
(2019) 07 JH CK 0041
In the Jharkhand High Court
Case No : Writ Pition (c) No. 5630 Of 2018

State Project Director

APPELLANT

Vs

M/s Raj Enterprises

RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

Commercial Courts Act, 2015 — Section 8, 13, 16
Code Of Civil Procedure, 1908 — Section 38, 39, 47, 115, Order 8 Rule 1, Order 21 Rule 22
Arbitration And Conciliation Act, 1996 — Section 10, 34, 36
Micro, Small And Medium Enterprises (development And regulation) Act, 2005 — Section 21(1)
Contract Act, 1872 — Section 182
Constitution Of India, 1950 — Article 202(3)(e), 227, 275

Citation : (2019) 07 JH CK 0041

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Krishna Murari, Pandey Neeraj Rai, Rohit Ranjan Singh, Akchansh Kishore

Final Decision : Disposed Off

Judgement

1. Heard Mr. Krishna Murari, counsel appearing on behalf of the petitioner.
2. Heard Mr. Pandey Neeraj Rai, counsel appearing on behalf of the respondents alongwith Mr. Rohit Ranjan Sinha, Advocate and Mr. Akchansh Kishore, Advocate.
3. This writ petition has been filed for the following relief:
 - a) "For quashing the order dated 03.10.2018 (Annexure - 8) passed by Id Presiding Officer, Commercial Court passed by the Court of Sri Rajeev Anand, AJC XIII Cum Presiding Officer, Commercial Court, Ranchi in Execution Case No.07/2017, whereby and where under the Preliminary show cause filed on behalf of the petitioner / judgment debtor (on the ground of Award Turn Decree being inherently nullity and thereby none executable) has been refused to be

entertained, holding the right to file the show cause stands forfeited after expiry of 120 days from the date of service of notice, as per Order - VIII, Rule - I of the CPC to be read with Section 16 of the Commercial Court Act, which is erroneous on both on law and fact.

b) Consequently, for direction upon the Learned Commercial Court, Ranchi to accept the Preliminary Show Cause and further objections within the meaning of Section 47 of the CPC and to consider the same in accordance with law, as has been prayed for in the preliminary show cause (Annexure - 7).

c) Further to declare and hold that where the Award/Decree is nullity being void ab-initio, the objection as such can be setup even at any stage before of execution or even in other collateral proceeding in as much as under Order - XXI CPC, No Time Limit has been prescribed for the same and whereas Order - VIII, Rule - I applies only in the original suit/commercial dispute within the meaning of the Commercial Court Act for filing W.S."

4. The instant petition arises out of arbitration award dated 11.07.2016 published by Uttarakhand Micro, Small and Medium Enterprises, Facilitation Council in favor of the respondent for payment of money under the provisions of Micro, Small and Medium Enterprises (development and regulation) Act, 2005. Admittedly, the award was not challenged under the provisions of Section 34 of Arbitration and Conciliation Act, 1996 and a writ petition was filed against the said award before Hon'ble High Court of Uttarakhand at Nainital which was numbered as Writ Petition (M/S) No.65 of 2017 and the operative portion of the judgment passed in the said writ petition, which was disposed of on 01.05.2017 is as follows:

"3. In the present matter, on 26.04.2016, the reconciliation proceedings have been failed, and thereafter the Council, after hearing the parties and assigning reasons, passed the award in favour of respondent No.2 on 11.07.2016 whereby directed the petitioner to pay a sum of Rs.19,19,23,446/- (Rupees Nineteen Crores Nineteen Lakh Twenty Three Thousand Four Hundred and Forty Six Only) to respondent No.2. This award admittedly can only be challenged under Section 34 of the Arbitration and Conciliation Act, which the petitioner admits. All the same, the petitioner, instead of availing this remedy, has filed the present writ petition before this Court. The only reason assigned by the petitioner for filing the present writ petition before this Court is that he could not file the appeal before the competent authority within 120 days of the award, which is mandatory period.

4. This is however, no ground to entertain the writ petition, by this Court. Accordingly, the writ petition stands dismissed. No order as to costs."

