

**Present: Smt. Suparna Ray (JO Code:WB00711)**  
**Judge, Commercial Court at Alipore**  
**Misc Case (Arbitration) 15 of 2021**  
**Renumbered as Misc. Arb (Com) 23 of 2021**  
**CNR No. WBSP18-000065-2021**

**Order No.** 51

**Date:** 29.10.2025

**In the matter of:**

An application under Section 36 of the Arbitration and Conciliation Act, 1996 and with Order XXI Rule 11(2) of CPC, 1908.

**AND**

**In the matter of:**

Jaya Kar.

**Vs.**

The Union on India & 03 Ors.

**Order**

Today is fixed for passing order in respect of I.A. No. 03 of 2025 and for taking steps by the award holder and also for hearing on the point of claim amount and to file calculation, if any.

Award holder files hariza.

Award debtors do not file status report of the case pending before the Hon'ble High Court. Rather, a petition has been filed by the award debtors praying for adjournment on the ground of pendency of AP/71/2025 before the Hon'ble High Court at Calcutta.

Since no order of stay from the Hon'ble High Court in respect of the proceeding of the instant misc case has been filed by the award debtors therefore, prayer for adjournment on the aforesaid ground is hereby considered and rejected.

Award debtors also file an application praying for adjournment on today's proceeding on the ground of sudden illness of Ld. Advocate on record of the award debtors.

Considered.

Now, the I.A. No. 03 of 2025 is taken up for passing necessary order.

**I.A. No. 03 of 2025**

Award debtors filed the captioned application under Section 47 of the Code of Civil Procedure, 1908 praying for stay of the instant execution proceeding till disposal of the G.A. No. 02 of 2020 filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “1996 Act”) and A.P. No. 71 of 2025 filed under Section 36(2) of the said 1996 Act, both are pending before the Hon’ble High Court at Calcutta. Award holder filed its objection to the aforesaid application.

The objections as set forth by the award debtors in the instant application are that due to pendency of the proceeding under Section 34 of the 1996 Act (G.A. No. 02 of 2020) challenging the instant award as well as the proceeding under Section 36(2) of the 1996 Act (A.P. No. 71 of 2025) praying for stay of the award before the Hon’ble High Court at Calcutta, the instant proceeding for enforceability of the award impugned should be stayed till disposal of such proceedings as stated. In spite of that the award debtors further stated that the award impugned is totally illegal and bad in law inasmuch as the learned Arbitrator failed to pass the award within one (01) year violating the direction of the Hon’ble High Court at Calcutta.

Learned Advocate appearing for the award debtors also submitted that during the proceedings stated hereinabove, the award holder obtained an ex parte order from the Hon’ble High Court at Calcutta by filing C.O. No. 4099 of 2024, inter alia, for early disposal of the execution case pending before this Court. However, the learned Advocate for the award debtors further stressed on the application’s case before this Court at the time of making his argument and submitted that the instant execution proceeding filed by the award holder seeking enforcement of the award

impugned, as if it were a decree of the Court. But the said award is not a decree rather it is an award passed by the learned Arbitrator and hence the said execution petition is liable to be dismissed *in limini* with costs. Learned Advocate further submitted that the Section 47 of the Code mandates that all questions arising between the parties to the suit relating to the execution, discharge or satisfaction of the decree shall be determined by the execution court and not by a separate suit. But in this case there is no decree which can be executed by this Court. Hence, the instant execution proceeding filed by the award holder is not maintainable and liable to be dismissed.

On the other hand, it appears from the objection as filed by the award holder that till date the award debtors failed to bring any order of stay from the Hon'ble High Court whereas it comes out from an Order dated 21.01.2025 passed by the Hon'ble High Court in C.O. No. 4099 of 2024 that the Hon'ble High Court was pleased to direct this Court to make all possible endeavours to dispose of the instant execution proceeding within a period of three (03) months. However, it also appears from the case record that on 28.02.2022, this Court dismissed a petition filed by the award debtors praying for stay on the instant proceeding rather directed the award debtors to pay the awarded amounts.

