

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

Jaya Kar

.....Award Holder

Vs.

The Union of India & 03 Ors.

.....Award Debtors

Order No. 58

Date: 17.02.2026

Order

Today is fixed for passing order in respect of I.A. No. 04 of 2026

Both sides file their respective haziras.

Now, the instant matter is taken up for passing necessary order.

Award debtors filed the application being registered as I.A. No. 04 of 2026 under Section 47 of the Code of Civil Procedure, 1908.

In the said application, the award debtors purportedly raised the point of jurisdiction of this Court to try and entertain the instant execution proceeding.

The award debtors have contended that the present dispute and/or the execution proceeding arose out of an agreement of licence granted by the award debtors to the award holder running a cycle stand, which is essentially, a licence/permission for use of space in the nature of facility management/amenity arrangement, which is not at all a commercial agreement. Therefore, the said award can not be executed by this Court being a commercial court whose

jurisdiction, *inter alia*, is strictly governed by Section 2(1)(c) read with Section 6 of the Commercial Courts Act, 2015.

The contention of the learned Advocate for the award debtors is that Section 2(1)(c) read with Section 6 of the Commercial Courts Act, 2015 says that when the dispute between the parties is related to trade, business or mercantile transaction or agreement relating to immovable property used exclusively in trade or commerce then it is a commercial dispute and in this case only the commercial court has jurisdiction to entertain any application related to such commercial dispute and in other non-commercial dispute the commercial court has no jurisdiction to entertain any application related to non-commercial dispute. Here, in this case the licence had been granted by the award debtors to the impugned award holder only to operate a cycle stand which is permissive contract with the Railways and does not amount to a mercantile or trading contract between merchants, and therefore, does not strictly fall within the ambit of Section 2(1)(c) of the Commercial Courts Act and hence, the said dispute out of which the said impugned award is passed is totally non-commercial, so this court has no jurisdiction to entertain the said execution application filed by the award holder.

In respect of his submission, learned Advocate appearing for the award debtors has relied on the judgment of the Hon'ble High Court at Calcutta in the case of ***Siddharta Chandra vs. Sk. Abdul Kasem & Ors.*** arising out of ***FMA No. 1738 of 2025 with CAN 1 of 2025***. He has also relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Sushil Kumar Mehta vs. Govind Ram Bohra***.

Although the award holder does not file any objection to the aforesaid application, however, the learned Advocate appearing for the award holder has submitted before this Court that only to stall the instant execution proceeding pending before this Court, the award debtors have desperately been trying when there is no scope left in their hands after the dismissal of the Section 34 application before the Hon'ble High Court at Calcutta.

Learned Advocate for the award holder has also submitted that it is a matter of record that the dispute involved in the matter, arises out of an agreement between

the parties herein in connection with an immovable property used exclusively for trade and commerce and as such, the matter pertains to a “Commercial Dispute” falling completely within the scope and ambit of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 and thus, this Court has the jurisdiction to take up the present execution matter. He has also submitted that the present execution matter, in view of involvement of a commercial dispute therein, has been transferred from the learned District Court at Paschim Medinipur to the learned Commercial Court at Alipore after the formation thereof. Therefore, the provisions of Section 47 of the CPC has no manner of application in execution cases arising out of arbitral award passed in arbitration proceeding. The further contention of the learned Advocate for the award holder is that Section 47 of CPC has no manner of application in execution matters pertaining to an arbitral award. In respect of that, he has relied on the judgment of the Hon’ble Courts in the cases of ***Indian Oil Corporation Limited & Anr. vs. The Commercial Court & Anr.*** and ***The State of Tripura & Anr. vs. Shri Ashes Deb.***

Heard the both sides and also perused the materials on record.

It appears from the record that award debtors earlier filed an application under Section 47 of the CPC being registered as I.A. No. 03 of 2023 praying for stay of the instant execution proceeding till disposal of the G.A. 02 of 2020 filed under Section 34 of the Arbitration and Conciliation Act, 1996 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. However, after elongated hearing of both sides, this Court by an Order dated 29.10.2025 dismissed the said application due to having no order of stay of the impugned award.

As of now, the Hon’ble High Court at Calcutta dismissed the said Section 34 application by which the award debtors after filing the instant execution proceeding sought for challenging the award in context. Therefore, till date there is no order of stay of the award impugned. As such, this Court no impediment to go within this execution proceeding.

