
SPECIAL EXECUTION PETITION No. 1 of 2019

Order below Exh.1 :-

1. The petitioner has filed the present execution petition under Section 36 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as “the Act”) for enforcement of an Arbitration Award.

2. The preliminary issue raised by this court is as to whether this court has jurisdiction to entertain the execution petition under Section 36 of the Act for execution of an Award passed by the Arbitral Tribunal under the provisions of the Act.

3. In order to decide the said preliminary issue with regard to jurisdiction of this court, relevant provisions of the Act are required to be analysed.

3.1 Section 2(1)(e) of the Act reads as under :-

Section 2(1)(e) :

"Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court or a grade inferior to such principal Civil Court, or any Court of Small Causes;

3.2 It is pertinent to note that after the enactment of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, the consequential amendments were made in the Act and it is relevant to produce the

provision made under Section 2(1)(e) of the Arbitration and Conciliation (Amendment) Act, 2015, which reads as under :-

Section 2(1)(e) :

"Court" means -

- (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the question forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
- (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of Courts subordinate to that High Court;

4. Thus, Section 2(1)(e) of the Act defines the word "Court" and while dealing with the definition of the word "Court", it has clearly stipulated that "Court" means the Principal Civil Court of Original Jurisdiction in a district. Under the General Clauses Act, 1897, a "District Judge" has been defined under Section 3(17) thereof to mean that "District Judge shall mean the Judge of a Principal Civil Court of Original Jurisdiction". The Gujarat Civil Courts Act, 2005 provides for three-tier subordinate court structure, namely, District Judges, Courts of Senior Civil Judges and Courts of Junior Civil Judges. Section 12 of the Gujarat Civil Courts Act, 2005 reads as under :-

Section 12 :-

- (1)** A Court of District Judge shall be the principal civil court of original jurisdiction within the local limits of its jurisdiction.
- (2)** Subject to the provisions of the Code, the jurisdiction of a court of District Judge shall extend to all original suits and proceedings of a civil nature.

5. In case of Ankati Satyamaiah Vs. Sallangulla Lalaiah, reported in 2002 Supreme (AP) 1426, the Hon'ble Andhra Pradesh High Court has observed as under :-

“(10) TURNING to clause (e) of Section 2 of the Act again, it is obvious that the Court envisaged under the Act means the "the principal Civil Court of original jurisdiction in a district". The expression "the Principal civil Court of original jurisdiction in a district" has not been defined under the Act. It is, therefore, appropriate to fall back upon the definition of the "district" as enjoined under Section 2 clause (4) of the Code of civil Procedure and the definition of the "district Judge" as envisaged in Section 3, clause (17) of the General Clauses Act, 1897. Section 2, clause (4) reads as under:"2 (4) "district" means the local limits of the jurisdiction of a principal Civil court of original jurisdiction (hereinafter called a "district Court"), and includes the local limits of the ordinary original civil jurisdiction of a high Court. "although the above excerpted provision seeks to define the expression "district" but a perusal of the said provision makes it obvious that the Principal Civil Court of original jurisdiction is the District Court in a district and it is also included in the local limits of the original civil jurisdiction of a high Court. It is to the common knowledge that in every district there is a District Court, which is the fountainhead of the District judiciary in the hierarchy of the judicial system.

(11) SECTION 3, clause (17) of the General clauses Act, which is apt to be considered, reads as under:"3 (17) "district Judge" shall mean the judge of a principal Civil

Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;"

(12) A plain reading of the above provision shows that the Principal Civil court of original jurisdiction means the district Court inasmuch as the District Judge is the Presiding Officer of that Court. Both the provisions as discussed hereinabove make it manifest that a District Court in a district is the principal civil court of original jurisdiction. When we consider the expression "the Principal Civil Court of original jurisdiction in district" appearing in the first part of clause (e) of Section 2 of the act the definition of the word "court" in conjunction with the meaning given in Section 2, clause (4) of the C. P. C. and clause (17) of Section 3 of the General clauses Act, it is obvious that it is the Court of District Judge, that is, the Principal Civil court of original jurisdiction in a District. Not only that, the definition as given under section 2 (e) expressly excludes any other civil court of a grade inferior to such principal Civil Court or any Court of Small causes. Therefore, the last limb of Sec. 2 (e) is more emphatic that it shall be only the principal Civil Court of original jurisdiction in a district and no other Court. This, therefore, leaves no room for any doubt that the expression "court" as envisaged under section 2 (e) means only the "principal Civil court of original jurisdiction" in a district which is obviously the District Court. I see no reason to construe the expression "the principal Civil Court of original jurisdiction" as envisaged under Section 2 (e) of the Act in a different sense than what has been envisaged by the two provisions under the code of Civil Procedure and the General clauses Act referred to hereinabove."

