

Arbitration Execution Case No: 645 of 2022
(CIS No.645/22)
CNR No: WBSP01-016586-2022
Present: Subhra Som Ghosal (J.O Code: WB00984)

Order No. 06, dated: 25.09.2023.

The decree holder has been duly represented by filing hazira.

The Ld. Advocate for the decree holder is also found to be present on call.

The Ld. Advocate for the decree holder prayed for issuance of writ of attachment for satisfaction of the arbitration award dated 30.06.2022.

The present execution has been filed under Section 36 of the Arbitration and Conciliation Act, 1996 read with Order XXI Rule 10 of the Code of Civil Procedure seeking enforcement and execution of the arbitral award dated 30.06.2022 against the Judgment Debtor.

There is no quandary over the proposition that Section 36 of the Arbitration and Conciliation Act, 1996 stipulates that the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. It is also conclusively settled by the Hon'ble Supreme Court in ***Sundaram Finance vs. Abdul Samad, reported in 2018 (3) SCC 622*** that an arbitral award is not equal to a decree passed by a Court and execution proceedings can be straightaway filed in the court where the Judgment Debtor's assets are located. The decree holder has invoked such option vested in it and has prayed for execution of the award as money decree.

In the instant case, the relevant provisions for grant of execution of a money decree would apply. Order XXI, Rule 30 of the Civil Procedure Code 1908, provides that "Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both."

As mentioned above in this execution proceed the decree holder has sought for execution of the award as a money decree and has prayed for attachment and sale of the properties of the judgment debtor as described in the execution petition. Therefore, for this Court to execute the decree, it must first proceed to attach. As a progressing action writ of attachment has to be issued. For issuance of such writ it is imperative for this court to specify the properties which are to be attachment for satisfaction of the decree.

In this case it has transpired that the arbitral award was passed in absence of the judgment debtor. The execution petition provides particulars of several articles but description of those articles are vague. Moreover attachment of several properties as mentioned in the execution petition also comes within the protective shield of Section 60 of the Code of Civil Procedure.

In this context it is worthy to add that the Hon'ble High Court in M/s Bhandari Engineers and Builders Private Limited v. Maharia Raj Joint Venture passed direction for filing of affidavit by the judgment debtor. But this decision of the Hon'ble High Court has been overruled. Hence in the opinion of this Court, the Decree Holder cannot ask for disclosure in terms of the format prescribed in the aforementioned case [see Delhi Chemical and Pharmaceutical Works Pvt. Ltd. v. Hingiri Realtors Pvt. Ltd., (Delhi)(DB) : Law Finder Doc Id # 1851208: 2021 SCC OnLine Del 3603].

However considering the list of articles sought to be attached, staying alive to section 60 of the Code of Civil Procedure, this court is of the opinion that the Judgment debtor be issued notice of this execution proceeding so that the arbitral award can be effectively executed and if so required the Judgment Debtor can be directed to disclose his list of assets as prescribed under Form 16A, Appendix E of the Code of Civil Procedure, 1908.

Hence issue notice upon the Judgment debtor.

To 05.02.2024 for S/R of notice. Decree Holder to put in requisite at once.

Typed to the dictation directly;
corrected on the system.

Additional District and Sessions Judge,
01st Court, Alipore, South 24 parganas.

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01st Court, Alipore, South 24 parganas.