Now, in respect of the instant Section 47 application, it is to be stated that it is fact that instant execution proceeding

was initially filed by the award holder before this regular civil court and being the Court of the Learned District Judge, Paschim Medinipur thereafter, by way of transfer *vide* the Order dated 16.07.2021, the instant proceeding embarked on to proceed before this Court. It appears from the said Order dated 16.07.2021 passed by the learned District Judge, Paschim Medinipur that due to constitution of this Court under the Commercial Courts Act, 2015, the learned District Judge, Paschim Medinipur was pleased to transfer the same, however, both the parties therein submitted that the Court of the Learned District Judge, Paschim Medinipur has no jurisdiction to try and entertain the instant proceeding. Furthermore, the said Order 16.07.2021 has not been challenged by any of the parties at all. As such, the same is in seisin. Although the award debtors attempted many times to impugn the instant proceeding by filing several applications but all such applications were rejected and/or dismissed either by this Court or by the Hon'ble High Court. And, accordingly, by an Order dated 17.11.2025 directed the concerned Bank Manager of the State Bank of India, Kharagpur Railway Branch to attach the sum of Rs. 85,47,922.00/- lying with A/C No. 11041344169 having IFSC SBIN0003332 and thereafter, the concerned Bank Manager of the State Bank of India attached the said amount with the A/C No. 11041344169 having IFSC SBIN0003332. Then, by an Order dated 17.12.2025 this Court further directed the said Bank Manager to keep the aforesaid sum be attached till the further order. In such a stage and after dismissal the Section 34 proceeding before the Hon'ble High Court, the award debtors filed the instant application under Section 47, which is indeed misconceived and accordingly deserves to be dismissed.

In spite of above, it is also to state that from the various decisions of the Hon'ble Courts, it is crystal clear 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 emphasized 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.

However, in the instant application the award debtors raised an issue under the grab of the provisions of Section 47 of the CPC, which has already been settled in the instant proceeding.

Therefore, from the above, this Court does not find any ground to allow the instant application and as such, in view of aforesaid, the instant application being registered as I.A. no. 04 of 2026 is rejected on contest without any order as to costs.

I.A. No. 04 of 2026 is, thus, **disposed off**.

It appears from the instant record due to pendency of the Section 34 application before the Hon'ble High Court at Calcutta, this Court directed the concerned Branch Manager of the State Bank of India to keep the attached amount till the further order. And, now the said proceeding before the Hon'ble High Court was dismissed. Therefore, there is no as such embargo to proceeding with the instant execution before by this Court.

It is also to be noted that the instant execution proceeding has been pending since 2021, which is nearly six (06) years and during such time the award holder has been restrained to imbibe the fruit of the award in context in spite to lacking any fruitful order of stay of the impugned award.

In view of above, this Court opines that this is high time for the award holder to get the fruit of the award impugned.

Therefore, this Court further appointed Mr. Sankar Sen (Mob No. 7890765025) and Mr. Anirban Das (Mob No. 9874516269), learned Advocates of the Alipore Judges Court with respect to the following direction. The award holder is hereby directed to pay a sum of Rs. 30,000/- to each of the learned Receivers in view of their remuneration at once and as such, file the money receipt to that effect on the date fixed hereunder. Thereafter, Writ will be issued.

Hence, this Court is hereby directed to the concerned Bank Manager of the State Bank of India, Kharagpur Railway Branch to hand over the sum of Rs. 85,47,922.00/- lying with A/C No. 11041344169 having IFSC SBIN0003332 by way of

Demand Draft (D.D.) in favour of award holder's name (Jaya Kar) to the learned Receivers and the learned Receivers are directed to collect the same from the concerned persons and thereafter, filed the same before this Court on the date as will be fixed by this Court. The award holder is directed to be present on the said day before this Court.

However, the learned Receivers are directed to intimate the concerned Bank Manager before going to the locale to collect the D.D.

Award holders is also directed to take necessary arrangement for visitation of the learned Receivers to the aforesaid branch of SBI.

Award holder is also directed to communicate the copy of the instant order to learned Receivers as well as the concerned Bank Manager of the State Bank of India, Kharagpur Railway branch having IFSC SBIN0003332 forthwith.

However, the learned Receivers shall have liberty to mention before this Court with respect to any clarification of the direction mentioned in the instant order.

Fix the matter on **23.02.2026 at 10:45 a.m.** for filing money receipt by the award holder.

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 Medinipur,
Paschim Medinipur&Jhargram

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, PurbaMedinipur,
Paschim Medinipur&Jhargram