6. In case of Prashanth Spinners Ltd. Vs. Chunnilal Pranjivandass and Co., Mumbai, reported in 2003 Supreme (AP) 1435, the Hon'ble Andhra Pradesh High Court, while deciding the controversy of jurisdiction whether the Senior Civil Judge, Puttur is empowered under law to entertain the Execution Petition or not, has observed that "Both the provisions (Section 3(17) of General Clauses Act and Section 2(4) of CPC) make it manifest that a District Court in a district is the Principal Civil Court of original

jurisdiction. When the court considers the expression “the Principal Civil Court of original jurisdiction in district” appearing in the first part of clause (e) of Section 2 of the Act the definition of the word “Court” in conjunction with the meaning given in Section 2 Clause (4) of CPC and Clause (17) of Section 3 of the General Clauses Act, it is obvious that it is the court of District Judge, that is, the Principal Civil Court of original jurisdiction in a District. Not only that, the definition as given under Section 2(e) expressly excludes any other Civil Court of a grade inferior to such Principal Civil Court or any Court of Small Causes. Therefore, the last limb of Section 2(e) is more emphatic that it shall be only the Principal Civil Court of original jurisdiction in a district and no other Court. This, therefore, leaves no room for any doubt that the expression “court” as envisaged under Section 2 (e) means only the “Principal Civil Court of original jurisdiction” in a district which is obviously the District Court. There is no reason to construe the expression “the Principal Civil Court of original jurisdiction” in a district which is obviously the District Court.” In this case, the Hon’ble Andhra Pradesh High Court has held that “the entertainment of the Execution Petition by the Senior Civil Judge, at Puttur is without authority and jurisdiction. It is needless to say that the District Court at Chittoor would be the Principal Civil Court of original jurisdiction of the District.”

7. In case of M/s. Nila Chakra Construction Vs. State of Orissa, reported in 2004 Supreme (Ori) 307, the Hon’ble High Court of Orissa has observed that “From a conjoint reading of Section 2(1)(e) of the Act, Section 2(4) of the Code of Civil Procedure...it is obvious that the Court of the District Judge is the Principal Civil Court of original jurisdiction in a district. That apart the definition, as given under Section 2(1)(e) of the Act expressly excludes any other Civil Court of a grade inferior to such Principal

Civil Court or any court of Small causes. Therefore, it leaves no room for any doubt that in the present case the “Principal Civil Court of original jurisdiction” is obviously the District Judge, Phulbani and not the Civil Judge (Senior Division), Phulbani” and it is held that “the Civil Judge (Senior Division), Phulbani has no jurisdiction to entertain the applications under Section 34 and 36 of the Act. It is only the District Judge, Phulbani, as the Principal Civil Court of original jurisdiction in that district, who has jurisdiction to decide the matter.” Thus, in the said case, the Hon’ble Orissa High Court has been pleased to set aside the order of transfer of execution cases by the District Judge the Civil Judge (Senior Division), for adjudication and further ordered to transferred the said cases to the file of the District Judge for adjudication in accordance with law.

8. In case of Mahesh B. Shah Vs. C.V. Joseph, reported in 2005 Supreme (Ker) 465, the Hon’ble Kerala High Court has considered the question that which the court where an award under Section 36 of the Act can be enforced and it is observed that “Here the court does not pass a decree. The award is passed by the Arbitration Committee which has got the force of the decree. The award is to be challenged in the court as defined under the above Act” and it is held that “the court mentioned in Section 36 also to be interpreted according to Section 2(e). If that be so, the award to be executed in the District Court. Hence, the court below is correct in holding that the Munsiff’s court has no jurisdiction.”

9. In case of State of Maharashtra through Executive Engineer, Road Development Division No.111, Panvel & another Vs. Atlanta Limited, reported in AIR 2014 SC 1093 : (2014) 11 SCC 619, the Hon’ble Supreme Court has held that the superior most court of the District would be the court within the meaning of

Section 2(1)(e) of the Act to exercise the jurisdiction. It is observed that “Undoubtedly, a “principal civil court of original jurisdiction in a district” is the superior most court exercising original civil jurisdiction in the district over which its jurisdiction extends. It is clear that Section 2(1)(e) of the Arbitration Act having vested jurisdiction in the “principal civil court of original jurisdiction in a district” did not rest the choice of jurisdiction on courts subordinate to that of the District Judge.”

10. In case of State of West Bengal Vs. Associated Contractor, reported in (2015) 1 SCC 32, the Hon’ble Supreme Court, concurring with the reasoning in the case of Atlanta Limited (supra), has held that “Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 contains an exhaustive definition marking out only the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as “Court” for the purpose of Part-I of the Arbitration Act, 1996.”

