

Continental Engineering Corporation vs Sugesan Transport Pvt. Ltd on 10 January, 2022

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI

OMP (ENF.) (COMM.) 38/2021, EX.APPL.(OS) 981/2021,
EX.APPL.(OS) 1034/2021 and EX.APPL.(OS) 1367/2021

CONTINENTAL ENGINEERING CORPORATION

..... Decree Holder

Through: Mr. Anil Kher, Senior
Mr. Kunal Kher and Mr.
Thukral, Advocates.

versus

SUGESAN TRANSPORT PVT. LTD.

Through: Mr. Udian Sharma and M
Singh Khurana, Advocat

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA
ORDER

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10.01.2022

[VIA VIDEO CONFERENCING]

1. The present petition has been filed under Section 36 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] read with Order XXI Rule 10 seeking enforcement and execution of the arbitral award dated 22nd October 2020 against the Judgment Debtor, seeking inter-alia the following relief:

"b) Issue against the Judgment Debtor, warrants of attachment of its movable and immovable assets/ properties, investments, bank accounts, fixed deposits and to order for sale of the said immovable and movable assets/properties, investments, bank accounts, fixed deposits, for the purposes of realizing the awarded amount".

2. In the present proceedings, initially, this Court vide Order dated 22nd February, 2021, directed the Judgment Debtor to file an affidavit in the format given in Annexure B-1 to the judgment dated 5th August, 2020 titled M/s Bhandari Engineers and Builders Private Limited v. Maharia Raj Joint Venture,¹ [hereinafter, 'Bhandari Engineers'] along with all the necessary documents. The said direction was further reiterated by this Court on 25th February, 2021 and again on 18th May, 2021.

3. Subsequently, Bhandari Engineers was overruled by the Division Bench in Delhi Chemicals and Pharmaceutical Works Pvt. Ltd. v. Himgiri Realtors Pvt. Ltd.² However, in the meantime, the Judgment Debtor had indeed filed an affidavit dated 10th August 2021 in the format prescribed in Bhandari Engineers.

4. Mr. Udian Sharma, states that he has instructions to say that the Judgment Debtor does not have any assets in Delhi, and its only assets are in Tamil Nadu. He further states that the present proceedings do not lie in this court as the court lacks territorial jurisdiction. In this light, he has filed an application [EX APPL.(OS) 981/2021] seeking rejection of the petition.

5. Mr. Anil Kher, senior counsel for the Decree Holder, on the other hand, points out that in the above referred affidavit, columns numbered 56 to 64 are blank and the Judgement Debtor should be directed to furnish the said information. On the objection raised by Mr. Sharma regarding the court lacking jurisdiction to entertain the present petition, Mr. Kher's primary submission is that the disclosure of assets by Judgment Debtor is necessary in order for the Decree Holder to ascertain the court of competent jurisdiction. He points out that no particulars of bank accounts have been MANU/DE/1497/2020, 2019 SCC OnLine Del 11879.

2021 SCC OnLine Del 3603.

given. The Judgment Debtor has not complied with the details as are required to be disclosed in Form 16A. Therefore, he prays that the Judgment Debtor should first be directed to furnish the said particulars by way filing a fresh affidavit.

6. However, in the opinion of the Court, Decree Holder cannot ask for disclosure in terms of the format prescribed under Bhandari Engineers as the said judgment, today, stands overruled. All that the Court can direct is to call upon the Judgment Debtor to disclose its list of assets as prescribed under Form 16A, Appendix E of the Code of Civil Procedure, 1908

7. Now that the affidavit dated 10th August 2021 disclosing assets of the Judgment Debtor is on record, the Court has perused the same to examine if the requisite information has been given. Bank account particulars have been shown in column number 22, as 'Corporation Bank', where the account of the Judgment Debtor is stated to have become NPA on 31st March, 2017. Although the branch is not mentioned, counsel for the Judgment Debtor clarifies to the court that it is the Asset Recovery Management Branch located in Chennai.

8. Section 36 of the Arbitration and Conciliation Act, 1996 stipulates that the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. In the instant case, the relevant provisions for grant of execution of a money decree would apply. Order XXI, Rule 30 of the Civil Procedure Code 1908, provides that "Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both." Therefore, for the Court to execute the decree, it must first proceed to attach and sell the Judgment Debtor's assets.

