

ORDER BELOW EXH.29 IN DARKHAST NO. 1155/2019
Aba Parekar & others Vs. Land Acquisition Officer No. 17 & others
CNR NO. MHPU010026922019

The Judgment debtor National Highways Authority of India has filed the present application and submitted that in view of the provisions of the Arbitration and Conciliation Act, 1996, this Court does not have the jurisdiction to entertain the captioned proceedings. It prayed for dismissal of the present Darkhast under Section 36 r/w Section 2(1)(e) of the Arbitration and Conciliation Act, 1996.

2] It is contended that the decree holder has filed the captioned darkhast before this Court for execution of the arbitral award passed by the Ld. Sole Arbitrator. The decree holder has already challenged the arbitral award passed in the proceedings of M.A. No. 953/2019 under Section 34 of the Arbitration and Conciliation Act, 1996 and the same is pending for consideration of the Hon'ble Principal District Judge. As per the provisions of the Arbitration and Conciliation Act, 1996 more particularly section 2(1)(e), the term Court in respect of Arbitration seated in India shall mean the Principal Civil Court of original jurisdiction in a district, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

3] It is further contended that said section defines the term Court and confers jurisdiction for the purpose of Act. It makes it abundantly clear that a reference to Court in all arbitrations other than international commercial arbitrations shall mean the Principal Civil Court only and further ousts any Court reference under the Act

to a Court below the grade inferior to that of Principal Civil Court or a Court of Small cause. Even for the purpose of Section 34 of the Act, the term Court has also been given the same meaning as defined under Section 2(1)(e) thereof and as such, any challenge to an arbitral award is required to be mandatorily filed before the Principal Civil Court of original jurisdiction including the High Court where it exercises ordinary original civil jurisdiction. Considering the above grounds, it prayed to allow the application.

4] The say of the other side was called. The decree holder has filed say vide exh.31. The decree holder has strongly opposed the application. It is contended that the application is mischievous, malafide and not maintainable. The application is misconceived as it is based on incorrect and incomplete averments of facts.

5] It is further contended that the contention of the judgment debtor that this Court does not have jurisdiction to entertain execution proceedings under Section 36 of the Arbitration and Conciliation Act, 1996 is completely misplaced, bad in law, arbitrary and illegal. The decree holder states that this Court has the jurisdiction to entertain execution proceedings filed under Section 36 of the said Arbitration Act read with Order 21 of the CPC. To understand the jurisdiction with regards to execution of Arbitral Award under Section 36 of the Arbitration and Conciliation Act, 1996, it is necessary to refer to the Sections of the CPC and Arbitration and Conciliation Act, 1996. Section 38 of the CPC provides as to which Court the decree would be executed by and thus reads as - Court by which decree may be executed. - A decree may be

executed either by the Court which passed it, or by the Court to which it is sent for execution. Sub Section 1 of Section 36 of the Arbitration and Conciliation Act, 1996 read as - Enforcement- (1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of Sub-Section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the Court. Section 42 reads as - Jurisdiction- Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court. He further contended that the application is false and baseless and hence, prayed to reject it.

6] Heard Ld. Counsels for both the sides. Ld. Counsel for the applicant/J.D. argued that an application for execution of an arbitral award must necessarily be filed only before the Principal Civil Court of original jurisdiction in the district. The term 'Court' for the purpose of Section 34 of the Act cannot be read at variance from the term 'Court' as used in section 36 of the Act, which deals with enforcement of an arbitral award. It is further argued that in view of the provisions of the Arbitration and Conciliation Act, 1996, this Court does not have the jurisdiction to entertain the captioned proceedings as it is only the Court of Principal Civil Judge which has the necessary jurisdiction.

7] It is further argued that the present darkhast is not maintainable before this Court as an application under section 34 of the Arbitration and Conciliation Act, 1996 is pending and sub-judice before the Hon'ble District Judge, Pune. This Court has no jurisdiction to deal with the present proceedings for enforcement and execution of arbitral award, filed under section 36 of the Arbitration Act and are not tenable in the eyes of law. This Court lacks the inherent jurisdiction to entertain the present execution petition and in fact, the judgments relied upon by the Decree Holder confer jurisdiction on 'Courts which are capable of enforcing the decree/ arbitral award' which is not the case in hand. It is further argued that the application under section 34 of the Arbitration Act is pending before the Hon'ble District Judge, Pune whereas execution petition is filed before Court of Civil Judge Senior Division and as such, this Court cannot override the pending proceedings before the Hon'ble District Judge, Pune. Therefore, it has prayed for dismissal of the present darkhast petition by allowing the application exh.30. He filed the authorities in support of his application as under :-

- i] Fountain Head Developers Vs Maria, 2007(3) Mh. L. J. 744
- ii] I.C.D.S. Ltd Vs Mangala Builders Pvt Ltd and Others, Civil Rev. Petition No. 3641/2000 Decided on 28/02/2001
- iii] M/s. India Media Services Private Limited Vs M/s. SBPL Infrastructure Limited, Civil Rev. Petition No. 507/2021 Decided on 09/06/2022
- iv] Sanjay Suryakant Mhaske and others Vs Zilla Parishad, Jalna, Writ Petition No. 2218/2015 Decided on 11 June 2015
- v] M/s. Beta Exim Logistics (P) Ltd Vs. M/s. Central Railside Warehouse Co. Ltd, OP(C) No. 2400/2022 Dtd. 07 March 2023
- vi] South Eastern Coal Fields Ltd Vs M/s. Tirupati Construction District Burhar, TPC No. 4 of 2018 Dtd. 10/01/2018

- vii] Potlabathuni Srikanth and others vs Shriram City Union Finance Limited and others, 2015 SCC Online Hyd 555
- viii] M/s. India Media Services Private Limited Vs M/s. SBPL Infrastructure Limited, Civil Revision Petition No. 507/2021.
- ix] National Highways Authority of India Vs Sayedabad Tea Company Ltd and Ors, Civil Appeal No(s) 6958-6959 of 2009 (27 August, 2019).