5. In the meantime, the respondent herein filed execution case in Dehradun and got the same transferred to the learned court below in the State of Jharkhand and the same was registered as Execution Case No.7 of 2017 before the learned Sub Judge, Ranchi and thereafter the said case was transferred to the

Commercial Court, Ranchi. On 18.12.2017, notice was issued by the executing court to the petitioner herein under Order XXI Rule 22 of Code of Civil Procedure in which the present petitioner herein appeared and a number of adjournments were granted to the present petitioner to file a show cause reply. However, in the meantime, the matter was also referred for mediation which ultimately failed and the failure was recorded on 06.08.2018. On 18.08.2018, time was granted to the present petitioner for that date, and the matter was thereafter taken up on 11.09.2018, when the present petitioner sought time. Thereafter, on 28.09.2018 also, the present petitioner sought time. On 28.09.2018, a petition was filed on behalf of the present respondent to forfeit the opportunity of the petitioner to file show-cause in the matter mentioning therein that in January, 2018, the present petitioner has forfeited their right to contest the execution case in view of the expiry of the maximum period of 120 days for filing the show-cause in view of amendment in order VIII Rule 1 of Code of Civil Procedure as applicable to commercial courts constituted under the Commercial Courts, Commercial Division And Commercial Appellate Division of High Court Act, 2015 (hereinafter referred to as the Act of 2015) and accordingly a prayer was made to pass necessary order for issuance of the attachment order for the amount involved in the award. However, on 03.10.2018, a petition was filed seeking apology for delay in filing the show-cause/objection due to frequent transfers of officials and it was stated in the showcause that the award under execution is nonest on the face of it and thereby nullity for the several pointed reasons primarily on account of following reasons :

- 1) The same has been signed by only two members, whereas Section 21 (1) of MSME Act mandates to be signed by minimum three person.
- 2) Even otherwise the number of Arbitrator under Section 10 of A & C Act should not be odd.
- 3) The very transfer of Award by the Court of District Judge Dehradun, is wholly without jurisdiction as U/s. 38/39 of C.P.C. only full fledged Decree within the meaning of C.P.C. can be transferred that too by the court who has passed the Decree itself and not by the other court, who has not passed the Decree.
- 4) The Award is otherwise non executable against the JEPC exclusively who is only Agent being U/s 182 Contract A implementing Agency of U.O.I. & State Govt. under SSA Scheme.
- 5) Under Article 275 of the Constitution of India r/w Article 202 (3) (e) therefore U.O.I. is Mandatory party as the SSA Scheme belongs to Union of India and the entire fund belongs to Union of India State in proportion of 65% and 35 % respectively.
6. It was also mentioned in the said petition that the aforesaid were preliminary bullet objections within the meaning of Section 47 of Code of Civil Procedure which will be filed within a period of one week with more exhaustive grounds demonstrating so called award/decreed as complete nullity. The aforesaid petition/

show-cause was rejected by the learned court below vide impugned order dated 03.10.2018 passed in Execution Case No.7 of 2017 by the learned Presiding Officer Commercial Court, Ranchi and the main grounds for rejection are as follows:

a) Judgment debtor has filed the above preliminary show-cause after expiry of 120 days from the date of service of summons and therefore the right to file show-cause at such belated stage is forfeited and the show-cause filed by the judgment debtor cannot be taken on record in terms of amendment in Order VIII Rule 1 of Code of Civil Procedure as applicable to commercial courts and accordingly the preliminary showcause filed on behalf of the judgment debtor was not taken on record and directed the respondent herein to take steps for issuance of writ of attachment of the amount involved in the award.

b) Having held so, the learned court below further held that from perusal of the records, the following facts transpires:

I) The Award was published on 11.07.2016.

II) No petition under Section 34 of the Arbitration and Conciliation Act was preferred by the judgment debtor for challenging the said award.

III) Instead of filing a petition under Section 34 of the Arbitration and Conciliation Act, the judgment debtor preferred writ petition (M/s) No.66 of 2017 before the High Court of Uttarakhand at Nainital which was dismissed by the order of Hon'ble Court dated 01.05.2017.

IV) Thereafter, a decree holder filed execution case.

V) The matter was referred for mediation but the mediation failed and the judgment debtor has failed to file any show-cause/reply within the stipulated period. Therefore, now there is no impediment in proceeding with the present execution case.

