

FIRM RAJASTHAN UDYOG & ORS.

A

v.

HINDUSTAN ENGINEERING & INDUSTRIES LTD.

(Civil Appeal No. 2376 of 2020)

APRIL 24, 2020

B

[UDAY UMESH LALIT AND VINEET SARAN, JJ.]

Arbitration Act, 1940 – Extent of execution of an award – 249.60 Bighas of land owned by appellant-firm was acquired in 1973 for the benefit of respondent-Company – Challenged by appellant – Rejected by High Court – Special appeal allowed by Division Bench – SLPs filed by respondent and State of Rajasthan, dismissed by Supreme Court – Agreement arrived at between the parties, as well as State of Rajasthan stating that out of 249.60 bighas of land, approx. 104 bighas would be retained by the appellant and the remaining about 145 bighas would be sold to the respondent, subject to fixation of price of land, construction etc. to be finalised through arbitration – Eventually, agreement dated 01.02.1980 entered into between parties and accordingly, the issue as to determination of price of 145 bighas of land was decided by sole arbitrator vide award dated 09.06.1985 – Award was affirmed – Appellant filed SLP – Dismissed – Respondent sought execution of award – Allowed by ADJ-I inter alia directing appellant to execute registered sale deed – Appellant filed Civil Revision Petition – During pendency thereof, respondent filed Civil Suit against appellant seeking specific performance of agreement dated. 01.02.1980 – Withdrawn – Civil Revision Petition dismissed by High Court, upholding the order of ADJ-I – Held: Award passed by the arbitrator could not be independently executed, as the same was only for fixation of price of land and not for enforcement of the agreement – Respondent could not be permitted to achieve the goal of execution of sale deed by indirectly claiming for execution of award, when the direct claim for execution of sale deed of the agreement dated. 01.02.1980 was abandoned by it by withdrawing the suit for specific performance of the agreement – Further, execution of an award can be only to the extent what has been awarded/decreed and not beyond it – Arbitrator in its award only declared the price of land

C

D

E

F

G

H

- A *and nothing more – Thus, the question of execution of a sale deed of the land at the price so declared by the arbitrator in its award, could not be directed – Judgment of High Court, quashed – Rajasthan Land Acquisition Act, 1953 – Code of Civil Procedure, 1908 – Or.XXIII, r.1(4) – Registration Act, 1908.*
- B **Allowing the appeal, the Court**
- HELD:** 1.1 The Award passed by the Arbitrator could not be independently executed, as the same was only for fixation of price of land and not for enforcement of the Agreement. The Award was only declaratory of the price of the land. As per the agreement,
- C if the respondent agreed to the price so fixed, it could then get the sale deed executed in terms of the Agreement dated 01.02.1980 as it had the option of either accepting the price and getting the sale deed executed, or not accepting the price and thus not getting the sale deed executed. This would clearly mean
- D that the Award was merely for the declaration of the price of the land, which would be subject to the agreement and it was not necessary for the respondent to get the sale deed executed at the price so determined by the Arbitrator. What was thus executable was the agreement, and not the Award. The relief granted by the Court below for execution of the sale deed in
- E terms of the Award, is thus outside the realm of law, as the Award did not contemplate the transfer of land in favour of the respondent, but only determined the price of land. Once the respondent had given up its claim of execution of sale deed in terms of the Agreement dated 01.02.1980 by withdrawing the suit for specific performance of the agreement (Civil Suit No. 60 of 1996), which was permitted to be withdrawn unconditionally on 13.02.2006, the appellant had abandoned its claim for execution of the sale deed. Thus, the respondent could not be permitted to achieve the goal of execution of sale deed by indirectly claiming for execution of Award, when the direct claim
- F for execution of sale deed of the Agreement dated 01.02.1980 had been abandoned by the respondent. [Paras 30, 32][830-F-H; 831-A, C-D]
- 1.2 Execution of an award can be only to the extent what has been awarded/decreed and not beyond the same. In the
- H present case, the Arbitrator in its Award had only declared the

price of land and nothing more. Thus, the question of execution of a sale deed of the land at the price so declared by the Arbitrator in its Award, could not be directed. Going behind the decree for doing complete justice would not mean that the entire nature of the case could be changed, and what was not awarded in favour of the respondent, could be granted by the executing court. It was only after the respondent had exercised its right to purchase the land at the price fixed by the Arbitrator that a right to enforce the Agreement could have arisen in favour of the respondent. The Award of the Arbitrator, in the present case, in itself was not a conclusive contract between the parties, which could be executed. The impugned judgment of the Rajasthan High Court passed in Civil Revision Petition No. 81 of 1985, upholding the order of the Additional District Judge dated 05.01.1995 is quashed. In terms of the interim order, the petitioner deposited Rs. 50,00,000/- with the Registry of this Court, which was directed to be placed in a short-term fixed deposit account. The amount so deposited by the appellant along with interest accrued thereon, shall be paid to the respondent, and besides this a further sum of Rs.10,00,000/- shall also be paid by the appellant to the respondent within six weeks from today, which all would be towards the cost of litigation and other expenses incurred by the respondent. With this, a quietus would be put to the long drawn litigation between the parties. [Paras 38, 44-46 and 48][833-H; 834-A; 836-C-E, G; 837-F-G]

Bhavan Vaja v. Solanki Hanuji Khodaji Mansang (1973) 2 SCC 40; Meenakshi Saxena v. ECGC Limited (2018) 7 SCC 479 : [2018] 5 SCR 421; Topanmal Chhotamal v. Kundomal Gangaram AIR 1960 SC 388 – distinguished.

State of M.P. v. Mangilal Sharma (1998) 2 SCC 510 : [1997] 6 Suppl. SCR 662; Coal Linker v. Coal India Ltd. (2009) 9 SCC 491 : [2009] 14 SCR 155; J&K Bank Ltd. v. Jagdish C. Gupta (2004) 10 SCC 568; Gurdev Singh v. Narain Singh (2007) 14 SCC 173 : [2007] 11 SCR 1093; Ramesh Kumar v. Furu Ram (2011) 8 SCC 613 : [2011] 10 SCR 453 – relied on.

