

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 3998 of 2013

M/S INDUSIND BANK LTD., a banking company incorporated under the provisions of Companies Act, 1956 having its office at Flat No. 2D, No. 41, Shakespear Sarani, Kolkata – 700017 and Regional Office at 113, Urmila Tower, Bank More, P.O - Dhanbad, PS - Dhanabd, District – Dhanbad-826001, through its authorized representative Sri Vinay Kumar Gupta, State Co-coordinator, son of Sri K.M.Gupta, resident of Urmila Tower, Bank More, P.O and P.S – Dhanbad, District – Dhanbad – 826001

... .. Petitioner

Versus

1. Rajesh Dayal, son of S.S.Dayal, Roba Colony, Behind Ashok Cinema, Ranchi Road, P.O-Ramgarh, P.S-Ramgarh, District-Ramgarh-829112

2. Yashpal Singh, son of not known, College Road, P.O-Ramgarh Cantt., P.S-Ramgarh, District-Ramgarh-829001

... .. Respondents

CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For the Petitioner: Mr. Siddhartha J. Roy

For the Respondents: None

04/17.08.2015 Aggrieved by order dated 04.02.2013 passed in Execution Case No. 08 of 2012 whereby, the Civil Judge, Senior Division No. 1 Hazaribagh has held that the Court at Kolkata has original jurisdiction to entertain the Execution Case and the Court at Hazaribagh can entertain the Execution Case, only if the Execution Case is transferred under Order XXI Rule 6 and 8 C.P.C. to the Court at Hazaribagh, the present writ petition has been filed.

2. The petitioner-Company is registered under the Companies Act, 1956 and one of its offices is situated at Kolkata. The petitioner is engaged in providing finance for purchase of vehicles and other banking services. A loan-cum-hypothecation agreement dated 28.06.2005 was executed between the petitioner and the respondent no.1 for purchase of a vehicle. The respondent nos. 2 is the guarantor for the said loan to the respondent no.1. The loan of Rs.9,57,000/- was given to respondent no. 1 for purchase of

motor vehicle bearing No. AL-2513-TASKER, which was to be repaid in 45 installments. The respondents executed one demand promissory note for the amount of Rs.11,97,815/- and respondent no. 1 executed one irrevocable power of attorney. The respondent no. 2-guarantor has executed a letter of guarantee also. After the respondent no.1 failed to make payment of the loan amount, the petitioner repossessed the vehicle and sold the vehicle for Rs.4,00,000/-. An Arbitration proceeding was initiated by the petitioner and one Mr. Kamal Chattopadhyay was appointed as arbitrator vide letter dated 21.04.2008. The sole arbitrator made award on 27.06.2008 directing the loanee and the guarantor to pay jointly and severally to the claimant a sum of Rs.8,62,111/- with interest at the rate of 24% per annum from 21.03.2006 till the date of Award and they were further held liable to pay interest at the rate of 18% from the date 25.09.2008 till, payment or realisation. Consequently, the petitioner filed Execution Case No. 08 of 2012 under Section 36 of the Arbitration Act in the Court of Civil Judge, Senior Division No. I, Hazaribagh which has been dismissed as not maintainable.

3. The learned counsel for the petitioner submits that, the object and purpose of the Arbitration and Conciliation Act, 1996 are reflected in provisions contained in Section 5, Section 9, Section 35, Section 36 and Section 42. The various provisions under Arbitration and Conciliation Act, 1996 are intended at minimizing the supervisory role of the Courts in Arbitration proceedings. It is further submitted that, the award made by the arbitrator under the Arbitration and Conciliation Act, 1996 is not a decree under Section 2(2) C.P.C. and Section 19 of the Arbitration and Conciliation Act, 1996 provides that Arbitral Tribunal is not bound by the provisions of the Code of Civil Procedure, 1908 and therefore, the legal fiction created under Section 36 that “the award shall be enforced in the same manner as if it were a decree of the Court”

would not mean that the award can be executed only by the Court under whose jurisdiction it was made. Further elaborating his contention, the learned counsel submits that, since the respondents are residing within the territorial limit of the Hazaribagh Court and the subject matter in the Execution Case is situated within the territorial limit of the Hazaribagh Court, the Execution Case filed in the Hazaribagh Court cannot be dismissed as not maintainable.

