



ARBITRATION AND CONCILIATION

ARBITRATION SEAT COURT HAS JURISDICTION TO EXECUTE ARBITRATION AWARD

AUTHOR Arundhati Sukhtankar

PUBLISHED 22 May 2019

The Bombay High Court in a recent judgment considered whether a Court^[1], within whose jurisdiction arbitration takes place, which also has supervisory jurisdiction over arbitration ("Arbitral Court"), can entertain application for execution of arbitral award, even if the award debtor or assets are situated outside its jurisdiction.

Justice G.S Patel was considering a group of 3 separate execution applications^[2], which were clubbed together because seat of arbitration in all three of them was in Mumbai giving courts in Mumbai supervisory jurisdiction over arbitration, whereas the assets of the respondents (award debtors) were situated outside Mumbai.

Supervisory Jurisdiction Vs Territorial Jurisdiction

Section 36 of the Arbitration and Conciliation Act 1996 ("Arbitration Act"), provides that an arbitral award has to be enforced in accordance with the provision of Civil Procedure Code, 1908 (the "Code"), as if it was a decree of the court. Section 39 of the Code, which governs execution of decree, prohibits any court, which passed a decree, from executing the same if the person or asset is outside the jurisdiction of that court.

It was contended on behalf of the award debtors or respondents that if the arbitral award has to be enforced in accordance with the provision of the Code as if it was a decree of the court, then restrictions under Section 39 of the Code would be applicable. Therefore, the Arbitral Court couldn't execute the arbitration award if the award debtor or asset falls outside the jurisdiction of the Arbitral Court. The supervisory role of the Arbitral Court ceases to exist if the award is to be enforced outside its territorial jurisdiction.

The Supreme Court of India in *Sundaram Finance Ltd v Abdul Samad & Anr*^[3] considered the following questions:

- (i) Whether an arbitral award is required to be first filed in the court having jurisdiction over the arbitration proceedings for execution and then to obtain transfer of the decree;
- (ii) Whether the award can be straightaway filed and executed in the Court where the assets are located.

The Supreme Court held that the claimant is not required to obtain a transfer of the decree from the Arbitral Court, which has the jurisdiction over the arbitration proceeding. Instead, the application for enforcement of an award (through execution) could be filed, wherever in the country a decree can be executed. The confusion arose because this judgment doesn't explicitly state that the award could be executed directly through the Arbitral Court. This was argued that that Arbitral Court does not have the authority to execute arbitral award beyond its territorial jurisdiction.

Current judgment rejected this argument outright and held that according to *Sundaram Finance* the Arbitration Act *transcends all territorial barriers*. Section 39 of the Code is a limitation on territoriality and hence, such restriction is not applicable for execution of arbitration award. The High Court differentiated arbitration award from a civil court decree as follows:

"Arbitration is not a distinct judicial forum like a subordinate Court. It is an alternative dispute resolution mechanism with a standalone statute. It is intended to provide for the speedy resolution of disputes and enforcement with a minimal level of judicial intervention. The essence of arbitration is an agreement unlike a civil proceeding in a law Court."

The Court explained the purpose of equating arbitration award with civil court decree under Section 36 of the Arbitration Act is to ensure *smooth enforcement of arbitral awards*. This objective will be defeated if the limitation and restriction on territoriality of the Code (as provided in Section 39 of the Code), which are applicable to civil court decree, is also made applicable to Arbitration Award. *Section 36(1) has to be read not in isolation but also as part of the framework of the Arbitration Act*. The Court summarized this as follows:

"The correct view is, therefore, that while there may be certain restrictions on the enforcement of a decree of a Civil Court, since the Arbitration Act 'actually transcends all territorial barriers' as Sundaram Finance said, those restrictions cannot be made to apply to the enforcement of arbitral awards without resulting in a completely incongruous situation. Award holders have a jurisdictional choice that decree holders do not."

Accordingly, the Court held that award holder has an option to choose the court for enforcement of arbitration award. He can enforce the award through Arbitral Court even if the award debtor or asset is outside the territorial jurisdiction of the court. The Arbitral Court will continue to have jurisdiction during the execution stage of award also even beyond its territorial jurisdiction.

Concluding Remark

This judgment is significant even though it is not laying down any new precedent but only a continuation of earlier judgments like *Sundaram Finance*, *Bharat Aluminium Company v Kaiser Aluminium Technical Services Inc*^[4] and *Gemini Bay Transcription Pvt*

The judgment removes any scope of confusion regarding jurisdictional issues of enforcement of arbitration. The judgment clarifies the objective equating an arbitral award with a decree is only to ensure smooth enforcement of award and not for the purpose of creating any restrictions. After all, one of the main objects of Arbitration Act for allowing the parties to choose the Arbitration Court is to ensure territorial neutrality. This purpose will be defeated, if the same court does not have jurisdiction to enforce the award.^a

[1] Section 2(1)(e)(i) of Arbitration and Conciliation Act 1996 defines the term Court as “*the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes*”

[2] *Global Asia Venture Company v. Arup Parimal Deb* Comm Execution Application No. 58 OF 2017

[3] (2018) 3 SCC 622.

[4] (2012) 9 SCC 552.

[5] 2018 (2) Mh LJ 329.