

Ex. No. 576/19

M/S ABB INDIA LIMITED Vs. M/S TECHNO AIRCON INDUSTRIES
PVT. LTD.

04.09.2021

Pursuant to directions of Hon'ble High Court of Delhi vide Order No. 569/RG/DHC/2021 dated 19.08.2021 and in continuation of this office Order No. 10334-10397/Judl./Covid19/F.14/SE/Saket/2021, New Delhi dated 21.08.2021, the Court is functioning physical on alternate days as per duty roaster and through video conferencing on non-physical days.

Present : Sh. Nikhilesh Krishnan, Ld. Counsel for DH.

Ms. Ananya Bhattacharya, Ld. Counsel for JD.

1. Vide this order, I shall dispose of the application seeking review of the order dated 25.03.2021 passed by this Court whereby the application of the JD under Section 47 CPC was dismissed and the execution petition was directed to be proceeded further.

2. By way of the instant application, what is being sought for in pith and substance is that the award passed by learned Arbitrator be declared as nullity and it can be challenged or attacked even during the execution proceedings. Elaborating further, it has been urged that the original award was contrary to Section 23 of the Indian Contract Act, 1872 and hence, liable to be declared as null and void. Reliance has been placed on the judgment of Hon'ble Delhi High Court in the case titled as "*Bijendra Kumar Vs Pradeep Kumar & Ors.*" in CM No.15021/2014 decided 15.10.2014.

3. Learned counsel for DH has straightaway argued on the application.

4. Arguments heard. Record perused.

5. Before proceedings further, let me recapitulate the operative portion of the order dated 25.03.2021. Para 5 & 6 of the said order are

reproduced herein:

*“5. Admittedly, till date there is no stay on the execution proceedings. The appointment of the Bailiff was also deferred by this Court as time was granted to the JD vide order dated 15.01.2021 to take legal recourse in the pending petition under Section 34 of the Arbitration Act. However, till date no stay has been granted by the Court on the petition of the JD under Section 34 of the Arbitration Act. I have perused both the citations filed by learned counsel for the JD. In case of **“M/s Larsen & Toubro Limited v. M/s Maharaji Education Trust”** (supra) reliance has also been placed upon the judgment of Hon'ble Apex Court in the Court of **“Paramjeet Singh Patheja v. ICDS Ltd.” AIR 2007 SC 168**. In the said judgment, it has been categorically held that the Arbitrator is not a Court, and arbitration is not an adjudication and, therefore, an award is not a decree. It has further been held that the award not being covered under the definition of a decree, objection with respect to its validity can only be raised as provided under Section 34 of the Act and not by taking resort to Section 47 C.P.C.*

6. Thus, considering the totality of the facts and circumstances, the execution being of the award passed by the learned Arbitrator, the pendency of petition under Section 34 of the Arbitration Act before learned ADJ challenging the said award, and more so there being no stay on the said petition till date, the present objection application under Section 47 CPC is not maintainable at all. The same stands dismissed as being not maintainable”.

6. Admittedly, objections under Section 34 of the Arbitration Act are pending before the competent Court. So all such contentions can be canvassed before the said competent Court. To that extent, I failed to understand as to why such pleas at the first stage are being addressed before this Court.

7. *Dehors* the aforesaid, the order dated 25.03.2021 is an exhaustive order and in the eventuality if a review is being sought for,

there has to be an error apparent on record, which would be decipherable/visible *per se* without any detailed arguments or going deep into the controversy. Review jurisdiction is to be sparingly exercised-only on cogent grounds and not on flimsy reasons as sought for herein.

8. Reliance which has been placed on the judgment of “*Bijendra Kumar Vs Pradeep Kumar & Ors.*” (supra) is completely misplaced. The facts of the present case are distinguishable. In the said case, straightaway the contract on the case of it was hit by Section 23 of Indian Contract Act, 1872. In fact, such a contract i.e. to pay a fixed sum of money on account of plying of buses in Delhi appears to be in the nature of an extortion contract which *per se* was illegal. If the contract in itself is illegal, the outcome of the arbitral award would naturally be unenforceable. Hence, ratio of the said case has to be confined to be the peculiar facts therein.

9. It appears that the JD herein wants to stall the execution proceedings without first exhausting its remedy under Section 34 of the Arbitration Act which is already pending. The same otherwise, also should not be permitted as the role of the executing Court is quite constricted – to execute the award and to proceed further so as to quickly realise the fruits of the award to the DH.

10. In view of the aforesaid discussion, the application in hand sans merits and reliable to be dismissed. Ordered accordingly.

(Shunali Gupta)
Additional District Judge-05
South-East District, Saket Court
New Delhi /04.09.2021