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ARBITRATION AND CONCILIATION

Transmission of arbitral award not required for execution, Karnataka HC clarifies the position

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The Karnataka High Court has, in a recent order dismissing a Writ Petition (*Chandrashekhar v. Tata Motor Finance Ltd & Others*) [1], clarified that for the purpose of executing an arbitral award in a jurisdiction which is different from the place of arbitration, a transmission order of the court in whose jurisdiction the arbitral award was passed is not required.

INDIALAW represented Tata Motor Finance Ltd & Others who is the judgment creditor in the case.

Facts of the Case

Briefly, the facts of the case pertain to a dispute between the parties to the execution proceedings which had been referred to an arbitrator. The arbitration proceedings were conducted in Mumbai and the award was also passed in Mumbai. Consequently, the award was sought to be enforced in Mysore, where the judgment debtor is residing and an execution petition was filed before the Principal District and Sessions Judge, Mysore. The judgment debtor however challenged the execution petition contending that it was not maintainable as it ought to have been filed before the Jurisdictional Court in Mumbai and then transmitted to a court in Mysore for execution of the award. The executing court however rejected the contention of the judgment debtor holding that the award was executable in Mysore where the judgment debtor resides. Aggrieved by this order, the judgment debtor filed the writ petition before the High Court of Karnataka.

Issues and Averments

The main question before the Hon'ble High Court was whether transmission order was required when the award was sought to be executed in different jurisdiction from where the award was passed. The Judgment Debtor while relying on Section 36 of the Arbitration and Conciliation Act 1996 (the "Act") which deals with enforcement of arbitral award and Sections 38 to 40 of the Code of Civil Procedure ("CPC") which deal transfer of a decree contended that the execution petition was not maintainable as the procedure envisaged thereof was not followed. The judgment debtor also relied on the judgment of the Karnataka High Court in *N. Nagaraj v. M/s Motilal Oswal Securities Ltd*[2]

Judgment

The Honourable Court while considering the contentions of the judgment debtor analysed the provisions of the CPC and pointed out that for the purpose of filing a petition for transfer of a decree under Section 39 of CPC there should be two courts, one which has passed the award but has no territorial jurisdiction to execute the award and the second which has not passed the decree but has territorial jurisdiction. Hence, existence of two courts is a condition precedent for filing a petition for transfer. An arbitral award is passed by an arbitrator, which is not a court. Hence, question of filing an execution petition before the court which passed the decree and then seeking a transfer of the decree to a Court which has jurisdiction over the judgment debtor or their properties would not arise at all.

An arbitral award is deemed to be a decree of a court by virtue of Section 36 of the Act, which states that an arbitral award can be enforced under CPC as if it is a decree of a court. Since, the arbitral award is not passed by any court, a court with appropriate jurisdiction has to enforce the award. Section 2(e) of the Act states that the jurisdiction lies with the Principal Civil Court of the district, which hasoriginal jurisdiction over the subject matter of the arbitration, as if the same has been the subject matter of a suit. An arbitral award can be challenged before the said court. The Honourable High Court held that the same court has the power to enforce the arbitration award also. The court also distinguished its earlier judgment in the matter of *N. Nagaraj v. M/s Motilal Oswal Securities Ltd* on the ground that facts are not applicable to the present case.

Conclusion

The Karnataka High Court through this landmark judgment has made it clear that the court which has the territorial jurisdiction to try the subject matter of a dispute has the jurisdiction to enforce the arbitral award arising out of the same dispute. The place where the arbitration award passed is of no importance. The High Courts of Delhi, Madras, Gujarat, Rajasthan, Punjab & Haryana and Allahabad have already taken a view that there is no requirement for transmission of arbitration awards for execution. Currently, only the High Court of Madhya Pradesh holds a contrary view that transmission of arbitral award is necessary for execution, if the place of arbitration is different from the place of execution.

This decision of Karnataka High Court can be viewed as affirmative step in clearing the apparent ambiguity regarding the process of execution of arbitral awards and a step forward in this direction can effectively reduce both time and resource for all the stakeholders involved.

[1] *W.P. No. 19828 of 2012 dated 13.03.2014*

[2] *W.P. Nos. 38220-221/2010 decided on 27.06.2012*