9. Judgment Debtor herein is a company carrying on its business in Chennai, Tamil Nadu. It does not have any office/ asset located in Delhi. Decree Holder has also failed to prove that the Judgment Debtor has any assets located in Delhi. Apart from the above, the affidavit filed by the Judgement Debtor does not disclose any moveable or immoveable assets within the jurisdiction of this court.

10. At this stage, Mr. Kher places reliance on Section 42 of the Act and submits that the Court should transfer the decree for execution before the court of competent jurisdiction in Chennai.

11. However, this request cannot be entertained in view of ample judicial precedents on this issue. In fact, it is now conclusively settled by the Supreme Court in *Sundaram Finance v. Abdul Samad*,³ that an arbitral award is not equal to a decree passed by a Court, and execution proceedings can be straightaway filed in the court where the Judgement Debtor's assets are located. The Supreme Court made the following remarks, which are directly on the point raised by Mr. Kher, relevant portion whereof is extracted below:

"17. (...) Thus, when an award is already made, of which execution is sought, the arbitral proceedings already stand terminated on the making of the final award. Thus, it is not appreciated how Section 42 of the said Act, which deals with the jurisdiction issue in respect of arbitral proceedings, would have any relevance. It does appear that the provisions of the said Code and the said Act have been mixed up.

18. It is in the aforesaid context that the view adopted by the Delhi High Court in *Daelim Industrial Co. Ltd. v. Numaligarh Refinery Ltd.* records that Section 42 of the Act would not apply to an execution application, which is not an arbitral proceeding and that Section 38 of the Code would apply to a decree passed by the Court, while in the case of an award no court has passed the decree.

2018 3 SCC 622.

21. The Madras High Court in *Kotak Mahindra Bank Ltd. v. Sivakama Sundari & Ors.* referred to Section 46 of the said Code, which spoke of precepts but stopped at that. In the context of the Code, thus, the view adopted is that the decree of a civil court is liable to be executed primarily by the Court, which passes the decree where an execution application has to be filed at the first instance. An award under Section 36 of the said Act, is equated to a decree of the Court for the purposes of execution and only for that purpose. Thus, it was rightly observed that while an award passed by the arbitral tribunal is deemed to be a decree under Section 36 of the said Act, there was no deeming fiction anywhere to hold that the Court within whose jurisdiction the arbitral award was passed should be taken to be the Court, which passed the decree. The said Act actually transcends all territorial barriers.

Conclusion

20. We are thus unhesitatingly of the view that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the court, which would have jurisdiction over the arbitral proceedings.

21. The effect of the aforesaid is that the view taken by the Madhya Pradesh High Court and the Himachal Pradesh High Court is held to be not good in law while the views of Delhi High Court, Kerala High Court, Madras High Court, Rajasthan High Court, Allahabad High Court, Punjab & Haryana High Court and Karnataka High Court reflect the correct legal position, for the reasons we have recorded aforesaid."

[Emphasis supplied]

12. There is no justification for filing an execution petition before the court within whose jurisdiction the arbitral award was passed, and then seek a transfer to the Court which has jurisdiction over the Judgment Debtor or their properties. Irrespective of the place where the award was passed, it is to be executed by a Court within whose jurisdiction the Judgment Debtor resides, carries on business or his property is situated. Since the Judgment Debtor is admittedly residing within the territorial jurisdiction of the courts at Chennai, such courts would certainly have territorial jurisdiction to enforce the arbitral award. Thus, this Court lacks territorial jurisdiction to entertain the present petition.

13. Accordingly, the instant petition must be dismissed, with liberty to the Decree Holder to approach the executing court of competent jurisdiction.

14. Although the affidavit dated 10th August 2021 clarifies the above facts as to the location of the Judgment Debtor's assets, nevertheless, the Judgment Debtor is directed to file an affidavit in terms of the submissions made by its counsel before court today. The said affidavit be filed within a period of two week from today, with a copy thereof to the counsel for Decree Holder.

15. The present petition along with all pending applications also stand disposed of.

SANJEEV NARULA, J JANUARY 10, 2022 nd