7. It further transpires from the impugned order dated 03.10.2018 that the judgment debtor submitted that he wants to challenge the order of the court before the Hon'ble Court and sought one-month time, and the prayer was allowed. The matter was directed to be posted on 17.11.2018 for taking steps. In the meantime, the judgment debtor was directed to produce effective order, if any, passed by the Hon'ble Court. This Court finds that the present writ petition was filed before this Court on 03.11.2018 vide affidavit dated 01.11.2018.

8. Upon a query by this Court, the counsels for the parties have submitted that during the pendency of this case, there has been no order for the writ of attachment and the matter is pending before the learned court below and in the meantime, the petitioner has filed another petition under Section 47 of the Code of Civil Procedure, objecting to the execution proceedings which is also pending.

Arguments of the petitioner

9. The counsel for the petitioner while assailing the impugned order dated 03.10.2018 has submitted that the learned court below has wrongly refused to take the objection filed by the petitioner under Order XXI Rule 22 of the Code of Civil Procedure by referring to the provisions of Order VIII Rule 1 of the Code of Civil Procedure as amended and made applicable to the commercial courts and held that right to file the show-cause at such belated stage is forfeited upon expiry of 120 days from the date of service of summons as per the time line prescribed in Order VIII Rule 1 of the Code of Civil Procedure.

10. The counsel for the petitioner further submits that he wants to confine the argument on the applicability of the timeline which has been prescribed in Order VIII Rule 1 of Code of Civil Procedure as applicable to the Commercial Courts to the show-cause filed under the provisions of Order XXI Rule 22 of Code of Civil Procedure. The counsel further submits that the provisions of Order VIII Rule I of Code of Civil Procedure and as applicable to the commercial courts under the aforesaid Act of 2015 does not apply to a show cause contemplated under the provisions of Order XXI Rule 22 of Code of Civil Procedure as the execution proceeding is not suit and the show-cause to be filed in the executing court is not a written statement. He submits that the provisions of Order VIII Rule I of Code of Civil Procedure applies to written statement filed in suits. The counsel refers to judgement passed by the Hon'ble Supreme Court reported in (2005) 10 SCC 437 to submit that the language of Order VIII Rule 1 of the Code of Civil Procedure is very clear and accordingly there can be no doubt that the provisions of Order VIII Rule 1 of the Code of Civil Procedure is applicable only to filing of written statements and not to the show causes contemplated under other provisions of Code of Civil Procedure including Order XXI Rule 22.

11. He submits that the learned court below has committed jurisdictional error by rejecting the show-cause filed by the petitioner under Order XXI Rule 22 of the Code of Civil Procedure by resorting to the provisions of Order VIII Rule I of Code of Civil Procedure as applicable to commercial courts and accordingly, the present writ petition under Article 227 of the Constitution of India has been filed.

12. He further submits that the objection with regard to the execution of the award, which was taken by the petitioner in its show-cause reply, were regarding nullity in connection with the award and as many as five points were raised to demonstrate that the award was a nullity. Over and above the aforesaid five points, which were raised by the petitioner to say that the award is a nullity, three more points i.e., the award is unstamped; the award is un-registered and the award has been passed in total disregards to the provisions of Micro, Small and Medium Enterprises (development and regulation) Act, 2005 are also available to say that the award is a nullity.

13. He submits that in spite of the fact that the petitioner had not filed any petition for setting-aside of the award under Section 34 of the Arbitration and Conciliation Act, 1996 and in spite of dismissal of the writ petition filed by the petitioner before the High Court of Uttarakhand against the award, it is still open

to the petitioner to contend that the award is a nullity and for that specific stand was taken in the show-cause filed by the petitioner under Order XXI Rule 22 of the Code of Civil Procedure. The counsel for the petitioner refers to the judgement passed by Hon'ble Supreme Court reported in (2003) 4 SSC 147 (Sarwan Kumar versus Madan Lal Agarwal) to submit that it has been held that invalidity of a decree being nullity can be raised even at the stage of execution or in any collateral proceedings.

