

Court No. 6
(265719)

01.05.2025
(AD 134-136)
(S. Banerjee)

CO 1349 of 2025

SREI Infrastructure Finance Limited
Vs.
A. K. Enterprise Pvt. Ltd.

with
CO 4243 of 2024
CAN 1 of 2024

with
CO 703 of 2025

Mr. Swatarup Banerjee, Sr. Advocate
Mr. Nirmalya Dasgupta
Mr. Sanjul Haque
Ms. S. Jha
Mr. Rajib Mullick

...for the petitioner

Mr. Anirban Ray, Sr. Advocate
Mr. Sourav Sengupta
Mr. Aman Baid

...for the opposite party

By the order impugned the objection raised by the petitioner herein against executability of the Award under Section 47 of the Code of Civil Procedure, was rejected on the ground that challenges on the ground of nullity or illegality can only be raised in proceedings under Section 34 of the Act.

Mr. Banerjee, learned Senior Advocate appearing in support of the application places reliance upon a decision of the Hon'ble Supreme Court in the case of *Electrosteel Steel Limited (Now*

M/s. ESL Steel Limtied) –Vs.- Ispat Career Private Limited, reported at 2025 SCC Online SC 829 in support of his contention that an objection under Section 47 of the Code of Civil Procedure is maintainable.

Mr. Ray, learned Senior Advocate, appearing for the opposite party commenced his argument but could not conclude due to paucity of time.

The Hon'ble Supreme Court in *Electrosteel Steel Limited (supra)* held that objection to execution of an Award under Section 47 CPC is not dependent or contingent upon filing a petition under Section 34 of the 1996 Act. The Hon'ble Supreme Court held thus:

“48.1 Section 47 CPC deals with questions to be determined by the court executing decree. As per sub-section (1), all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. Execution of decrees and orders is provided for in Order XXI CPC. The law is well settled that at the stage of execution, an objection as to executability of the decree can be raised but such objection is limited to the ground of jurisdictional infirmity or voidness. The law laid down by this Court in *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*

is that only a decree which is a nullity can be the subject matter of objection under Section 47 CPC and not one which is erroneous either in law or on facts. The aforesaid proposition of law continues to hold the field.

49. Objection to execution of an award under Section 47 CPC is not dependent or contingent upon filing a petition under Section 34 of the 1996 Act. High Court was not justified in taking the view that since the appellant did not file a petition under Section 34 of the 1996 Act, therefore, it was precluded from filing an application before the Executing Court to declare the award as void and hence non-executable.”

After hearing the learned advocates for the respective parties this Court is of the prima facie view that an arguable case has been made out by the petitioner herein.

In view thereof, there shall be an order of stay of all further proceedings in Arbitration Execution Case No. 11 of 2023, renumbered as Misc. Ex. (Com) 41 of 2023 pending before the learned Commercial Court at Alipore till the end of the month of June, 2025 or until further orders, whichever is earlier.

List the matter under the heading ‘Fixed Matter’ on May 16, 2025.

(Hiranmay Bhattacharyya, J.)