Learned Advocate appearing for the award holder submitted that till date the award debtors failed to obtain any stay order from the Hon'ble High Court and further with a view to seeking for an order of stay on the instant execution proceeding, the award debtors filed the A.P. No. 71 of 2025 under Section 36(2) of the 1996 Act before the Hon'ble High Court at Calcutta. But in the said proceeding, the Hon'ble High Court refused to grant any stay by the Order dated 15.05.2025. Now, on being failed to obtain a stay order, the award debtors filed the instant application before this Court to get a stay.

As per learned Advocate for the award holder the instant application filed under Section 47 of the Code is not all maintainable as the provisions of Section 47 do not apply in case of execution of an arbitral award as not being a decree of a Court arising between the parties. The provision for execution of arbitral award is guided by special statute i.e. the Arbitration and Conciliation Act, 1996 providing Section 36 for execution of an arbitral award and enforceable like a decree of a court, but it is not at all a decree of a court. Section 36 of the Act, 1996 does not permit the executing court to go beyond the award to re-examine its merit.

As stated above, it is fact that any order of stay has never been obtained by the award debtors till date, rather the prayer for stay has duly been considered and rejected by the Hon'ble High Court. More so, in C.O. No. 4099 of 2024, the Hon'ble High Court by an Order dated 21.01.2025 was pleased to direct this Court to make all possible endeavours to dispose of the instant execution proceeding within a period of three (03) months. Also in A.P. No. 71 of 2025, the Hon'ble High Court by the Order dated 15.05.2025 has been pleased to refuse the prayer for stay of execution of the award impugned.

Further in respect of maintainability of the instant application filed under Section 47 of the Code, this Court relies on the case *Indian Oil Corporation Limited & Anr. Vs. The Commercial Court & Anr'* wherein the Hon'ble Court viewed as follows:

45. So far as present case is concerned, position is same as discussed in the matter of Larsen & Tubro Limited (Supra). Petitioner had full occasions to raise all these issues while filing appeal in Section 34 of New Act, 1996 and FAFO, but the same has never been raised. Therefore, by way of objection under Section 47 of CPC, he cannot be permitted to raise this issues nullifying the provision of Section 36 of Act, 1996.

46. Again the very same issue of filing of objection under Section 47 of CPC came before this Court in the matter of Bharat Pumps and Compressors Ltd. (supra) and Court following the ratio of law laid down by this Court in the matter of Larsen & Tubro Limited (Supra) has held as follows:-

"22. The Arbitration Act, 1940 is self-contained, complete code and section 47 thereof is in pari-materia with section 36 of the Arbitration & Conciliation Act, 1996. Section 20 thereof, provides for challenging the appointment of an Arbitrator. The revisionist never challenged

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<sup>1</sup> Reported in Neutral Citation No. 2023:AHC:176040.

appointment of the Arbitrator under section 20 thereof. Sections 30/33 and 37 of the Arbitration Act, 1940, read with Article 119 of the Limitation Act, give provision for an application to be filed within 30 days of notice of award; however, no such application within the said period was filed by the revisionist.

23. The arbitration award by way of friction is executed as decree, but it is not a decree as defined under section 2(2) of CPC and therefore, the objection under section 47 of CPC, which was filed only in execution of decree (as defined under section 2(2) CPC), is not maintainable in the proceedings seeking execution of award."

47. This Court has again taken view that arbitral award is not a decree under Section 2(2) of CPC, therefore, objection filed under Section 47 of CPC is not maintainable.

48. To conclude this point on the basis of undisputed fact, objection under Section 47 of CPC filed against the arbitral award is not maintainable as the same is not a decree under Section 2(2) of CPC. Further, arbitral award can be executed invoking Section 36 of New Act, 1996 alongwith the provisions of CPC in the same manner as if it is decree of the Court.

49. Therefore, in light of facts of the case, provisions of law as well as pronouncements made by the Apex Court as well as this Court, I found no good reason to interfere with the impugned orders. Writ petition lacks merit and is, accordingly, dismissed with the cost of Rs.1,00,000/- to be paid by the petitioners to respondent no.2.