Manakchand v. Manoharlal 71 Ind. App. 65 : (AIR 1944 P.C. 46) – referred to.

A	<u>Case Law Reference</u>	
	[1997] 6 Suppl. SCR 662	relied on Para 35
	[2009] 14 SCR 155	relied on Para 36
	(2004) 10 SCC 568	relied on Para 37
B	[2007] 11 SCR 1093	relied on Para 38
	[2011] 10 SCR 453	relied on Para 40
	(1973) 2 SCC 40	distinguished Para 42
	[2018] 5 SCR 421	distinguished Para 43
C	AIR 1960 SC 388	distinguished Para 43

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2376 of 2020.

D From the Judgment and Order dated 04.07.2016 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in S.B. Civil Revision Petition No. 81 of 1995.

Sudhir Chandra Agarwala, Brijender Chahar, Sr. Advs., Pradeep Kumar Bakshi, Kushara Pandit, Shashi Bhushan, Advs. for the Appellants.

E Dushyant Dave, Sr. Adv., T.S. Ahuja, Varun S. Ahuja, Ms. Neha, D.K. Thakur, Nitin Kumar Thakur, Advs. for the Respondent.

The Judgment of the Court was delivered by

VINEET SARAN, J.

F 1. Leave granted.

2. The question for consideration in the present appeal is as to whether an Arbitration Award, which determined the compensation amount for the land to be paid under agreement for sale, can be directed to be executed as a suit for specific performance of agreement, when

G the reference to the Arbitrator (as per the agreement) was only for fixation of price of land in question, and the Arbitration Award was also only with regard to the same.

H 3. Briefly stated, the facts of this case are that the appellant no.1 is a partnership firm and other appellants are its partners. The appellant firm is owner of 249.60 Bighas (approximately 100 acres) of land, which was purchased by the appellant in the year 1966. The dispute in the

present appeal relates to a period spreading over four decades. The said land was subject matter of acquisition, for which a Notification dated 13.03.1973 under Section 4 of the Rajasthan Land Acquisition Act, 1953 (for short, "Act of 1953"), was issued by the State of Rajasthan, which acquisition was for the benefit of the respondent-industry. The said notification was challenged by the appellant before the Rajasthan High Court in Writ Petition no.389 of 1974, which was dismissed by a learned Single Judge of the High Court vide judgment dated 23.07.1974. Challenging the same, the appellant filed Special Appeal No.448 of 1974 before the Division Bench of the High Court, during the pendency of which a declaration under Section 6, read with Section 17 of the Act of 1953, was issued by the State of Rajasthan on 13.09.1975. The Special Appeal challenging the said acquisition was allowed by the Division Bench of the Rajasthan High Court, vide its judgment dated 05.10.1976 and the acquisition proceedings were thus quashed. Challenging the said decision of the Rajasthan High Court, respondent-Hindustan Engineering & Industries Limited, as well as the State of Rajasthan, filed separate Special Leave Petitions (No. 4199 of 1977 and 1060 of 1978, respectively), which petitions were dismissed by this Court by order dated 29.3.1994.

4. During the pendency of the said Special Leave Petitions, on the intervention of the then Chief Minister-cum-Minister of Industries of the State of Rajasthan, an agreement was arrived at between the parties herein, as well as the State of Rajasthan, which was recorded in the Minutes of the meeting dated 27.11.1978, which was to the effect that out of the 249.60 bighas of land belonging to the appellant firm, approximately 104 bighas would be retained by the appellant and the remaining about 145 bighas would be sold to the respondent-Company, subject to the fixation of price of land, construction etc. to be finalised through Arbitration.

5. Pursuant thereto, an Agreement dated 16.02.1979 was entered into between the appellant-firm and the respondent-Company. The said Agreement dated 16.02.1979 was superseded by another Agreement dated 01.02.1980 executed between the parties.

6. The matter of determination of price of the land to be sold by the appellant to the respondent-Company, was decided by the sole Arbitrator, Justice Chandra Bhan Bhargav (Retired), vide his Award dated 09.06.1985. In the said Award, the Arbitrator mentioned that the parties had "*referred their dispute regarding determination of*

A

B

C

D

E

F

G

H

- A *compensation of land to me as Sole Arbitrator*". The salient feature decided in the said Award was that the market value of the land to be transferred in favour of the respondent-Company would be determined as on 27.11.1978, which was the date on which the parties agreed to transfer the land. In pursuance thereof, the total compensation amount for the land in question was determined by the Arbitrator as
- B Rs.12,18,700/- . The said Award was filed before the Additional District Judge-1, Bharatpur on 10.06.1985. After the Award was passed, the respondent-Company, vide its communication dated 15.07.1985 conveyed its acceptance of the Award to the appellant by registered post. The same was also conveyed to the Arbitrator vide communication dated
- C 18.07.1985.

- 7. The appellant then filed its objections to the Award before the Additional District Judge-1, Bharatpur and vide order dated 22.11.1988, the objections were allowed and the matter was remanded back to the Sole Arbitrator. Challenging the said order dated 22.11.1988, the
- D respondent-Company filed Civil Revision Petition No. 163 of 1990 before the Rajasthan High Court, which Revision Petition was allowed on 01.12.1993 and the Award dated 09.06.1985 passed by the Arbitrator was affirmed and made Rule of the Court. Challenging the said order of the Rajasthan High Court, the appellant had filed the Special Leave Petition No.3684 of 1994, which was dismissed by this Court on 29.03.1994. The Award thus attained finality.