4. I have carefully considered the rival contentions raised on behalf of the parties and perused the documents on record.

5. In the present case an Arbitration proceeding was initiated vide letter dated 21.04.2008 and notice dated 31.04.2008 was issued to respondents. The arbitrator fixed the place of arbitration at Kolkata. The award dated 27.06.2008 was made and signed at Kolkata. From the claim petition and award dated 27.06.2008, it is apparent that the subject matter of the award was an amount of Rs.8,62,111/- with interest due and payable to the petitioner-IndusInd Bank Ltd. The subject matter of the award was thus, not an immovable property situated within the local limits of the Hazaribagh Court. In "*Paramjeet Singh Patheja vs. ICDS Ltd.*" reported in (2006) 13 SCC 322, while examining section 36 of the Arbitration and Conciliation Act, 1996, the Hon'ble Supreme Court held that section 36 of the 1996 Act goes further than section 15 of the Arbitration Act, 1899 and makes it clear beyond doubt that enforceability is only to be under the Code of Civil Procedure. The legal fiction created under section 36 is for the limited purpose for enforcement as a Decree.

6. In "*Paramjeet Singh Patheja*", it has been held that award made by an arbitrator is not a decree of the Court as contemplated under Section 2(2) C.P.C. however, Section 36 of the Arbitration and Conciliation Act, 1996 creates a legal fiction in as much as, the award under the Act shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. The

legal fiction thus created, under Section 36 though recognises that the award is not decree of a Court still, it has to be enforced under the provisions of the Code of Civil Procedure, 1908. The expression “the award shall be enforced under the Code of Civil Procedure” makes it abundantly clear that in so far as, enforcement of the award is concerned, the provisions of the Code of Civil Procedure would govern the proceeding. The contention of the learned counsel for the petitioner that Section 19 of the Act excludes the application of the Code of Civil Procedure is misconceived. Section 19 merely provides that the Arbitral proceeding may not be conducted strictly following the provisions of the Code of Civil Procedure and the Indian Evidence Act. Moreover, Section 19 cannot be extended to cover proceedings in the Court. It is apparent from the scheme of the 1996 Act that what is contemplated under the 1996 Act is minimum intervention of the Courts in the arbitration process and it does not restrict the provisions and applicability of other enactments after the award is rendered by the Arbitrator. The provisions under the Arbitration and Conciliation Act, 1996 do not lay down a specific procedure of execution of the award. Though, Section 19 of the Act restricts the applicability of the code of Civil Procedure and the Indian Evidence Act insofar as, proceeding before the arbitral tribunal is concerned however, the restriction contained under Section 19 of the Act cannot be extended to the execution proceeding.

7. In “*Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc. and others*”, reported in (2012) 9 SCC 559, the Hon'ble Supreme Court dealt with the distinction between the term “subject matter of the arbitration” and the term “subject matter of the suit”. With reference to section 2(1)(e) of the Arbitration and Conciliation Act, 1996 it has been held that the definition of the expression “Court” under section 2(1)(e) includes “subject matter of arbitration” to give jurisdiction to the Courts where the arbitration takes place. Its purpose is to identify the Courts which have

supervisory control over the Arbitration proceeding. It in fact, refers to a Court which would essentially be a Court of the seat for the arbitration purpose. In "*Bharat Aluminium Company*" the Hon'ble Supreme Court has observed that the provisions under Section 2(1)(e), Section 20 and Section 28 r/w Section 45 of the 1996 Act have to be interpreted by keeping the principle of territoriality at the forefront. With reference to a case in which arbitration is held at place A though, the subject-matter of the suit is situated at place B, it has been held that both the courts would have jurisdiction i.e., the Court within whose jurisdiction the "subject-matter" of the suit is situated and the Court within the jurisdiction of which the dispute resolution i.e. arbitration is located. As noticed above, the subject-matter before the Arbitral Tribunal was "loan" to the respondent no.1 and the award is for Rs. 8,62,111/- with interest and thus, the jurisdiction of the Court where the execution proceeding has to be initiated, would be the Court within whose jurisdiction the Arbitral Tribunal is situated.

