) of Section 39, which was inserted by Act 104 of 1976, creates a deeming fiction. It says that if a Court to which an application for the transfer of the decree is made, has jurisdiction to try the suit in which the decree was passed, then it could also be deemed to be a Court of competent jurisdiction. Sub-section (4) inserted under Amendment Act 22 of 2002, places an embargo upon a Court which passed the decree to execute such a decree against any person or property outside the local limits of its jurisdiction.

10. Section 41 of the Code imposes an obligation upon the executing Court to inform the Court which passed the decree, about the completion of execution or about the failure to execute the decree along with the attending circumstances. Section 42(2)(a) empowers the Court to which a decree is transferred, to send it to some other Court for execution. For this purpose, the transferee Court would have the same power as that of the Court which passed the decree. Sub-section (4) of Section 42 contains two limitations to the power of the Court to which a decree is sent for execution. Since we are not concerned with the same, I am not referring to it.

11. Section 43 provides for execution of decrees passed by any civil Court established in India or outside India, to which the provisions of this Code do not extend. Section 44 empowers the State Government to declare by notification in the Official Gazette that the decrees of any Revenue Court in any part of India to which the provisions of Civil Procedure Code would not apply, be executed within the State as if they had been passed by Courts in that State. Section 44-A indicates the procedure to be followed for execution of decrees passed by a Court in reciprocating territories. Section 45 declares that a Court in any State will be entitled to send a decree for execution to any Court established by the authority of the Central Government outside India. Section 46 speaks of precepts.

12. In tune with Section 38 of the Code of Civil Procedure, Order XXI, Rule 10 of the Code states that the holder of a decree shall apply to the Court which passed the decree, for its execution. The application may also be made to the Court to which such decree has been sent under the provisions contained in the Code. Rule 6 of Order XXI requires the Court forwarding a decree for execution to another Court, (i) to send a copy of the decree, (ii) to send a certificate recording satisfaction or non satisfaction of the decree, and (iii) to send a copy of any

order for the execution of the decree or a certificate to the effect that no such order had been passed. The mode of transfer is prescribed by Rule 5 of Order XXI. It says that where a decree is to be sent for execution to another Court, the Court which passed such decree shall send it directly to such other Court, irrespective of whether such Court is situate in the same State or not.

13. A comprehensive analysis of the various provisions of the Code of Civil Procedure, dealt with in the preceding paragraphs, would show that every decree of a civil Court is liable to be executed primarily by the Court which passed the decree. Therefore, an application for execution is expected to be filed in the first instance, only in the court which passed the decree. It is only in cases where the Court which passed the decree is unable to execute it, that the provisions for the transfer or transmission of such decree and the procedure prescribed therefor, come into play.

14. Keeping this fundamental aspect in mind, if we now have a look at the provisions of the Arbitration and Conciliation Act, 1996, it is seen that the award passed by an Arbitral Tribunal is liable to be enforced under Section 36 of the Act, in the same manner as if it is a decree of the Court, in terms of the provisions of the Code. In other words, an award passed by the Arbitral Tribunal is equated to the decree of a Court, for the purpose of execution and only for that purpose. In so far as foreign awards are concerned, they are also equated to the decrees of Courts under Section 58 of the 1996 Act.

15. But the fact that an Arbitral Tribunal is not bound by the Rules of Procedure formulated in the Code, is made clear by Section 19(1) of the Arbitration and Conciliation Act, 1996. Therefore, an Arbitral Tribunal is not a Court. Hence it follows that the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the "1996 Act") elevates an award to the level of a decree, for the purpose of execution. But, it does not elevate the Arbitral Tribunal to the status of a civil Court.

16. It is important to note that under the 1996 Act, an award can be executed directly without a seal of approval by a civil court. The 1996 Act made a total departure in this regard, from the provisions contained in the Arbitration Act, 1940, (hereinafter referred to as the "Act of 1940"). The difference between the provisions of the 1996 Act and the provisions of the Act of 1940, may be summarised as follows (insofar as the issue on hand is concerned):

