

Order below Exh.17 in Special Darkhast No: 181/2023

**Nagarbai Nanaji Shelke
Vs.
The Competent Authority & SLO**

The Judgment Debtor ('JD' for short) no.2 National Highway Authority of India (in short 'NHAI') has filed this application under Section 39(4) of the Code of Civil Procedure by contending that the immovable property of JD no.2 is not situated within the territorial jurisdiction of this Court. This Court cannot execute the money decree by attachment of the properties which are not situated within the territorial jurisdiction of this Court. To support these contentions, reliance is placed upon following rulings.

- 1] ***Mohit Bhargava Vs. Bharat Bhushan Bhargava & Ors. 2007 SCC OnLine SCC 545,***
- 2] ***Continental Engineering Transport Vs. Sugesan Pvt. Ltd., 2022 SCC OnLine SCC 4728,***
- 3] Judgment of the Hon'ble Apex Court in Civil Appeal No.1650/2018 between ***Sundaram Finance Ltd. Vs. Abdul Samad & Anr .***

2] The Decree Holder ('DH' for short) filed reply vide Exh.19 and resisted this application by contending that, this execution petition is filed against the JD nos. 1 and 2 for the recovery of the amount of compensation for acquisition of land

of the decree holders for widening of Alandi-Pandharpur Palkhi road. The JD no.1 was appointed as the competent authority. The JD no.1 is the Special Land Acquisition Officer No.16 Satara and its property as well as office is situated within the jurisdiction of this Court.

It is further contended that, as per the provisions of National Highway's Authorities Act, all the properties of National Highway shall vests in the Union. The acquired property which is vested with JD no.2 is situated within the jurisdiction of this Court.

It is further contended that the JD no.2 has filed Civil M.A. No.229/2022 under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Satara challenging the legality of the order passed in arbitration proceeding. In the said matter, the District Judge Satara by order dated 01.04.2024 ordered JD no.2 to deposit 50% of the enhanced compensation amount in the Court. However, the said order is not complied.

So urged to reject this application with prayer for taking necessary action against the JD No.2 for perjury.

3] Heard the Ld. Advocate Shri. Sagar Laddha appearing for JD no.2 through V.C. at some length. Also heard the Ld.Advocate appearing for the DH. Also gone through the written arguments submitted by both sides.

4] The substance of the arguments submitted on behalf of J.D.No.2 is that, the property of JD no.2 is not situated within the territorial jurisdiction of this Court. So as per the provisions of Section 39(4) of the Code of Civil Procedure, this Court has no jurisdiction. Further, as per Section 42 of the Arbitration and Conciliation Act, all the subsequent proceedings and applications arising out of arbitral agreement is liable to be made before the Court where the arbitration agreement and applications under the first part of the said Act has been made. So this Court has no jurisdiction. In the oral arguments the Ld. Advocate for JD no.2 placed reliance upon the authorities referred in the application and the following rulings.

1. ***National Highways Authority of India Vs. Sayedabad Tea Company Ltd.*** [Civil Appeal Nos. 6958 - 6959/2009] and
2. ***M/s India Media Services Pvt. Ltd. Vs. M/s. SBPL Infrastructure Ltd.*** [Civil Rev.Petition No.507/2021].

5] The substance of points raised in the written argument on behalf of the DH is that, the Award No.928/2018 dated 25.01.2019 was passed by the Special Land Acquisition Officer No.16, Satara. The land was acquired for Alandi – Pandharpur Palkhi road. After acquisition of the said property, it is vested with the National Highway Authority of India. In such circumstances the said acquired immovable property is in the jurisdiction of this Court. The office of the JD no.2 in Pune is in the rented premises. In such circumstances, that office cannot be

considered as the place where the immovable property of J.D. No.2 is situated. So urged to reject the application.

On the point of jurisdiction of this Court, the DH relied upon the judgment of the Hon'ble Apex Court in the case of *National Highway Authority of India Vs. Yashpreet Singh and another [2022 Supreme (P & H) 1518]*.

6] This Court carefully gone through the material on record, submissions of both the Ld. Advocates and the case laws relied upon by both sides.

7] This execution petition is filed by the DH for recovery of compensation amount as per arbitral award dated 02.02.2022. The agriculture land of the DH has been acquired for widening of the National Highway No. 965 Alandi-Pandharpur- Palakhi road vide Land Acquisition/16/SR/928/2018 dated 25.01.2019. The Deputy Collector / Land Acquisition Officer No.16, Satara was the competent authority for acquisition of the land. The address of the JD no.1 is given as, 'Land Acquisition Officer No.16, Acquisition House, First Floor, Sadarbazar, Satara'.