14. The counsel submits that the impugned order passed by the learned court below having rejected the show-cause filed by the petitioner by resorting to the provisions of Order VIII Rule 1 of Code of Civil Procedure as applicable to the Commercial Courts has not considered the objections filed by the petitioner on merit (nullity of award) in as much as there is no finding recorded by the learned court below in the impugned order as to whether the award is a nullity on account of the aforesaid points which were raised by the petitioner. He reiterates that over and above the points which have already been made in the petition, the aforesaid additional points are also required to be taken into consideration if the matter is remanded back for fresh consideration of the show cause filed by the petitioner under Order XXI Rule 22. The counsel has specifically referred to judgment passed by Hon'ble Supreme Court reported in (2003) 8 SCC 565 (M. Ansuiya Devi and Anr. Vs. M. Manik Reddy and Ors.) to submit that it has been held that the question as to whether the award is required to be stamped and registered would be relevant only when the parties would file the award for its enforcement under Section 36 of the Arbitration and Conciliation Act, 1996. It has been further held in that judgment that the question whether an award requires stamping and registration is within the ambit of Section 47 of Code of Civil Procedure and not covered by Section 34 of the Arbitration and Conciliation Act, 1996. The counsel submits that it has been held by a judgment passed by Hon'ble Court in the case of (Veer Krishna Sahay Vs. Vardaan Builders and Anr.) 2018 (2) JBCJ page 532 that if the executing court while passing orders refused to apply their mind, then the same is a fit case for exercise of power under Article 227 of the Constitution of India.

15. Counsel further submits that so far as merits of the case on the point of nullity is concerned, the petitioner is supported by large number of judgements passed by the Hon'ble Supreme Court and various High Courts, which are as follows:

- i) (2008) 2 SCC 350
- ii) AIR 1961 Rajasthan 227
- iii) AIR 1982 Calcutta 178
- iv) (2012) 4 JCR 332 (Jhr)
- v) Civil Appeal No.1638 of 2019
- vi) (1989) 3 SCC 99

vii) WPC No.3649 of 2016

viii) WPC No.6464 of 2012

ix) (2011) 4 SCC 266

16. He submits that these citations would be required if this Court enters into the merit of the case as to whether the award is nullity or not and if the Court is satisfied on the point that this issue has to be decided by the learned court below at the first instance and by the impugned order, the issue regarding nullity of the award has not been decided, then the matter should be remitted back to the learned court below for deciding the matter in accordance with law after taking objection filed by the petitioner under Order XXI Rule 22 on record and considering the arguments, which may be advanced by the parties. He further submits that the present case can be decided on the short point as to whether the provisions of Order VIII Rule 1 of Code of Civil Procedure is applicable to the show-cause filed in the execution proceeding or not.

17. Counsel for the petitioner further submits that in the petition which has been filed under Section 47 of Code of Civil Procedure before the learned court below, the counsel has also taken certain additional grounds to point out that the award is a nullity and accordingly he submits that the point as to whether the award is a nullity should be decided by considering both the petitions, the present petition as well as petition under Section 47 of Code of Civil Procedure which is pending. Counsel for the petitioner has also submitted that the next date fixed is 30th July, 2019 and this aspect of the matter is not disputed by the counsel for the respondent. The petitioner further submits that he is ready to advance his arguments before the learned court below on 30th July, 2019. Upon this, counsel for the respondent submits that the respondent is ready to co-operate with the hearing of the case on 30th July, 2019 in case this Court finds that the matter is to be remitted for fresh consideration. Counsel for the respondent has submitted that in case this Court finds that the matter is to be remitted for fresh consideration, then the respondent has no objection if it is directed that the objection under Order XXI Rule 22 and the pending petition under Section 47 of the Code of Civil Procedure are taken up together to decide the issue as to whether the award is a nullity or not. However, the counsel for the respondent has argued the case on merits and has submitted that the present writ petition is not maintainable and otherwise also fit to be dismissed under the facts and circumstances of this case.