- 8. It was thereafter that on 16.05.1994, the respondent-Company filed an application for execution of the Award. In the said application, it was stated that "*according to the directions contained in the Award of the Arbitrator, the petitioner Hindustan Corporation Limited, is required to furnish stamp paper to the respondent for execution of the sale deed _____*". The prayer made in the said application was that the appellants herein be directed to take steps and execute the sale deed on the stamp papers filed by the respondent herein and thereafter produce the sale deed before the Sub Registrar for its registration. In
- G the alternative, it was prayed that if the appellants herein failed to execute the sale deed, the same may be executed by the Court. In response to the same, the appellants filed its reply on 19.7.1994 opposing the execution application and specially denied that any such direction for the execution of the sale deed, as has been made in the prayer of the application by the respondent herein, was made in the Award of the Arbitrator.
- H

9. By judgment and order dated 05.01.1995, the Additional District Judge-I, Bharatpur, exercising its power under Section 17 of the Arbitration Act, 1940, allowed the application of the respondent herein and directed the appellants to execute and register the sale deed and hand over possession of the land in question to the respondent herein. Aggrieved by the judgment of the Additional District Judge-I, Bharatpur, dated 05.01.1995, the appellants filed Civil Revision Petition No. 81 of 1995 before the Rajasthan High Court.

10. During the pendency of the Civil Revision Petition filed by the appellants, the respondent-Company filed Civil Suit No. 60 of 1996 against the appellants seeking specific performance of the Agreement dated 01.02.1980 between the parties i.e., the appellants and the respondent-Company. The Civil Revision Petition No. 81 of 1995 filed by the appellants remained pending before the Rajasthan High Court, when the respondent-Company had filed the Civil Suit No. 60 of 1996. Even when the Civil Suit of the appellants was not decided, the respondent - Company sought to withdraw the Civil Suit No. 60 of 1996 vide its application dated 06.02.2006. Pursuant thereto, the Civil Suit No. 60 of 1996 seeking specific performance of the Agreement dated 01.02.1980 was permitted to be unconditionally withdrawn by the respondent-Company vide order dated 13.02.2006 passed by the Trial Court.

11. It was then, after more than a decade of withdrawal of the suit by the respondent – Company, that the Civil Revision Petition 81 of 1995, challenging the order of the Additional District Judge-I dated 05.01.1995 was dismissed by the Rajasthan High Court by a detailed order dated 04.07.2016. The High Court opined that the Civil Suit No. 60 of 1996 was filed by the respondent-Company as a matter of abundant precaution but was later withdrawn and mere filing of the Civil Suit would not amount to admission by the respondent-Company that the Award and subsequent order based on it, were not suitable and enforceable. Upholding the order of the Additional District Judge-I dated 05.01.1995, the Civil Revision Petition was dismissed by the Rajasthan High Court. Aggrieved by the said judgment dated 04.07.2016, this appeal has been filed by way of Special Leave Petition.

12. The submission of Mr. Sudhir Chandra Agarwala, learned Senior Counsel for the appellants is that the Executing Court has travelled beyond the Award while passing the order dated 05.01.1995, inasmuch as by the Arbitration Award dated 09.06.1985 only price of the land in

- A question was determined by the Arbitrator and it did not declare, create or confer any right, title or interest in the land in question in favour of the respondent – Company. It was contended that by the Agreement dated 01.02.1980, the appellants had agreed to sell their land to the respondent-Company at the rate to be fixed in future by an Arbitrator,
 - B and the respondent-Company was given an option in the agreement to be exercised within a period of 45 days of the fixing of the price by the Arbitrator, either to purchase or decline to purchase the land. Thus, according to the learned Senior Counsel, the Agreement dated 01.02.1980 was to result in a concluded contract only after the respondent-Company had either given its consent to purchase the land at the price fixed by the
 - C Arbitrator or declined to do so. It was thus contended that the respondent had not acquired any enforceable right even at the time of the passing of the Award, as there did not exist any concluded contract between the parties even at the time of the passing of the Award, as the contractual obligations of the parties were to arise subsequent to the passing of the
 - D Award and only after the respondent-Company had exercised its option of purchasing the land at the price fixed by the Arbitrator. Learned Senior Counsel contended that the Executing Court could not have gone behind or beyond the Award, and thus could not have considered the Agreement dated 01.02.1980 entered into between the parties. The scope of reference to the Arbitrator being only with regard to determination of
 - E the price of land at which it may be sold by the appellants to the respondent-Company, thus in execution of the Award, no direction for execution of the sale deed by the appellants in favour of the respondent-Company in pursuance of the Agreement dated 01.02.1980 could have been issued by Executing Court, especially when the suit for specific performance of the Agreement dated 01.02.1980 had been withdrawn
 - F by the respondent-Company on 13.02.2006, which was without any condition.
13. Learned Senior Counsel for the appellants further submitted that any instrument or award creating right, title or interest in an immoveable property would be required to be compulsorily registered under Registration Act, and the same having not been registered, could not be executable. It was contended that neither the Agreement dated 01.02.1980 nor the Award dated 09.06.1985, was registered in the present case. It was vehemently urged that when the respondent-Company was barred for seeking execution of the Agreement dated 01.02.1980
- G (which was not registered) and also when the Civil Suit No. 60 of 1996

filed by the respondent-Company for specific performance dated 01.02.1980 was dismissed as unconditionally withdrawn on an application filed under Order XXXIII Rule 1 Code of Civil Procedure by the respondent on 06.02.2006, the execution of the said agreement dated 01.02.1980 (while deciding the application under Section 17 of the Arbitration Act, 1940) in execution of the Award determining the price of the land could not have been passed. In the alternative, it was contended that the Agreement dated 01.02.1980 was not enforceable also because the same had been obtained by undue influence.

14. With regard to the price of land as determined in the Award of the Arbitrator, on merits, it was submitted that the price which was fixed as on 27.11.1978, and not the date on which the sale deed was to be executed. Since the price fixed was a meagre amount of Rs. 12.18 lacs for about 145 bighas (about 55-60 acres) of land, the fixation of the price under the Award was highly unreasonable as the present value of the land would be in crores. In the end, learned Senior Counsel for the appellants submitted that as proposed and recorded in this Court's Order dated 23.02.2007 in this appeal, the appellants were ready to compensate the respondent-Company towards costs of litigation and other expenses incurred by it, which the appellants are still ready and willing to pay. While concluding his submission, learned Senior Counsel reiterated that the Executing Court had grossly erred and exceeded its jurisdiction in travelling beyond the Award, which was only for fixation of the price of land and not execution of sale deed. It was thus urged that the orders dated 05.01.1985 passed by the Executing Court and the order dated 04.07.2016 passed by the Rajasthan High Court in Civil Revision Petition, be quashed.

15. Per contra Shri Dushyant Dave and Shri Sidharth Dave, learned Senior Counsel appearing for the respondent-Company contended that this is not a case where the Court should exercise its discretionary jurisdiction under Article 136 of the Constitution as the appellants had agreed to sell the land in question in terms of the Agreement dated 01.02.1980, at the price to be fixed by the Arbitrator, and once the Arbitrator had fixed price of land, the execution of the same, as directed by the Executing Court, was perfectly justified. It was the solemn agreement entered into between the parties in the year 1980, which was sought to be executed after the passing of the Award of the Arbitrator on 09.06.1985 and by directing execution of sale deed, the Executing

- A Court has done substantial justice between the parties. It has been contended that the appellants had never filed any suit for declaration that the Agreement dated 01.02.1980 was void by virtue of Section 23 of the Indian Contract Act, 1872, nor did it ever raise the challenge to the validity and legality of the agreement while assailing the Award or while resisting the execution proceedings. Learned Senior Counsel submitted that it was wrong to allege that the agreement entered into by the appellants was purportedly under coercion. The agreement always remained binding between the parties and was executable after the determination of price of land in question by the Arbitrator, and the appellants could not seek to wriggle out of the same on any count. The quantum of price of the land as fixed by the Arbitrator could not now be reagitated on the ground that the current market value of the land is very high. It was then contended that the power of the Executing Court was very wide and it was its duty to give effect to the Award of the Arbitrator. It was thus urged that the scope and power of the Executing Court has been held to be wide enough to interpret the Award, the agreement upon which the Award is based, and also the pleadings. Thus, while considering the above, the Executing Court was justified in ordering the execution of the agreement and by having done so, it was not only justified and suitable in the facts of the present case, but the Court has done complete justice between the parties.
- E 16. As regards the filing the Civil Suit No. 60 of 1996 for specific performance of the Agreement dated 01.02.1980 by the respondent-Company, learned Senior Counsel for the respondent - Company has submitted that on receiving legal advice, the said Civil Suit No. 60 of 1996 was withdrawn on 13.02.2006, as the petition for execution of the Award was already pending. It has been submitted that the contention that filing of the Civil Suit No. 60 of 1996 for specific performance of the Agreement dated 01.02.1980 tantamounts to admission on the part of the respondent-Company that the Award did not envisage direction for execution of sale deed and handing over the possession of the land in question, is wholly misconceived, as in any case, there cannot be any admission against the law. Learned Senior Counsel for the respondent thus contended that the appeal is devoid of merits, and deserves to be dismissed.
- H 17. In the end, with regard to the order of this Court dated 23.02.2017 passed in this appeal, giving suggestion to the respondent-

Company that whether the respondent- Company would be satisfied if Rs.60 lacs was paid to it towards cost of litigation and other expenses made by it and put the controversy to the end, learned Senior Counsel for the respondent suggested that the respondent-Company would be, on the other hand, agreeable to deposit Rs.60 lacs to be paid to the appellants for putting a quietus to the litigation.

18. We have heard learned Senior Counsel for the parties at length and have perused the record.

19. Learned Senior Counsel for the parties have, in support of their respective submissions, relied on several decisions rendered by this Court, which shall be considered while dealing with their submissions.

20. The facts of this case, relevant for the purpose of this appeal, may be summarised as follows:

(a) In 1966, the appellant firm purchased 249.60 bighas (app. 100 acres) of land.

(b) On 13.03.1973, a Notification under Section 4 of the Rajasthan Land Acquisition Act, 1953 was issued for acquisition of said land for benefit of respondent-industry.

(c) On 23.07.1974, Rajasthan High Court dismissed the Writ Petition of the appellant herein, challenging the aforesaid acquisition.

(d) On 13.09.1975, a declaration under Section 6 of the Act of 1953 issued by the State of Rajasthan.

(e) On 05.10.1976, a Special Appeal against the order dated 23.07.1974 passed in Writ was allowed by the Division Bench of the Rajasthan High Court and the acquisition proceedings were quashed.

(f) In 1977/1978, Special Leave Petitions challenging the judgment dated 05.10.1976 were filed by respondent and State of Rajasthan, which petitions were dismissed by this Court on 29.03.1994.

(g) On 27.11.1978, on the intervention of the Chief Minister of the State of Rajasthan, an agreement was arrived at to the effect that out of 249.60 bighas, 104 bighas would be retained by the appellant herein and 145 bighas be sold to the respondent herein, subject to price to be fixed through Arbitration.

- A (h) On 16.02.1979, an agreement was entered into between the appellant and respondent herein.
- (i) On 01.02.1980, a fresh agreement was entered into between the parties superseding the earlier agreement dated 16.02.1979, whereby it was provided that the price of about 145 bighas of land to be sold to the respondent would be determined through arbitration.
- B (j) On 09.06.1985, an award passed by the Arbitrator fixing price of 145 bighas of land (as on 27.11.1978) to be Rs.12,18,700, which would be the price payable for the land to be sold to the respondent.
- C (k) Appellant herein filed objections to the award before the ADJ-1, Bharatpur.
- (l) On 22.11.1988, ADJ-1, Bharatpur allowed the objections and remanded the matter back to the Arbitrator.
- D (m) Challenging the said order, respondent filed Civil Revision Petition No. 163 of 1993 before the Rajasthan High Court.
- (n) On 01.12.1993, Civil Revision Petition was allowed by the Rajasthan High Court and the award dated 09.06.1985, was affirmed and made Rule of the Court.
- E (o) On 29.03.1994, the Special Leave Petition filed by the appellant against the order dated 01.12.1993 was dismissed by this Court and the award attained finality.
- F (p) On 16.05.1994, the respondent filed an application under Section 17 of the Arbitration Act for execution of the award dated 09.06.1985.
- (q) On 06.07.1994, the appellant filed objections to the application for execution of the award.
- G (r) On 05.01.1995, ADJ-1 Bharatpur allowed the application of the respondent and directed the appellant to execute a registered sale deed and hand over the possession of land in question to the respondent.
- (s) In 1995, the appellant filed Civil Revision Petition No. 81 of 1995 before the Rajasthan High Court, challenging the order

H

of the ADJ-1 Bharatpur dated 05.01.1995 which remained A
pending till 04.07.2016.

- (t) On 29.11.1996, the respondent filed Civil Suit No. 60 of 1996 against appellant seeking specific performance of Agreement dated 01.02.1980.
- (u) On 06.02.2006, the respondent filed an application to withdraw its Civil Suit No. 60 of 1996. B
- (v) On 13.02.2006, Civil Suit No. 60 of 1996 allowed to be withdrawn unconditionally.
- (w) On 04.07.2016, impugned order passed by the Rajasthan High Court in Civil Revision Petition No. 81 of 1995 filed by the respondent, whereby order of ADJ-1, Bharatpur dated 05.01.1985 was upheld. C
- (x) On 17.08.2016, the appellant filed this Appeal, challenging the judgment dated 04.07.2016. D
- (y) On 02.09.2016, this Court passed Stay Order in this Appeal on deposit of Rs.50,00,000/- by the appellant in the Registry of this Court.
- (z) On 23.02.2017, this Court recorded a suggestion in the order that whether the respondent would be satisfied to take Rs.60,00,000/- towards the cost of litigation and other expenses and put the controversy to an end. E

21. The anchor sheet of the case of the respondent is the Agreement dated 01.02.1980 between the parties (i.e. appellant and respondent) as well as the Arbitration award dated 09.06.1985. F

22. The relevant portion of the Agreement dated 01.02.1980 (superseding the earlier Agreement dated 16.02.1979) is reproduced below:

“.....
AND WHEREAS in pursuance of the aforementioned agreement for arbitration, the dispute was agreed to be referred to arbitration by Hon'ble ex-chief Justice Mr. B.P. Beri for determining the quantum of compensation to be paid to Party No.2 in respect of land under acquisition in G

H

A *accordance with the provisions of the Rajasthan Land Acquisition Act.*

B
AND WHEREAS in the course of arbitration proceedings the parties with a view to accommodate each other have agreed to modify the aforementioned agreement to refer the dispute for arbitration in the following manner:-

- 1.....
2. *That Party No.1 Hindustan Development Corporation Ltd. and General Engineering Works expressly abandon the determination of the price by the arbitrator of the area measuring approximately 104 bighas marked, A, B, C, D, E, F, G, H in plain No.1 dated 14.01.1977 and all claims regarding acquisition thereof before all authorities shall be deemed to have been abandoned by Party No.1 in respect of the land marked A,B,C,D,E,F,G,H of plan No.1 dated 14.01.1977. The Party No.1 shall not claim the aforesaid land A,B,C,D,E,F,G,H by way of acquisition or otherwise in future.*
3. *That after excluding portion marked, A,B,C,D,E,F,G,H the remaining land under acquisition measures about 145 bighas in "L" shape shown in green colour marked as A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P,Q,R,S,T,U,V,W,X,Y, in the aforesaid plan.*
4. *That the arbitrator shall determine compensation for the land referred to in para No.3 above.*
- 5.....
- 6.....
- 7.....
- G 8. *That the amount of compensation determined by the arbitrator shall be binding on the parties. Provided that in case such amount of compensation is not acceptable to party No.1 it shall have the option of not accepting the same and will not in whatsoever manner be entitled to take the aforementioned land.*
- H

9. In case the Party No.1 in exercise of the option reserved to it in para 8 accepts the amount of compensation determined by the arbitrator, it shall within 45 days from the date of the receipt of the copy of the Award from the Arbitrator communicate to the party No.2 as well as to the Arbitrator the exercise of its option. The communication to the arbitrator will be considered as sufficient communication, that the Party No.1 has chosen to exercise its option to purchase the area of the land marked as A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y in the plan dated 14.01.77. The Party No.2 will be bound to execute the sale deed (the draft whereof is enclosed to this deed of arbitration) within thirty days of the delivery of the stamped deed of transfer, by the Party No.1 to the Party No.2 (The stamp duty and registration charges shall be borne by Party No.1) and the consideration of the sale deed shall be paid by the Party No.1 to the Party No.2 in the presence of the sub-Registrar, at Bharatpur at the time of registration. The Party No.2 shall hand over possession simultaneously to party No.1 of the aforesaid land at the time of registration.

10. That the award of the arbitrator shall be conclusive and binding upon both the parties aforesaid and any proceedings pending anywhere at any stage with regard to the matter of the acquisition of the said land shall be deemed to have been propped for all practical purposes.

11

12

13 "

(emphasis supplied)

23. Salient features of the Agreement dated 01.02.1980 are, thus, as under:

- Reference to be made to the Arbitrator was for determining the quantum of compensation for the land (145 bighas) to be paid by the respondent.
- Respondent-company was to abandon its claim of app. 104 bighas of land in favour of the appellant-firm.

- A
 - Arbitrator was to determine compensation of the 145 bighas of land (meant to be transferred by the appellant to the respondent), which was to be binding on the parties in all respects.
 - If compensation was not acceptable to the respondent-company, it shall have an option of not accepting the same.
 - B
 - If respondent accepted the same, it was to communicate to the appellant in 45 days, after which the appellant would be bound to execute the sale deed within 30 days of the delivery of the stamp deeds of transfer by the respondent to the appellant, and the consideration was to be paid before the Sub-Registrar at the time of registration, and the appellant was to simultaneously deliver the possession.
 - C

(Note: In the earlier agreement dated 16.02.1979, the provision was for the respondent to deposit the compensation amount in the bank account of the appellant, if the appellant was unwilling to accept the same, which was to be considered as valid payment.)

24. In the award dated 09.06.1985 passed by the sole Arbitrator, in the opening paragraph it was observed that by the Agreement dated 01.02.1980, the parties (i.e. appellant and respondent) had “*referred their dispute regarding determination of compensation of land to me as Sole Arbitrator*”. While determining the question of price of land the Arbitrator held that “*I accordingly hold that the market value of the land shall be determined (as) on 27.11.1978*”. This was decided on the basis that the initial Minutes of the meeting prior to the agreement were recorded on the said date i.e. 27.11.1978. The operative portion of the said award reads as under:

“As a result of the above findings, Party No. 2 (i.e. respondent herein) is entitled to the following amounts as compensation from Party No. 1 (i.e. appellant herein).

- | | |
|---|---|
| G | <i>Construction for land mentioned in Para 3 of Ex. A.1 and shown in green colour in Ex. A.2;</i> |
| | (i) <i>95 Bighas of land @ Rs.9,000/- per Bigha</i> ...Rs.8,55,000.00 |
| | (ii) <i>50 Bighas of land @ Rs.4,500/- per Bigha</i> ...Rs.2,25,000.00 |
| H | |

		A
	<i>Rs. 10,80,000.00</i>	
(iii) Solatiam (illegible) on the above Amount.	...Rs. 1,08,000.00	
	<i>Rs. 11,88,000.00</i>	
(iv) Compensation for the compound wall	...Rs. 20,700.00	B
(v) Compensation for the trees.	...Rs. 10,000.00	
Total	<i>Rs. 12,18,700.00</i>	C

*(Rupees Twelve Lakhs Eighteen Thousand Seven Hundred).
Announced and signed in the presence of the parties".*

25. It is noteworthy that the reference to Arbitrator was only with regard to the determination of price of land of 145 bighas or the compensation to be awarded to the appellant by the respondent for the said land, which is clear from the very observation of the Arbitrator in award that the parties had "*referred their dispute regarding determination of compensation of land to me as Sole Arbitrator*", meaning thereby the Arbitrator was to declare the price of land/ compensation to be paid for the land by the respondent to the appellant, and nothing more.

26. In the aforesaid facts of this case, the only question which arise for determination by this Court is as to whether the reference to the Arbitrator, in terms of the Agreement dated 01.02.1980, was merely for fixation of price of land to be sold by the appellant to the respondent in terms of the agreement, and if that be so, could a direction to execute the sale deed have been issued vide order dated 04.07.2016, even though the Civil Suit No. 60 of 1996 seeking specific performance of Agreement dated 01.02.1980 filed by the respondent was unconditionally withdrawn by the respondent on 13.02.2006.

27. In our considered opinion, in the facts of the present case, the answer to the same would be an emphatic "no".

28. There cannot be any doubt that in terms of the Agreement dated 01.02.1980, the Arbitrator was authorized to only fix the price of the land which was to be sold by the appellant to the respondent as per

- A the aforesaid agreement. In the said Agreement dated 01.02.1980, there was an option given to the respondent to either accept the price fixed by the Arbitrator and go ahead with the sale deed, or to refuse to get the sale deed executed at the price fixed by the Arbitrator. Thus, there was no certainty that the sale was to be executed at the price fixed by the Arbitrator. As such, it was the Agreement dated 01.02.1980 alone which could have been executed at the price fixed by the Arbitrator, in case the respondent agreed to the same.

29. After the passing of the Award by the Arbitrator dated 09.06.1985, which was later confirmed and made Rule of the Court by C the Rajasthan High Court on 01.12.1993 and the Special Leave Petition filed by the appellant against the said order was dismissed on 29.03.1994 and the Award had attained finality, the respondent filed a Civil Suit No.60 of 1996 for specific performance of the Agreement dated 01.02.1980. It was this suit for specific performance of agreement under which a direction could have been issued for execution of the sale deed D in terms of the Agreement dated 01.02.1980. However, the same was unconditionally withdrawn on 13.02.2006, on an application filed by the respondent on 06.02.2006. With the withdrawal of such suit for specific performance, the matter with regard to the execution of the sale deed in terms of the Agreement dated 01.02.1980 came to an end. The effect of withdrawing Civil Suit No. 60 of 1996 would be that the plaintiff therein E (respondent herein) had abandoned its claim of execution of the sale deed in terms of the Agreement dated 01.02.1980, which would be clear from the provisions of Rule 1(4) of Order XXIII CPC.

30. From the facts of this case, it is clear that the Award passed F by the Arbitrator could not be independently executed, as the same was only for fixation of price of land and not for enforcement of the Agreement. The Award was only declaratory of the price of the land. As per the agreement, if the respondent agreed to the price so fixed, it could then get the sale deed executed in terms of the Agreement dated 01.02.1980 as it had the option of either accepting the price and getting G the sale deed executed, or not accepting the price and thus not getting the sale deed executed. This would clearly mean that the Award was merely for the declaration of the price of the land, which would be subject to the agreement and it was not necessary for the respondent to get the sale deed executed at the price so determined by the Arbitrator. What was thus executable was the agreement, and not the Award. The relief H

granted by the Court below for execution of the sale deed in terms of the Award, is thus outside the realm of law, as the Award did not contemplate the transfer of land in favour of the respondent, but only determined the price of land. A

31. It is also noteworthy that the application for execution of Award filed on 16.05.1994 before the Additional District Judge-I, Bharatpur did not provide for any provision of law under which the same was filed. Though, in paragraph 2 of the said application, it was mentioned that the Award of the Arbitrator contained a direction for execution of the Award, but in fact there was no such direction issued in the Award, in which the Arbitrator had only fixed the price of the land and nothing more. B

32. In our view, once the respondent had given up its claim of execution of sale deed in terms of the Agreement dated 01.02.1980 by withdrawing the suit for specific performance of the agreement (Civil Suit No. 60 of 1996), which was permitted to be withdrawn unconditionally on 13.02.2006, the appellant had abandoned its claim for execution of the sale deed. Thus, in our opinion, the respondent could not be permitted to achieve the goal of execution of sale deed by indirectly claiming for execution of Award, when the direct claim for execution of sale deed of the Agreement dated 01.02.1980 had been abandoned by the respondent. C