Further in the case of *The State of Tripura & Anr. Vs. Shri Ashes Deb*<sup>2</sup> the

Hon'ble Court viewed that:

[13] In the scheme of the Arbitration Act, a challenge against an arbitral award can be made by taking recourse to Section 34 of the Arbitration Act and that too on the grounds set out under Sub-Section (2-A) of section 34 of the Act. It has surfaced from the record that the present petitioner against whom the arbitral awards were made did not prefer any application under Section 34 of the Act. After the time prescribed for filing such application expired, the respondent award holder approached the Court by filing a petition under Section 36 for enforcement of the arbitral award. Only then, the petitioner-State against whom the arbitral awards were passed raised objection under Section 47, CPC. Section 5 of the Arbitration Act clearly provides that "Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part", which implies that the only remedy available to the aggrieved party against whom an arbitral award is passed, is Section 34 of the Arbitration Act. Obviously, the petitioner-State did not avail such remedy to resist the execution within the time prescribed under the -11- CRP No.85 of 2022 CRP No.86 of 2022 law. Petitioner raised objection to resist the execution only by filing an application under Section 47, CPC despite the specific remedy available under Section 34 of the Arbitration Act. In view of the prohibition imposed under Section 5 of the Act, objection except under Section 34 of the Act is not entertainable.

Recently, the Hon'ble Allahabad High Court in the case of *The State of U.P.*

*& Ors. Vs. Shri Raj Veer Singh*<sup>3</sup> depicted salient principles as follows:

a. *The jurisdiction of an executing court under Section 47 of the CPC, 1908 is limited to matters pertaining to execution of the decree. Validity of a decree cannot be looked into by the executing court unless the decree suffers from inherent lack of jurisdiction. Role of an executing court is akin to a microscopic inspection hole, as held by the Hon'ble Supreme Court in Dhurandhar Prasad Singh (supra).*

b. *The repercussions of either wrongly accepting or rejecting objections can significantly impact the parties involved and potentially compromise the integrity of the execution procedure. Given the limited jurisdiction of the executing court under Section 47 of the CPC, 1908, it is crucial to precisely define the issues falling within its domain. Courts should ensure that objections raised under Section 47 of the CPC, 1908 relate strictly to matters concerning the execution, discharge, or fulfilment of the decree and do not overstep into*

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<sup>2</sup> Arising out of CRP 85 of 2022.

<sup>3</sup> Reported in Neutral Citation No. 2024: AHC: 66171.

*substantive rights or legal matters beyond the decree's boundaries. Moreover, courts should uphold the principle of finality when dealing with objections under Section 47 of the CPC, 1908.*

*c. Courts must be mindful of execution proceedings under Section 47 of the CPC, 1908 being used as a means to unnecessarily obstruct the execution proceedings. Meritless, and frivolous objections under Section 47 of the CPC, 1908 must be dealt with strongly.*

*d. Language of a statute is the primary consideration while interpreting a statute. Words used in a statute are the expression of the will of the legislature. Courts are obligated to give effect to the literal meaning of the words used in a particular provision unless the same leads to absurdity.*

*e. The intent behind plain meaning rule is to respect the separation of powers. By adhering to the literal meaning of the words used in a statute, courts refrain from encroaching upon the domain of the legislature. Intention of legislature is best reflected in the words used by it as propounded by the Hon'ble Supreme Court in *Nagar Palika Nigam* (supra).*

*f. Plain meaning rule is not an absolute principle and must be used in light of the broader context and purpose of the statute.*

*g. The phrase "as if it were" is used to suggest a hypothetical scenario implying that something is being treated in a manner akin to a particular situation even if it is not actually the case. It is used to establish a legal fiction or create a presumption, where a condition is deemed to exist for the purpose of legal analysis, even if it does not actually exist.*

*h. In Section 36 of the Act, the phrase providing for the execution of an arbitral award as if it were "a decree of the court" indicates that an arbitral award is to be executed in a similar manner as a decree passed by a court. This legal fiction is created for the limited purpose of executing an arbitral award through the court's enforcement powers.*

*i. An arbitral award is not in reality a decree of the Court as defined under Section 2(2) of the CPC, 1908. Therefore, objections under Section 47 of the CPC, 1908 cannot be allowed in proceedings under Section 36 of the Act. Allowing objections under Section 47 of the CPC, 1908 to be raised in execution proceedings under Section 36 of the Act will undermine the finality and binding nature of arbitral awards.*