Arguments of the respondent

18. Counsel appearing on behalf of the respondent while advancing his argument has submitted that none of the points which has been raised by the petitioner is tenable in the eyes of law. He has also submitted that so far as applicability of Order VIII Rule 1 of the Code of Civil Procedure in execution proceeding is concerned, considering scheme of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015 it can be easily

inferred that the same should also be applicable to execution proceedings. The counsel submits that the impugned order has been rightly passed so far as the applicability of Order VIII Rule 1 of Code of Civil Procedure is concerned and accordingly the objection having being filed beyond the prescribed time line of 120 days under Order VIII Rule I of Code of Civil Procedure has been rightly not taken on record and rejected.

19. The counsel further submits that the learned court below has also considered the merits of the matter and none of the points which has been raised by the petitioner and as argued by the counsel for the petitioner on the point of nullity is tenable in the eyes of law. He has also submitted that the present petition under Article 227 of the Constitution of India is not maintainable as the impugned order is an appealable order under the provisions of Section 13 of the Commercial Courts Act, 2015 and this is coupled with the fact that there is lack of any patent illegality which would justify interfering with an interlocutory order despite there being bar on revision as introduced by 2002 amendment in Section 115 of Code of Civil Procedure and interfering with the impugned order will amount to doing indirectly what cannot be done directly. He has further raised following points during his course of argument by filing written notes:

- Executing Court can't go behind the decree.
- Alternatively submitted, the object and purpose of the legislation (0.1 R.8 contemplating 120 days non-extendable limitation) would justify purposive interpretation so as to make it applicable to the execution proceedings also. Otherwise the object of cutting short the time to have speedy disposal of Commercial Court matters would get frustrated.
- The impugned order, placing reliance upon the provision of 180 days limitation should be construed to have acted in furtherance of the principles if not provisions of Order 8 Rule 1 as applied to the Commercial Courts Act.
- Assuming 120 days limitation-interpretation was not correct, still, 120 days limitation is not the only ground for rejection in the impugned order. The impugned order is on mixed considerations, each of which are enough for rejection independently (The Executing Court clearly held that the objections raised to the award could not be entertained and had no merit, because they would amount to going behind the decree and in any case s.34 challenge had not been preferred). Therefore, a futile writ is Judgments prayed for [(1972) 2 SCC 133 and (1973) 2 SCC 124 are illustrating that futile writ should not be issued].
- Now, if the impugned order is set aside, the Executing Court would be required to decide those objections to the validity of the award which could and ought to have been raised u/s 34 of the Arbitration Act, and have not been raised [See Mallikarjun v. Gulbarga University, (2004) 1 SCC 372, para 25 and Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, (1970) 1 SCC 670; para 7]. Writ petition- para 16 admits that points available were not taken in the writ court at Uttarakhand. The non- condonable limitation was allowed to expire (See Ramjee

Power Construction Limited v Jharkhand Urja Vikas Nigam Limited; Civil Appeal No.9774-9775 of 2018- order dated 19.9.2018 on the point that by no means challenge to arbitral award could be allowed after expiry.) To allow the challenge to be entertained now would amount to doing indirectly what is forbidden directly [See NOIDA Entrepreneurs Assn. v. NOIDA, (2011) 6 SCC 508; para 25]. The Uttarakhand High Court has already dismissed the challenge. It has recorded a finding about the award having been passed after hearing, recording reasons and preceded by conciliation failure. Those findings have attained finality. They can't be allowed to be re-agitated, at execution stage.

- In any case, enough of opportunity was granted to file response, which were not availed and for no justified reasons. This too, in backdrop of O.21 R.22 providing for no requirement of such opportunity. It is a case of exclusion of natural justice by statutory exclusion. [See Laxmi Khandsari v. State of U.P., (1981) 2 SCC 600; para 68].

- The objections raised are even otherwise frivolous. The tribunal comprised of three members and award signed by majority is enough on the principles of s.10 r/w 31(2), Arbitration and Conciliation by the MSME Council is statutorily made permissible. Section 10 is not non- derogable [Narayan Prasad Lohia v. Nikunj Lohia, (2002) 3 SCC 572, para 14,16]. The MSME Council has confirmed that it comprised of 3 Machineries; Chandok members (Annex.C). In MANU/DE/4526/2018, para 10 (DB) while upholding such an award reliance was placed on the materials to suggest that absence of one signature would not invalidated the award rather, the objection can be cured by the party obtaining the signature later. The present award not creating but merely declaring the pre-existing rights didn't require Registration [See Mattapalli Chelamayya Mattapalli V. Venkataratnam, (1972) 3 SCC 799: para 9]. Issue of stamping doesn't attract the ground of nullity. In any case, on these issues award ought to have been challenged which has not been challenged. Article 275 of the Constitution is absolutely inapplicable.

- S.47 objection is not available to execution of award, which is not strictly a decree. [Sundaram Finance Ltd. v. Abdul Samad, (2018) 3 SCC 622; para 14]

20. Counsel for the respondent has further relied upon a judgment passed by Hon'ble Supreme Court reported in (2004) 1 SCC 372 (Mallikarjun Vs. Gulbarga University); (1970) 1 SCC 670 (Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman); (2011) 6 SCC 508 (Noida Entrepreneurs Assn. Vs. Noida); (2002) 3 SCC 572 (Narayan Prasad Lohia Vs. Nikunj Lohia) in furtherance of his arguments.

21. However, the counsel for the respondent further submits that in case this Court is inclined to remit the matter to the learned court below for fresh consideration then under that circumstances he has no objection if the petition under Section 47 as well as the present petition under Order XXI Rule 22 are taken up together by the learned court below and the point raised by the

petitioner that the award is a nullity is decided.

22. Counsel for the respondent has specifically referred to the judgment passed by the Hon'ble Supreme Court reported in (1970) 1 SCC 670 and (2011) 6 SCC 508 to demonstrate the scope and to the extent an order can be said to be nullity and the manner the point of nullity has to be examined.

Findings of this Court

23. After hearing the counsel for the parties and after considering the materials on record, this Court finds that the first point which has to be decided is the maintainability of the present writ petition. This Court in W.P.(C). No.4171 of 2018 has considered the point of maintainability of the writ petition against the orders passed by the commercial courts. In the said judgement dated 12.03.2019, this Court has held in para -26, 27 and 28 of the said judgment that writ petition under Article 227 of the Constitution of India is maintainable but the courts would be very slow in entertaining a writ petition considering the mandate and the objects of the Commercial Courts Act, 2015. The said paragraphs 26 to 28 are quoted for ready reference: -

"26. This Court further finds that in the judgment reported in (1995) 6 SCC 576 (Laxmikant Revchand Bhojwani and Another vs. Pratapsing Mohansingh Pardeshi) which related to special legislation governing land lord-tenant relationship where second appeal or revision to high court was barred and the judgment of the appellate court was challenged under Article 227 of the constitution of India, it has been held by the Hon'ble Supreme Court in para 9 that in such circumstances the High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions and such exercise of powers must be restricted to cases such as grave dereliction of duty and flagrant abuse of the fundamental principles of law of justice and where grave injustice would be done unless the High Court interferes. This Court finds that under the Commercial Courts Act of 2015 also, right to challenge the orders at interlocutory stages has been curtailed as aforesaid and accordingly, same principles are applicable.

27. This Court is of the considered view that power under Article 227 of Constitution of India cannot be curtailed by any Act of parliament including the aforesaid Commercial Courts Act, 2015, but certainly the High Court while exercising power under Article 227 of the Constitution of India, cannot ignore the aforesaid object of the aforesaid Commercial Courts Act, 2015. The Court, in such circumstances, where there is specific bar to challenge an order at the interlocutory stage, will be extremely slow in exercising power under Article 227 of the Constitution of India to interfere at the interlocutory stages, except in exceptional circumstances. This Court would restrict exercise of power under Article 227 of the Constitution of India to such cases of grave dereliction of duty and flagrant abuse of fundamental right and principles of law and justice, where grave injustice would be done unless the High Court interferes in the matter.

Accordingly, this Court holds that there is no bar in entertaining an application under Article 227 of the Constitution of India in spite of Section 8 of the aforesaid Commercial Courts Act, 2015, but whether such exercise is to be done or whether the impugned order is to be interfered with, will certainly depend upon the facts and circumstances of each case.

28. Accordingly, it is held that the writ petitions under Article 227 of the Constitution of India are maintainable, in spite of provisions of Section 8 of the aforesaid Commercial Courts Act, 2015. Considering the fact that there is specific bar to challenge an order at the interlocutory stage, this court will be extremely slow in exercising power under Article 227 of the Constitution of India to interfere at the interlocutory stages except in exceptional circumstances as already pointed out above."

24. Accordingly, the contention of the respondent that the present writ petition is not maintainable, is hereby rejected. However, it has to be examined as to whether the court would consider the present case, as a fit case, for interference under Article 227 of the Constitution of India.

25. Upon perusal of the impugned order, this Court finds that a petition under Order XXI Rule 22 of Code of Civil Procedure was filed by the petitioner before the learned court below and the same was not taken on record on the ground that the statutory period of 120 days had expired as prescribed under Order VIII Rule 1 of Code of Civil Procedure as applicable to the Commercial Courts under the provisions of Commercial Courts Act, 2015. This Court is of the considered view that Order VIII Rule 1 is applicable only in connection with filing of written statements in suits as is apparent from the clear language of the said provision itself and has got no applicability so far as the objections / show cause in execution proceedings are concerned. In such circumstances, this Court finds that the learned court below has failed to properly appreciate the applicability of Order VIII Rule 1 of CPC in execution proceeding. Accordingly, this Court is of the considered view that the learned court below is not justified in holding that the petition under Order XXI Rule 22 of Code of Civil Procedure, which was filed by the petitioner objecting to the execution of the award, was not maintainable having been filed beyond a period of 120 days by resorting to the provisions of Order VIII Rule 1 of the Code of Civil Procedure as applicable to the commercial courts under Commercial Court Act 2015. This Court is of the considered view that the learned court below has committed serious error in law while refusing to exercise the jurisdiction conferred upon the said executing court while rejecting the objection filed under Order XXI Rule 22 by resorting to the provisions of Order VIII Rule 1 of Code of Civil Procedure and accordingly grave injustice has been caused to the petitioner in as much as the point of nullity which has been raised by the petitioner in the objection filed under Order XXI Rule 22, has not been decided.

26. This Court further finds that the petitioner had raised a plea that the award is a nullity although the said plea of nullity is being opposed by the respondent

tooth and nail who has submitted that none of the points raised by the petitioner makes the award a nullity in the eyes of law and such points could have been raised only in a petition under Section 34 of the Arbitration and Conciliation Act, 1996. However, upon perusal of the impugned order, this Court finds that the claim of the petitioner that the award is a nullity, has not been decided by the learned court below considering the points raised by the petitioner before the learned court below as well as other points which the petitioner claims is available to the petitioner as already recorded in the arguments advanced on behalf of the petitioner. In such circumstances, this Court refrains from expressing any view on the merits of the rival claims of the respective parties.

27. In view of the aforesaid facts and circumstances of this case, this Court is inclined to exercise power under Article 227 of the Constitution of India and in exercise of such power, the impugned order is hereby set aside and the matter is remitted back to the learned court below for fresh consideration in accordance with law after considering the arguments to be advanced by the parties and also considering the judgments which may be relied upon by the parties.

28. This Court has recorded various submission which have been made by the parties before this Court so as to give an overall view of the nature of controversy involved between the parties. It will certainly be open to the parties to raise any further point which they wish to raise before the learned court below and also rely upon further judgment and provision of law as they may deem proper.

29. The counsel for the parties have agreed and are ready to advance their argument on 30th July, 2019 before the learned court below and accordingly they are directed to appear before the learned court below on 30th July, 2019 for advancement of their argument on the objection filed under Order XXI Rule 22 Code of Civil Procedure and they have also agreed that the petition filed under Section 47 of the Code of Civil Procedure as well as objection filed under Order XXI Rule 22 Code of Civil Procedure be taken up together so that the objection to the execution of the award is set at rest.

30. Accordingly, the present writ petition is disposed of with the aforesaid observations and directions. It is made clear that this Court has not expressed any opinion on the merits of the case and the learned court below will be free to take its own decision in accordance with law.

31. This Court further finds that huge money is involved in this case and there is no interim order in favour of the petitioner and no order of stay was ever passed by this Court in this writ petition.

32. The learned court below is directed to pass the final order, pursuant to this order, as early as possible and preferably by 31st August, 2019.