



ARBITRATION AND CONCILIATION

Supreme Court Settles Jurisdictional Issues in execution of arbitration awards

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In a much awaited judgment, the Supreme Court bench consisting of J. Chelameswar and J. Sanjay Kishan Kaul in *Sundaram Finance Limited v. Abdul Samad & Anr*^[1] resolved a long standing debate as to whether an arbitration award: (i) 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; or (ii) can be straightway filed and executed in the court where the assets are located.

Facts and Background

The fact of the case arises from an arbitration award passed in a loan agreement executed between appellant, a vehicle finance company, and respondent. The arbitration award was passed in Tamil Nadu. The appellant approached the Trial Court of Madhya Pradesh, where the vehicle was registered, to execute the award on the ground that the arbitration award is enforceable as a decree under section 36 of the Arbitration and Conciliation Act 1996 (the "Act"). Hence, execution proceeding is filed in the Trial Court of Madhya Pradesh under Section 47 read with Section 151 and Order 21 Rule 27 of the Code of Civil Procedure, 1908 (the "Code").

The Trial Court returned the execution application on account of lack of jurisdiction. The effect of the judgment of the Trial Court was that the appellant was required to file the execution proceedings first before the court of competent jurisdiction in Tamil Nadu, obtain a transfer of the decree and then only could the proceedings be filed in the Trial Court at Madhya Pradesh. The appellant directly approached the Supreme Court on the ground that it would be fruitless approaching the High Court of Madhya Pradesh, because the view adopted by the Trial Court was in turn based on the judgment of the Madhya Pradesh High Court.

Conflicting views of the High Courts

The issue under consideration was a subject matter of conflicting judgments among various high courts. The High Courts of Madhya Pradesh, Karnataka and Himachal Pradesh have taken the view that prior to filing execution petition before the court where the assets are located, transfer of decree should first be obtained from the court having jurisdiction over the arbitration. Where as, the High Court of Delhi, Madras, Punjab & Haryana, Allahabad, Rajasthan, Karnataka and Kerala have taken the opposite view that the award can be filed for execution before the court, where the assets of the judgment debtor are located.

Judgment and Analysis of the Supreme Court

The Hon'ble Supreme Court analyzed relevant provisions of Part II of the Code, which deals with execution proceedings, including sections 37(Court which passed the decree), 38(Court by which the decree could be executed), 39 (transfer of decree) and 46 (percepts). A combined reading of the above provisions say that a decree of a court can be executed either by the court, which passed it ("Decreeing Court"); or by the court to which it is sent for execution. If a decree needs to be executed by a court other than the Decreeing Court, then the decree holder needs to make an application to the Decreeing Court to transfer the decree for execution to such another court. Then, the Decreeing Court will issue a percept to another court, competent to execute the decree. In the case of an arbitration award, the Supreme Court observed, there is no decree passed by a court as the award is passed by an arbitration tribunal, which has no power of execution of decree. Hence, section 36 of the Act comes into play, which provides that an arbitration award is to be enforced in accordance with the provisions of the Code in the same manner as if it were a decree. Section 36 of the Act creates a fiction that for the purposes of execution; the award is to be enforced in the same manner, as if it was a decree under the Code.

The Hon'be Court, thereafter, analyzed relevant provision of the Act, which deals with the jurisdiction of arbitration proceeding. Section 42 of the Act provides that when an application with respect to an arbitration agreement is filed in a court under Part I of the Act, then all subsequent applications arising out of that agreement or the arbitral proceedings are to be made in that court alone. The Act defines the 'court' as, in the case of domestic arbitration, the principal civil court of original jurisdiction in a district, having jurisdiction to decide the questions forming the subject matter of the arbitration, if the same had been the subject matter of a suit. The Hon'ble Court observed that line of reasoning supporting the award to be filed in a so-called court of competent jurisdiction and then to obtain a transfer of the decree is primarily based on the jurisdiction clause found in section 42 of the Act. Where as, the Court observed, what has been lost sight is of section 32 of the Act, which talks about termination of arbitration proceedings. Section 32 categorically provides for arbitral proceedings to be terminated by the final arbitral award. Thus, when an award is already made, of which execution is sought, the arbitral proceedings already stand terminated on the making of the final award. Thus, to sum up, Section 42 of the Act, which deals with the jurisdiction issue in respect of arbitral proceedings, would not have any relevance in execution proceedings of award.

The Hon'ble Supreme Court reproduced the observation of Madras High Court in *Kotak Mahindra Bank Ltd. v. Sivakama Sundari & Ors*^[2] as follows:

In the context of the Code, thus, the view adopted is that the decree of a civil court is liable to be executed primarily by the Court, which passes the decree where an execution application has to be filed at the first instance. An award, under Section 36 of the said Act, is equated to a decree of the Court for the purposes of execution and only for that purpose. Thus, it was rightly observed that while an award passed by the arbitral tribunal is deemed to be a decree under Section 36 of the said Act, there was 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. The said Act actually transcends all territorial barriers.

The Supreme Court accordingly concluded that the enforcement of an arbitral 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 proceedings.

[1] Civil Appeal No. 1650 of 2018

[2] (2011) 4 LW 745