8] On the other hand, the Ld. Counsel for the Decree Holder argued that the contention of the judgment debtor that this Court does not have jurisdiction to entertain execution proceedings under Section 36 of the Arbitration and Conciliation Act, 1996 is completely misplaced, bad in law, arbitrary and illegal. This Court has the jurisdiction to entertain execution proceedings filed under Section 36 of the said Arbitration Act read with Order 21 of the CPC. He further argued that as per provisions of section 42 of C.P.C., notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court. He relied upon following authorities in support of his defence as under :-

- i] Sundaram Finance Ltd. Vs. Abdul Samad and Ors – AIR 2018 SC 965
- ii] Gujarat JHM Hotels Ltd Vs Rajasthali Resorts and Studios Limited – 2023 DHC 323
- iii] Gemini Bay Transcription Pvt Ltd Vs Intergrated Sales Services Ltd, 2018 (2) ABR 610

- iv] Global Asia Venture Company and Ors. Vs Arup Parimal Deb and Ors., MANU/MH/0796/2019
- v] Daelim Industrial Co. Ltd Vs Numaligarh Refinery Ltd., 2009 (3) ARBLR 524 (Delhi)
- vi] National Highway Authority of India and Ors Vs Yashpreet Singh and Ors, AIR 2023 P&H 6
- vii] Shiv Shyam Vs Competent Authority / Special land Acquisition Officer, MANU/SCOR/71193/2023.

9] Upon hearing both sides, I have framed the preliminary issue below Exh. 1 regarding the jurisdiction of this Court. I have recorded my findings to it for the reasons mentioned therein under. :

<u>SR.NO</u>	<u>POINTS</u>	<u>FINDINGS</u>
1]	Whether this Court has jurisdiction to entertain the captioned proceeding ?	In the affirmative.
2]	What order?	As per final order application is rejected.

REASONS

10] Heard both sides. Perused the record of the darkhast. I have gone through the authorities cited supra and the written notes of arguments filed on record by both the sides. It reveals from the record that the lands of the Decree Holders were acquired by National Highways. Aggrieved by the compensation awarded, the Decree Holder had preferred applications under section 3G(5) of the National Highway Act seeking enhancement of compensation. The Arbitrator was pleased to enhance the compensation by way of Judgment and Award dated 29/10/2019. The execution proceeding was preferred by the Decree Holders in the year 2019 before the District Court, Pune. The application was heard by the District Judge-20 and Addl. Sessions Judge, Pune and it was transferred on

17/02/2020 to this Court. The Judgment Debtors after five years of the filing of the execution proceeding, have preferred the said application under section 14 of the Arbitration and Conciliation Act, 1996.

11] It reveals that to understand the jurisdiction with regards to execution of Arbitral Award under section 36 of the Arbitration and Conciliation Act, 1996, it is essential to go through the Sections of the Civil Procedure Code and the Arbitration and Conciliation Act, 1996. As per provision under section 38 of C.P.C., a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

12] It reveals from the record that this darkhast was filed before the District Judge-20 and Addl. Sessions Judge, Pune and was transferred to this Court on 17/02/2020. The execution proceeding has been sent to this Court under section 38 of the Civil Procedure Code. Thus, this Court has all the necessary powers for hearing of execution petition. It further reveals that the Arbitration Proceeding came to an end. The Award was passed by the Arbitrator. And hence, the definition of Court as provided under the Arbitration and Conciliation Act, 1996 does not become applicable to execution proceedings filed under section 36 of the Arbitration and Conciliation Act.

13] It reveals that when an Arbitral Award is declared the Arbitral Proceedings stand terminated. Thus, due to the provision of Section 32 the definition of Court provided in Section 2(e) of the

Arbitration and Conciliation Act would not be attracted for the term Court in Section 36, but would be governed by the Civil Procedure Code. An Award under Section 36 of the said Act is equated to decree of the court for the purposes of execution. As a result of which an execution proceeding for an Arbitral Award can be filed in any Court. It reveals that Section 38 of the Civil Procedure Code would apply to any Award passed by an Arbitral Tribunal. It further reveals that, Section 42 of the Arbitration and Conciliation Act comes to an end or will not be operative the moment an award gets declared as the same would be considered as termination of arbitration proceedings as per the provisions of section 32 and hence, provisions of Section 2(e) are not applicable to Execution Proceedings filed under section 36.

14] I have gone through the authorities cited supra filed by both the parties. It appears that the ratio in the authorities cited supra by applicant / J.D. are not applicable to the present case in hand as the facts and circumstances mentioned in these authorities are different from facts and circumstances of the present case in hand. It reveals that the application is devoid of merit. Considering the above discussion, I come to the conclusion that this Court has jurisdiction to entertain the present execution proceeding. Hence, in the interest of justice, I pass the following order.

Order

The application is hereby rejected.

Date : 26/09/2024

(H. J. Shende)
3rd Addl. Judge and CJSD,
Small Causes Court, Pune.