*j. Once objections are dismissed under Section 34 of the Act, and appeal under Section 37 of the Act also stands adjudicated, an arbitral award attains finality. Any objections regarding the validity of an arbitral award are impermissible under Section 36 of the Act.*

*k. Execution proceedings, far from being a battleground for a rematch on the merits of the arbitral award, serve as the denouement of the legal drama - a final act in which the award holder claims their just reward. Like the closing scene of a play, execution proceedings bring the curtain down on the dispute, allowing the parties to turn the page and move forward. To raise objections under Section 47 of the CPC, 1908 in the execution proceedings would be akin to attempting to rewrite the script of a play after the final curtain call - a futile endeavour that serves only to prolong the agony of litigation and delay the inevitable conclusion.*

*l. Writ jurisdiction under Article 226 and Article 227 of the Constitution of India cannot be invoked to challenge an arbitral award. The Act is a complete code in itself and any challenge to the validity of an arbitral award has to be raised within the mechanisms provided by the Act itself. Only under exceptional circumstances, a writ court can interfere with an arbitral award or execution proceedings under Article 226 and Article 227 of the Constitution of India.*

*m. Parties' failure to raise timely objections under Section 34 and Section 37 of the Act will not entitle them to raise these grounds at a later stage by invoking the writ jurisdiction under Constitution of India. Writ jurisdiction is extremely limited and cannot be treated as a second chance at the cherry.*

*n. As pointed out in *Rahul S. Shah v. Jinendra Kumar Gandhi*; (2021) 6 SCC 418, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to. In such cases, courts are duty bound to impose costs as a deterrent in order to ensure that litigants do not abuse the judicial system with frivolous and vexatious matters. Judicial resources are extremely limited and frivolous matters which unnecessarily take up the valuable time of the court deserve to be dealt with stringently.*

Therefore, in view of above it is crystal clear from the aforesaid judgments of the Hon'ble Courts that an arbitral award is not a decree as defined under Section 2(2) of the CPC, 1908. Therefore, objections under section 47 of the CPC, 1908 which are specifically applicable to execution of decrees, are not maintainable against arbitral awards. The courts have constantly emphasised the self-contained nature of the Act. Section 36 of the Act deals with enforcement and does not provide for challenges to the merits of the arbitral awards. Challenges on the grounds of nullity or illegality can only be raised in proceedings under section 34 of the Act, which sets forth specific grounds for challenging arbitral awards. Allowing challenges on the merits in enforcement proceedings would undermine the legislative intent and the procedural framework established by the Act.

So, it can be safely concluded from the above referred observations of the Hon'ble Courts that objections available under Section 47 of the CPC, 1908 will not be available under Section 36 of the Arbitration and Conciliation Act since an arbitral award is not in reality a decree of the court, but is treated as one of the limited purposes of enforcement. The key distinction between court decrees and arbitral award lies in their origin and nature. Court decrees are orders or judgements issued by a Court of law, following adversary proceedings and adjudication by a Judge. In contrast, arbitral award is a decision rendered by learned Arbitrator chosen by the parties to a dispute, pursuant to an arbitration agreement. They arise from the contractual agreements between the parties and are not awarded by a Court of law. While they may have the same legal effect as court decrees once enforced, they are fundamentally different in origin and nature.

So, considering all, the application being no. I.A.03/2022 filed by the award debtor stands rejected on contest without any order as to costs.

Fix the matter on 17.11.2025 at 2:45 p.m. to 3:30 p.m. for hearing of the instant Misc Case and also for consideration and passing necessary order in respect

of attachment of the bank account of the judgment debtors, as prayed for by the award holder.

Judgment debtors to take steps in respect of filing calculation, if any, at least before three (03) days of the date as fixed above.

Parties to act on the basis of the downloaded copy of this order.

Dictated and corrected by me

Sd/-  
Judge, Commercial Court at Alipore,  
For South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram

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Judge, Commercial Court at Alipore,  
For South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram