

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CR No.27 of 2019****Reserved on 31.01.2020**  
**Pronounced on 06.02.2020**

Shrey Chouksey, S/o Sh. Mukesh Chouksey, Aged About 22 Years,  
R/o Behind Jalaram Temple, Tikarapara, Bilaspur,  
Chhattisgarh.....Applicant (Decree Holder),

---- **Petitioner****Versus**

1. Raghuwar Dayal Singhal, S/o Late Sh. Shivdayal Singhal, Aged About 68 Years, Partner, M/s Panchvati Inn, R/o Singhal Sadan, Link Road, Bilaspur, Chhattisgarh.....Respondent No. 1 (Judgment Debtor No.1),
2. Gopal Krishna Singhal, S/o Sh. Raghuwar Dayal Singhal, Aged About 36 , Partner, M/s Panchvati Inn, R/o Singhal Sadan, Link Road, Bilaspur, Chhattisgarh.....Respondent No. 2 (Judgment Debtor No.2),

---- **Respondents/Non-Applicants**


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For Applicant	:	Shri Manoj Paranjpe, Advocate.
For Respondent No.1	:	Shri Anurag Dayal Shrivastava, Advocate

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**Hon'ble Shri Justice Sanjay S. Agrawal****C.A.V.Order / Judgment**

1. This Revision Petition has been preferred by the Applicant – Shreya Chouksey under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the legality and propriety of the Order dated 01.02.2019 passed by the District Judge, Bilaspur in MJC (Execution) No.147/2018 whereby the learned District Judge, while exercising the powers enumerated under Order 7 Rule 10 of CPC, has returned the execution proceedings initiated under Section 36 of the Arbitration and Conciliation Act, 1996 (for short, the Act of 1996) for its presentation before the Commercial Court having its jurisdiction to entertain

it. The parties to this Revision Petition shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that the parties have entered into an agreement on 19.08.2014 for running the hotel business known as 'Panchavati Inn' situated at Link Road, Bilaspur under certain terms and conditions stipulated therein which contains the reference of dispute before the Arbitrator. During subsistence of the alleged agreement, a dispute arose between the parties and it was accordingly referred to the Sole Arbitrator, who in turn, has passed the arbitral award on 27.10.2014.

3. The aforesaid arbitral award has attained its finality by efflux of time and was put in execution by the applicant under Section 36 of the Act of 1996 read with Order 21 Rule 11 of CPC. It was objected by the Non-Applicants by moving an application under Order 7 Rule 11 of CPC alleging, inter alia, by referring to the provision prescribed under Section 2 (c) (vii) of the Commercial Courts Act, 2015 (for brevity, the Act, 2015) that the dispute arose between parties is a commercial dispute and the Commercial Court alone has jurisdiction to entertain it. Therefore, the claim as made is liable to be rejected.

4. The aforesaid application has been objected by the Applicant and, the Court below, upon considering the said application, opined that the alleged dispute falls within the ambit of commercial dispute. In consequence, the Court below has directed for its presentation before the Commercial Court having its jurisdiction in exercise of its powers as provided under Order 7 Rule 10 of CPC. This is the Order which has been impugned by way of this Revision Petition.

5. Shri Manoj Paranjpe, learned counsel appearing for the Applicant, while referring to the provision prescribed under Section 2 (i) and Section 12 of the Act of 2015, submits that the jurisdiction of the Commercial Court under Section 6 would be attracted only if the commercial dispute is of a specified value and in absence thereof, it cannot be referred to the said Court. It is contended further that the application and/or the proceeding initiated under Section 36 of the Act of 1996 for the enforcement of the said arbitral award is a kind of execution proceeding and cannot be equated with an original or independent application of the Act of 1996, and therefore, the application preferred under Order 7 Rule 11 of CPC for its rejection cannot be held to be maintainable for want of its applicability by virtue of Rule 9 of the Chhattisgarh Arbitration Rules, 2007, framed by the High Court in exercise of the powers enumerated under Section 82 of the Act of 1996.

6. While countering the aforesaid contention and by referring to the proviso to Section 115 of CPC, a preliminary objection has been raised by Shri Anurag Dayal Shrivastava, learned counsel appearing for the Non-Applicants that the Order impugned is not a revisable order as even if it is set aside or would pass in favour of the Applicant, the entire proceeding, which comes within the purview of other proceedings initiated under Section 36 of the Act of 1996, would not come to an end and, rather it would revive the said proceeding and under such circumstances, the Revision Petition as framed is not maintainable. In support, he placed his reliance upon the decisions rendered in the matter of *Shiv Shakti Cooperative Housing Society vs. Swaraj Developers and Others* and *Babu Lal vs. Hazari Lal Kishori Lal & Ors.*, reported respectively in (2003) 6 SCC 659 and (1982) 1 SCC 525.

7. In response to the aforesaid objection, Shri Paranjpe has placed his reliance upon a decision delivered by the Division Bench of this Court in the matter of *R.S. Bajwa & Co. vs. State of Chhattisgarh and Ors.*, made in Writ Appeal No.208/2008 decided on 20.09.2012 (reported in **2013 (II) MPJR 96**) and submits that under the similar circumstances, as happened herein, a Revision Petition was held to be maintainable.

8. I have heard learned counsel for the parties and perused the entire papers annexed with this Revision Petition carefully.

9. What is reflected here in the instant matter is that an application enumerated under Section 36 of Act of 1996 has been made for the enforcement of the arbitral award passed on 27.10.2014 which amounts to a decree by virtue of sub-section (1) of the said provision. It is thus the execution proceeding initiated by the Applicant. As observed herein above, it was directed to be returned by the Court below vide Order impugned in exercise of the powers under Order 7 Rule 10 CPC for its presentation before the Commercial Court.

10. In order to consider the aforesaid objection, it is necessary at this stage to examine the provision prescribed under Section 115 of CPC, which reads as under:-

**“115. Revision.---** [(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears---

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.]

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

[*Explanation.*---- In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.]”

11. A plain reading of the aforesaid provision, it is clear that the test is on the question whether the order in favour of the party applying for revision would have given finality to “suit” or “other proceeding” or not. If the answer is ‘Yes’, then only the Revision is maintainable, otherwise not.

12. The proceeding initiated by the Applicant under Section 36 of the Act of 1996 is undisputedly an execution proceeding and could be equated with the “other ‘proceedings’”, in view of the principles laid down in the matter of **Babu Lal vs. Hazari Lal Kishori Lal and Others** (supra), as relied upon by Shri Shrivastava, wherein at paragraph 17, it has been observed as under:-

“17. The word 'proceeding' is not defined in the Act. Shorter Oxford Dictionary defines it as "carrying on of an action at law, a legal action or process, any act done by authority of a court of law; any step taken in a cause by either party". The term 'proceeding' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word 'proceeding' in [section 22](#) includes execution proceedings also. In [Rameshwar Nath v. U.P. Union Bank Ltd.](#) (AIR 1956 All.586) such a view was taken. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in

the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It marks a stage in litigation. It is a step in the ladder. In the journey of litigation there are various stages. One of them is execution.”

13. The aforesaid execution proceeding would thus come within the ambit of ‘other proceeding’ as provided under the proviso to sub-section (1) of Section 115 of CPC.

14. According to the aforesaid provision, the Revision would be maintainable only against the order where no appeal is provided and this is the first requirement of the said provision. Secondly, even if the order is not appealable, but according to the proviso of it, which provides that even if the order is passed in favour of the party applying for Revision is not deciding the suit or other proceeding finally, then the Revision cannot be held to be maintainable. Thus, the real test for applicability of the Revision Petition is on the question as to whether the order in favour of the party applying for Revision would have given finality to the “suit” or “other proceeding” or not? If the answer is ‘Yes’, then only the Revision is maintainable, otherwise not, as held in the matter of **Shiv Shakti Cooperative Housing Society v. Swaraj Developers and Ors.** (supra), as relied upon by Shri Shrivastava, where at paragraph 32, it has been observed by the Supreme Court as under:-

“32. A plain reading of [Section 115](#) as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is “yes” then the revision is maintainable. But on the contrary, if the answer is “no” then the revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject-matter of revision under Section 115. There is marked distinction in language of Section 97(3) of the Old Amendment Act and [Section 32\(2\)\(i\)](#) of the

Amendment Act. While in the former, there was clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in [Section 32\(2\)\(i\)](#). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation.”

15. Reverting back to the case in hand where, as observed herein above, the execution proceedings initiated by the Applicant under Section 36 of the Act of 1996 was directed for its presentation before the Commercial Court having its jurisdiction to entertain it by the Court below in exercise of the powers enumerated under Order 7 Rule 10 of CPC. The Order impugned returning the said execution proceedings if reversed, would rather revive the said proceeding, instead of giving its finality. In such a condition, it cannot be held that the Revision Petition as filed is maintainable, in view of the principles laid down by the Supreme Court in the aforesaid decision.

16. However, in similar circumstances, the Revision was held to be maintainable, in view of the principles laid down by the Division Bench of this Court in the matter of **R.S. Bajwa & Co. vs. State of Chhattisgarh** (supra), as relied upon by Shri Paranjpe, and the Registry was directed for conversion of the Writ Petition into the Revision but, unfortunately the decision of the Supreme Court passed in the matter of **Shiv Shakti Cooperative Housing Society v. Swaraj Developers and Ors** (supra) settling the said issue and/or the real interpretation of the said proviso was not brought to the notice of this Court. That apart, the “proviso” to said provision was not at all taken into consideration while passing the said order by the Division Bench of this Court. Therefore, in my opinion, the decision of this Court passed in the matter of **R.S. Bajwa & Co. vs. State of**

**Chhattisgarh and Ors.** (supra) is *per incurium* in nature and needs to be reconsidered by the larger Bench of this Court.

17. Consequently, in exercise of the powers conferred by Rule 33 of the High Court of Chhattisgarh Rules, 2007, it is hereby recommended that all the papers of these proceedings of present Civil Revision No. 27/2019 (Shrey Chouksey vs. Raghuwar Dayal Singhal, & Anr.) be placed before Hon'ble the Chief Justice for consideration and for appropriate orders for constitution of a Larger Bench for settling the following issue:-

“Whether proviso to Section 115 of the Code of Civil Procedure, 1908, as substituted by Act 46 of 1999, bars revision, if the proceedings revive instead being finally disposed off?”

Sd/-  
**(Sanjay S. Agrawal)**  
Judge