11. In case of Potlabathuni Srikanth & others Vs. Shriram City Union Finance Limited & others, reported in 2015 Supreme (AP) 420, the Hon’ble Andhra Pradesh High Court, while confronting with the question as to which court will have jurisdiction to entertain and decide an application under Section 36 of the Act, has observed that “a plain and literal reading of all the aforesaid words/expressions/terms employed in section 2(e) clearly demonstrate the exact meaning of the term “court”. It means the district court is the Principal Civil Court of original jurisdiction in a district and not a civil court of a grade inferior to such Principal Civil Court. The court of Civil Judge, Senior Division may also be a civil court of original jurisdiction, but in any case it could not be termed as the Principal Civil Court of original jurisdiction in a

district.” In the said case, the Hon’ble Andhra Pradesh High Court has held that it is obvious that the learned Senior Civil Judges have no inherent jurisdiction to deal with the applications filed under Section 36 of the Act and consequently entertaining the Execution Petitions by those courts is without authority.

12. In case of South Eastern Coal Fields Ltd. Vs. M/s. Tirupati Construction District Burhar, TPC No.4 of 2018, the Hon’ble High Court of Chhatisgarh, Bilaspur has held that “In view of the proviso, to sub section (2) of Section 15 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, the execution application cannot be transferred to Commercial Court and it is also held that the District Judge has not committed any illegality while rejecting the applicant’s application for transfer of the execution case to the Commercial Court.”

13. Recently, in case of C.A. Galiakotwala & Co. Pvt. Ltd. Vs. Gopnath Cotton Pvt. Ltd. (Special Civil Application No. 4138/2018 dated 22/1/2019), our Hon’ble High Court, while deciding the question with regard to jurisdiction of the court for execution of the award under Arbitration and Conciliation Act, 1996 falling under Part-I of the Act, relying upon the judgment of the Hon’ble Supreme Court in case of Atlanta Limited (supra), has observed that the issue is no more res integra and there can be no manner of doubt that District Court is the superior most court in the District exercising original jurisdiction and, therefore, would be the Court within the meaning of Section 2(1)(e) of the Act and thus would be the competent court for execution of the award.

14. Thus, the Hon’ble Supreme Court has held in in case of Atlanta Limited (supra), that the superior most Court of the District would be the Court within the meaning of Section 2(1)(e) of the Act

to exercise the jurisdiction for enforcement of award passed by the Arbitral Tribunal under the provisions of the Act. On bare reading of Section 2(1)(e), the Court envisaged under the Act means the "the principal Civil Court of original jurisdiction in a district". Further, "District Judge" has been defined under Section 3(17) of the General Clauses Act, 1897, to mean that "District Judge shall mean the Judge of a Principal Civil Court of Original Jurisdiction. As per the provisions of Section 12(1) of the Gujarat Civil Courts Act, 2005, a Court of District Judge shall be the Principal Civil Court of original jurisdiction within the local limits of its jurisdiction. Further on bare reading of Section 2(1)(e) of the Act, it expressly excludes any other civil court of a grade inferior to such principal Civil Court or any Court of Small causes. Therefore, the last limb of Section 2(1)(e) is more emphatic that it shall be only the principal Civil Court of original jurisdiction in a district and no other Court.

15. In view of the above legal position, there is no any doubt that the expression "court" as envisaged under section 2(1) (e) means only the "principal Civil court of original jurisdiction" in a district which is obviously the District Court as the said Section itself expressly excludes any other civil court of a grade inferior to such principal Civil Court or any Court of Small causes. Since this court is not superior most court in the District and further this court is obviously the inferior court to the Principal Civil Court of original jurisdiction i.e. District Court and, therefore, as discussed above, in my view, this court is not within the meaning of Section 2(1)(e) of the Act and thus, this court is not competent for execution of the arbitration award passed by the Arbitral Tribunal and, now relying upon the latest pronouncement of our own High Court in case of C.A. Galiakotwala & Co. Pvt. Ltd. (supra), this court has no jurisdiction to entertain this Execution Petition and, therefore, the said petition is required to be returned to the petitioner for

presentation before the competent court and, hence, I hereby pass the following order :-

-: O R D E R :-

The present Execution Petition is ordered to be returned back to the petitioner under Order 7 Rule 10 of Code of Civil Procedure, 1908 for presentation of it before the competent District Court having jurisdiction.

No order as to costs.

Pronounced in the open court, on this 4th day of February, 2019.

Date : 4th February, 2019 (Rajendra Ghanshyambhai Barot)
Principal Senior Civil Judge
Modasa
Judge Code : GJ00572