33. At the cost of repetition, it may be mentioned that the specific performance could only be of the Agreement dated 01.02.1980 and not of the Award dated 09.06.1985. Even the operative portion of the Award also does not give any direction for execution of the sale deed. It was after the passing of the Award that the respondent could have fallen back on the agreement for execution of the sale deed, which respondent did by filing the suit for specific performance, but abandoned such claim by withdrawing the suit unconditionally. E F

34. The submission of the learned Senior Counsel for the respondent that substantial justice has been done by the Court by directing execution of the sale deed, is not worthy of acceptance. In a Civil Case, the Courts have to follow the law in letter and spirit, which has not been done in the present case, as in law the sale deed could have been directed to be executed in execution of the Agreement dated 01.02.1980 and not the Award, which was only a declaration, fixing the price of land. G

- A 35. This Court, while considering the question of execution of a decree which only declared the rights of the decree holder and nothing more, has in the case of *State of M.P. vs. Mangilal Sharma* (1998) 2 SCC 510 held as follows:
- B “6. *A declaratory decree merely declares the right of the decree-holder vis-à-vis the judgment-debtor and does not in terms direct the judgment-debtor to do or refrain from doing any particular act or thing. Since in the present case decree does not direct reinstatement or payment of arrears of salary the executing court could not issue any process for the purpose as that would be going outside or beyond the decree. The respondent as a decree-holder was free to seek his remedy for arrears of salary in the suit for declaration. The executing court has no jurisdiction to direct payment of salary or grant any other consequential relief which does not flow directly and necessarily from the declaratory decree.....”*
- C 36. In *Coal Linker vs. Coal India Ltd.* (2009) 9 SCC 491, where this Court was considering an Award of an Arbitrator whereby interest was awarded for certain period but not for other period, and executing court had awarded interest for such period also, this Court held as under:
- D “16. *Admittedly, in the instant case interest has been granted by the arbitrator in the award for the first two periods. But interest has not been granted by the arbitrator in the award for the last period. As noted above, the appellant awardee herein, filed an application under Section 17 of the Act for pronouncing a judgment in terms of the award. So there is no scope for the executing court to go beyond the award and grant interest for the post-award period which was not granted in the award. Here the executing court has gone beyond the award and thus had gone beyond its jurisdiction and passed a decree which thus becomes a nullity.”*
- E 37. While considering the power of the executing court for granting promotion which was not part of the decree, this Court in the case of *J&K Bank Ltd. Vs. Jagdish C. Gupta* (2004) 10 SCC 568 held as under:
- F 38. While considering the power of the executing court for granting promotion which was not part of the decree, this Court in the case of *J&K Bank Ltd. Vs. Jagdish C. Gupta* (2004) 10 SCC 568 held as under:
- G 39. While considering the power of the executing court for granting promotion which was not part of the decree, this Court in the case of *J&K Bank Ltd. Vs. Jagdish C. Gupta* (2004) 10 SCC 568 held as under:
- H 40. While considering the power of the executing court for granting promotion which was not part of the decree, this Court in the case of *J&K Bank Ltd. Vs. Jagdish C. Gupta* (2004) 10 SCC 568 held as under:

"2. The short question involved in the case is whether the executing court could go beyond the decree by directing that the respondent be promoted to the post of Chief Manager. It is no more res integra that the executing court has no jurisdiction to go behind the decree. It is not disputed that the decree did not contain any direction to promote the respondent to the post of Chief Manager. Under such circumstances, we are of the view that the executing court as well as the High Court fell in error in issuing directions in execution case that the respondent be promoted to the post of Chief Manager. The order under challenge, therefore, deserves to be set aside. We order accordingly. The appeal is allowed. There shall be no order as to costs."

38. Similarly, in the case of **Gurdev Singh vs. Narain Singh** (2007) 14 SCC 173, where the question of execution of a decree prayed for was beyond what was decreed, this Court held as follows:

"7. We agree with the said contention. A bare perusal of the decree in question would clearly demonstrate that the appellant herein was restrained by a permanent injunction from planting any tree on Khasra No. 17/2 on the one side and Khasra Nos. 218/1 and 17/1 on the other side. The decree did not speak of removal of any tree which had already been planted. The executing court, as noticed hereinbefore, while interpreting the said decree proceeded completely on a wrong premise to hold that there should not be any tree within two karams on either side of the common boundary of the parties. Such an interpretation evidently is not in consonance with the tenor of the decree. A jurisdictional error, thus, has been committed by the High Court.

8. It is well settled that executing court cannot go behind the decree. As the decree did not clothe the decree-holder to pray for execution of the decree by way of removal of the trees, the same could not have been directed by the learned executing court in the name of construing the spirit of the decree under execution."

It is thus clear that execution of an award can be only to the extent what has been awarded/decreed and not beyond the same. In the

H

- A present case, the Arbitrator in its Award had only declared the price of land and nothing more. Thus, the question of execution of a sale deed of the land at the price so declared by the Arbitrator in its Award, could not be directed.

39. Even otherwise, there cannot be any equity in favour of the respondent, as neither any amount was paid nor deposited by the respondent. No earnest money was also paid by the respondent. It was only the stamp paper worth Rs.1,21,870/-, which was deposited by the respondent along with a deposit of Rs.5,500/- in Court at the time of filing of the application on 16.05.1994 for execution of the Award.

C 40. It is also noteworthy that neither the Agreement dated 01.02.1980 nor the Award dated 09.06.1985 had been registered under the Registration Act, 1908. This Court in the case of **Ramesh Kumar vs. Furu Ram** (2011) 8 SCC 613 had considered the effect of non-registration of an Arbitration Award relating to right, title and interest in an immovable property and held as under:

D “46. *Thus the awards are clearly documents which purport or operate to create and declare a right, title or interest in an immovable property of the value of more than Rs. 100 which was not the subject of the dispute or reference to arbitration. Therefore, the awards were compulsorily registrable. If they were not registered, they could not be acted upon under Section 49 of the Registration Act, 1908 nor could a decree be passed in terms of such unregistered awards.*”

F 41. Although, in the present case, the Award did not relate to right, title or interest in an immovable property and was only for determination of the price of land, yet if the execution court was to treat the same for execution of sale deed of land (immovable property), it ought to have considered the impact of non-registration of such Award, which has not been done in the present case.