(i) Under Section 14(2) of the 1940 Act, the arbitrators are obliged to file a copy of the award into Court and the Court is obliged to give notice to the parties about the filing of the award. After it is so filed, the Court is empowered to modify or correct an award, in terms of the provisions of Section 15. The Court also has the power to remit the award under Section 16 of the 1940 Act. If the Court sees no reason to remit the award, or if the Court sees no reason to set aside the award (either after the expiry of the time for filing an application to set aside the award or after the dismissal of any such application), the Court shall

pronounce a judgment under Section 17 . A decree is to follow such judgment under Section 17 . Thus, an arbitral award became executable under the 1940 Act, only after a judgment was pronounced by a Court under Section 17 and it was also followed by a decree. But, under the 1996 Act, the award automatically becomes a decree in terms of Sections 36 and 58 ;

(ii) As pointed out earlier, Section 19(1) of the 1996 Act liberates Arbitral Tribunals from the rigors of the provisions contained in CPC and the Indian Evidence Act . The role of the Court, even while dealing with an application under Section 34, has been restricted by the 1996 Act. The only place where some role is assigned to a Court is in Section 27 of the 1996 Act (apart from Sections 8, 9, 11, 34 and

45. By virtue of Sub-section (3) of Section 27, the Court to which a request for assistance in taking evidence is made, is entitled to follow its own rules for taking evidence. Thus, Section 27(3), read with Section 19(1) of the 1996 Act, gives a clear indication that while the Arbitral Tribunal can formulate its own procedures, the civil Court could follow its own, whenever it is approached (a) either for the grant of interim measures, (b) or for any assistance in taking evidence, or (c) for execution. In contrast to these provisions of the 1996 Act, Section 41 of the 1940 Act makes the provisions of the Code of Civil Procedure apply to all proceedings before the Court as well as to all appeals under the Act.

17. Once it is seen that an award of the Arbitral Tribunal is deemed to be a decree, by virtue of Section 36 of the 1996 Act, it follows as a corollary that the Arbitral Tribunal is in the position of a Court which passed the decree (though it may not be the same). But, no application for execution can be presented to an Arbitrator, by the holder of an award, under Order XXI, Rule 10, on the ground that the Arbitral Tribunal is the Court which passed the decree. Therefore, the provisions of Section 38 and Order XXI, Rules 5, 6 and 10 of the Code of Civil Procedure cannot be applied to an Arbitral Tribunal. To put it differently, it is only when an award holder is entitled to file an execution petition before the Arbitral Tribunal itself under Order XXI, Rule 10, (treating it as a Court which passed the decree) that the provisions of Order XXI, Rules 5 and 6 would come to play.

18. If no application for execution can be filed before the Arbitral Tribunal, by treating the Arbitral Tribunal as the Court which passed the decree, the Arbitral Tribunal cannot also order the transfer of the decree (or award) to any other Court for its execution. Similarly, there is no provision either in the Code or anywhere else, to treat a court, within whose jurisdiction the Arbitral proceedings took place, as the court which passed the decree. It is only when a court within whose jurisdiction the arbitral award was passed, is taken to be the court which passed the decree within the meaning of Section 37 and Order XXI, Rule 10 of the Code that the award holder would be entitled to seek transmission from that court.

19. While the award passed by an arbitral tribunal is deemed to be a decree of a

civil court under Section 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.

10. Therefore, it is clear that no Court, to which an application for execution is made, can insist on the filing of the execution petition first before some other Court and to have it transmitted to it later. As a matter of fact, the Arbitration Act transcends all territorial barriers. The parties are entitled to prescribe any place as the seat of arbitration, irrespective of where the parties carry on the business or where the contract was to be executed. In commercial contracts, the parties even choose a foreign country as the seat of arbitration, despite all the parties to the agreement being in India. Therefore, if the requirement of transmission of a decree is read into the statute, it will lead to the disastrous consequences of a foreign Court having power to transmit the award to the executing Court.

11. In fact, the decision in Kotak Mahindra Bank Limited draws a parallel from the provisions of the Chit Funds Act where the award passed by the Registrar of Chits is made executable by a civil Court as if it is a decree of Court. The awards passed by the Registrar of Chits are accepted for execution without any demand for transmission. The same logic applies to arbitration awards also.

12. Therefore, the revision is liable to be dismissed. However, we point out that since the date of the award is only 04.04.2006, the petitioner has time up to April, 2018 to file an execution petition before the District Court, Kadapa, directly. Upon the petitioner filing the execution petition before the appropriate Court before April, 2018, the Court shall entertain the same without insisting upon the transmission of the decree. With the above observation, the revision petition is dismissed.

Consequently, miscellaneous petitions if any pending in the revision shall stand dismissed. No order as to costs.