8. It is also important to notice that the Code of Civil Procedure deals with "place of suing" in Section 15 to Section 25. Section 16 of the Code of Civil Procedure is invoked when the controversies pertain to recovery of immovable property, partition of immovable property, foreclosure sale or redemption of immovable property, determination of any other right to immovable property, for determination of compensation for wrong to immovable property and/or for the recovery of movable property under distraint or attachment. Section 20 CPC provides for institution of suit in a Court within the local limits of whose jurisdiction either the defendant/defendants reside or cause of action arises. However, Section 20 CPC begins with the expression "subject to the limitations aforesaid" and the limitations are provided under Section 16-19 of the Code of Civil Procedure. Further limitation for instituting a suit in a Court within the local limits of whose jurisdiction either the

defendant resides or cause of action arises has to be read, in cases of execution of award, with reference to Section 2(1)(e) of the Arbitration and Conciliation Act, 1996. The contention that the defendants are residing within the local limits of the Hazaribagh Court and the property which would be sold in execution of the award is also situated within the local limits of the Hazaribagh Court and therefore, the execution of the award dated 27.06.2008 can take place in the Hazaribagh Court, is untenable. Section 36 of the Code of Civil Procedure provides that the provisions of the Code relating to the execution of decree including provisions relating to payment under a decree shall be applicable to the execution of orders including payment under order. Section 38 CPC provides that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. The contention that Section 38 CPC is not applicable in case of execution of an award because award is not a decree by the Court, is liable to be rejected. In view of specific language of Section 36 of the Arbitration and Conciliation Act, 1996 and judgment in "*Paramjeet Singh Patheja*" case, though the award is not a decree by the Court, it has to be executed under the provisions of the Code of Civil Procedure.

9. The contention that while the explanation to Section 49 for enforcement of foreign award provides that the award shall be deemed to be decree "of that Court" whereas, Section 36 uses the expression "as if it were a decree of the Court", and thus, the legislative intent was not that the arbitral award has to be treated as decree of "that Court only" which would have the jurisdiction to entertain the suit, is also liable to be rejected. The expression "of that Court" used in Section 49 of the Arbitration and Conciliation Act, 1996 has been used in the context of Section 48 under which the Court can examine the validity of the foreign awards, before its enforcement. Section 35 of the Arbitration and Conciliation Act, 1996 makes the arbitral award final and binding on the parties and

persons claiming under them and the arbitral award becomes enforceable under Section 36 after the time for making an application under Section 34 expires, or such application has been refused. The application under Section 34 of the Arbitration and Conciliation Act, 1996 can be filed at a place where award has been given or the place where the subject matter of arbitration is situated. In the present case as noticed above, the subject matter of arbitration was a sum of Rs.8,62,111/- with interest and not the immovable property situated within the local limits of the Hazaribagh Court and therefore, the application under Section 34 of the Arbitration and Conciliation Act, 1996 can be filed only in the Court of competent jurisdiction at Kolkata. Merely because the property which has been sought to be sold for satisfying the award is situated within the local limits of the Hazaribagh Court, the execution application can not be filed in the Hazaribagh Court though, the Court at Hazaribagh can execute the award in the manner provided under the Code of Civil Procedure, after its transfer for execution.

10. Considering the above facts, I am not persuaded to take the view taken by the other Hon'ble High Courts. I find no merit in the writ petition and accordingly, it is dismissed.

Satish/A.F.R

(Shree Chandrashekhar, J)