G 42. In support of his contention that the powers of the executing Court are wide enough, learned Senior Counsel for the respondent has relied on the decision of this Court in the case of **Bhavan Vaja vs Solanki Hanuji Khodaji Mansang** (1973) 2 SCC 40, wherein it has been held that:

H

A

"20.....For Construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree the Court, often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the execution Court and if that Court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it....."

B

The question in the present case is different, which is as to whether the execution of an award could have been directed in the absence of there being any direction in the Award for execution of the sale deed, which direction could have been given only in the case of execution of the Agreement dated 01.02.1980. The question under consideration in the aforesaid case was that of a decree which was under execution, whereas there was no such decree passed by any Court which was to be executed in the present case. The facts of the present case are thus distinguishable from those in the aforesaid case.

C

D

43. Learned Senior Counsel for the respondent has also relied on the decisions of this Court rendered in *Meenakshi Saxena vs ECGC Limited* (2018) 7 SCC 479 as well as *Topanmal Chhotamal vs Kundomal Gangaram* AIR 1960 SC 388, which in our opinion are both distinguishable on facts. In the case of *Meenakshi Saxena* (*supra*), there was a clear verdict of the Consumer Court, which was to be executed by the Court. In paragraph 17 of the said judgment, this Court held that "*the whole purpose of the execution proceedings is to enforce the verdict of the Court. Executing court while executing the decree is only concerned with the execution part of it but nothing else. The court has to take the judgment in its face value.*" In the case of *Topanmal* (*supra*), the decree under consideration was against the partnership firm and was to be executed against the personal assets of the partners. In paragraph 4 of the said judgment, this Court held that "*at the worst the decree can be said to be ambiguous. In such a case it is the duty of the executing Court to construe the decree. For the purpose of interpreting a decree, when its terms are ambiguous, the Court would certainly be entitled to look into the pleadings and the judgment: see Manakchand v. Manoharlal*, 71 Ind. App. 65: (AIR 1944 P.C. 46). *In the plaint in the Agra suit, Suit*

E

F

G

H

- A *No. 205 of 1949, not only relief was asked for against the firm, but also a personal decree was claimed against defendants 2 to 6.*" In the present case, the Court is concerned about execution of the Award and not the Agreement. In the Award passed by the Arbitrator, the price of land was fixed, which was to be executed in terms of the Agreement dated 01.02.1980, and that too at the option of the respondent. Thus, there could be no direction to execute the sale deed at the price fixed in the Award, that too in a petition for execution of the Award, without there being any prayer for execution of the Agreement dated 01.02.1980.

44. Going behind the decree for doing complete justice would not mean that the entire nature of the case could be changed, and what was not awarded in favour of the respondent, could be granted by the executing court. It was only after the respondent had exercised its right to purchase the land at the price fixed by the Arbitrator that a right to enforce the Agreement could have arisen in favour of the respondent. The Award of the Arbitrator, in the present case, in itself was not a conclusive contract between the parties, which could be executed.
- C
 - D

45. For the reason given hereinabove, we are of the definite opinion that the impugned judgment of the Rajasthan High Court dated 04.07.2016 passed in Civil Revision Petition No. 81 of 1985, upholding the order of the Additional District Judge dated 05.01.1995 is liable to be quashed, and is hereby quashed, and this appeal deserves to be allowed.
- E

46. Now what is to be next considered by this Court is as to whether any compensation is to be awarded in favour of the respondent, keeping in view the interim order passed by this Court on 02.09.2016, which is reproduced below:

- F "*Issue notice returnable within eight weeks.*

There shall be stay of operation of the impugned judgment subject to the petitioner depositing a sum of Rs.50,00,000/- (Rupees fifty lac only) before the Registry of this Court within six weeks hence."

- G In terms of the said order, the petitioner has deposited Rs.50,00,000/- with the Registry of this Court, which has been directed to be placed in a short-term fixed deposit account.

47. Then on, 23.02.2017, this Court passed the following order:

- H "*In the course of hearing, it was put to Mr. Gopal Jain, learned senior counsel for the respondent, whether by virtue*

of the award passed by the learned Arbitrator, could the respondent become the owner of the property, more so when the award has not been registered as per the Stamps Act. Additionally, it was also put to him whether when the suit for specific performance of the contract was withdrawn, could he get right, title and interest on the basis of the award passed by the Arbitrator, who had entered into reference on the basis of intervention by an authority who wanted that the parties should negotiate and arrive at a settlement.

Be it noted, prima facie, the award relates to quantification of the price and, therefore, the issue that would arise for consideration is whether determination of price creates any right, title and interest in the respondent. Apart from all these questions, a suggestion was given to the learned counsel for the respondent as to whether he would, apart from money he claims to have deposited before the District Court, be satisfied to take Rs.60,00,000/- for the cost of litigation and other expenses made by him and put the controversy to an end.”

(emphasis supplied)

When the aforesaid facts were put to the learned Counsel for the parties, Mr. Sudhir Chandra Agarwala learned Senior Counsel appearing for the petitioner agreed to pay such amount towards cost of litigation and other expenses to the respondent, as may be fixed/determined by this Court.

48. In our view, in the aforesaid facts and circumstances of this case, we are of the opinion that the amount so deposited by the appellant, in terms of the interim orders passed by this Court, along with interest accrued thereon, shall be paid to the respondent, and besides this a further sum of Rs.10,00,000/- shall also be paid by the appellant to the respondent within six weeks from today, which all would be towards the cost of litigation and other expenses incurred by the respondent. With this, a quietus would be put to the long drawn litigation between the parties.

49. Accordingly, this appeal stands allowed in terms of the directions given hereinabove.