This material on record shows that the acquired land is situated within the jurisdiction of this Court, the competent authority i.e. the Special Land Acquisition Officer No.16, Satara has acquired the said land by award dated 25.01.2019 and the office of JD No.1 is situated within the jurisdiction of this Court.

8] On perusal of the award passed by the arbitrator, it appears that the Additional Divisional Commissioner was appointed as an arbitrator by National Highway Authority. The said arbitrator held the proceeding and passed the arbitration award on 02.02.2022. It was passed in Pune. The arbitral award was passed at Pune, so the JD no.2 has taken objection about the territorial jurisdiction of this Court by asserting that the property of JD no.2 is not situated within the territorial jurisdiction of this Court and as per Section 39(4), the Court can't execute a decree against any person or property outside the local limits of its jurisdiction.

So far as this objection is concerned, from the facts discussed above, firstly the property of JD no.1 is situated within the territorial jurisdiction of this Court. Secondly, from the date of acquisition of the property, it is vested / mutated in the name of JD no.2. Thirdly, it is pertinent to note that the JD No.2 has filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the arbitral award before the District Judge, Satara (vide Civil M.A. No.229/2022). In the said mater the JD no.2 itself asserted about the jurisdiction of District Judge, Satara to entertain the application under Section 34 against the arbitral award dated 02.02.2022. In such circumstances, the JD no.2 is estopped from denying the territorial jurisdiction of this Court to try and entertain this petition by invoking the provisions under Section 42 of the Arbitration and Conciliation Act, 1996.

In such circumstances, there is no substance in the objections taken by JD no.2.

9] Now so far as the case laws relied upon on behalf of the JD no.2 is concerned, in the case of ***Mohit Bhargava Vs. Bharat Bhushan Bhargava & Ors.***, it is held that, if the decree holder wants to proceed against the property situate outside the jurisdiction of the Court which passed the decree, he has to get the decree transfer to the appropriate Court i.e. the Court in which jurisdiction the property is situate.

In the case of ***Continental Engineering Transport Vs. Sugesan Pvt. Ltd.***, the question was about the transfer of the decree for execution before the Court of competent jurisdiction. In the said matter, the Hon'ble Delhi High Court relied upon the judgment of the Hon'ble Apex Court in the case of ***Sundaram Finance Vs. Abdul Samad***. In the case of Sundaram, the question was whether an award under the Arbitration and Conciliation Act 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** whether the award can be straightway filed and executed in the Court where the assets are located ?

In answer to this question it is held that, arbitral award is not equal to a decree passed by a Court, and execution proceeding can be straightway filed in the Court where the judgment debtor's assets are located.

In the case of *National Highways Authority of India Vs. Sayedabad Tea Company Ltd.*, the question was whether the application under Section 11 of the Arbitration and Conciliation Act is maintainable in view of Section 3G(5) of the National Highways Act, 1956 which provides for appointment of the arbitrator by the central government. It is held that, so far as the appointment of arbitrator is concerned, the power being exclusively vested with the central government as envisaged under Sub-section 5 of the Section 3G of the Act. Section 11 of the 1996 has no application.

In the case of *M/s India Media Services Pvt. Ltd. Vs. M/s. SBPL Infrastructure Ltd.*, there was question about the jurisdiction about maintainability of the execution proceeding. In the said matter, the arbitration proceeding was concluded on 09.08.2020 The award was actually passed on 27.10.2020 and the said award was challenged by filing petition under Section 34 of the Act before the Hon'ble Calcutta High Court. Pending the said application under Section 34, the execution petition was filed under Order 21 Rule 11(2) read with Section 151 of the Code of Civil Procedure before IX Additional Chief City Civil Court, Hyderabad. In such factual matrix, by invoking the provisions of Section 42 it is held that, the Court where an application under Section 9 and / or Section 34 was already filed alone has jurisdiction to deal with the subsequent applications including the application for enforcement of award and no other Court has jurisdiction.

10] The case laws relied upon by JD no.2 are in fact helpful to the DH. As discussed above, after passing of the arbitral award, the application under Section 34 (Civil M.A. No.229/2022) is filed before the District Court Satara. Further, the property of the JD no.1 is situated within the territorial jurisdiction of this Court. The property which is acquired and vested with JD no.2 is also situated within the territorial jurisdiction of this Court. In such circumstances, there is no substance in the contentions and the issue of jurisdiction raised on behalf of the JD no.2 about the maintainability of this execution proceeding.

Hence, this Court pass the following order.

ORDER

1. The application is rejected.

Wai
Date: 22.09.2025

(D.B.Mane)
District Judge-2, Wai.