M/S. Fuerst Day Lawson Ltd vs Jindal Exports Ltd on 4 May, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2293, 2001 (6) SCC 356, 2001 AIR SCW 2087, 2001 CLC 746 (SC), 2001 (3) COM LJ 9 SC, 2001 (3) SCALE 708, 2001 (1) JT (SUPP) 263, 2001 (2) LRI 1003, 2001 (6) SRJ 93, (2001) 3 COMLJ 9, (2001) 4 SCJ 206, (2001) 4 ANDHLD 4, (2001) 4 SUPREME 141, (2001) 3 SCALE 708, (2001) 3 CIVLJ 534, (2001) 91 DLT 373, AIRONLINE 2001 SC 968

Author: Shivaraj V. Patil

Bench: D.P. Mohapatra, Shivaraj V. Patil

CASE NO.:
Appeal (civil) 3594 of 2001

PETITIONER:
M/S. FUERST DAY LAWSON LTD.

Vs.

RESPONDENT:
JINDAL EXPORTS LTD.

DATE OF JUDGMENT: 04/05/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

Shivaraj V. Patil J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T..J An agreement was entered into between the appellant and the respondent on 1.8.1994 under which the respondent was to supply certain goods to the appellant during the period January, 1995 to June, 1996. Certain disputes cropped up in the course of the execution of the agreement. The agreement provided for arbitration. The appellant filed a

claim petition before the International General Produce Association (IGPA) a body nominated by the appellant as the Arbitrators. The Arbitrators, after entering into reference, received evidence and thereafter passed an Award on 13.8.1996 allowing the claims of the appellant. The appeal filed by the respondent against the Award before the IGPA Appellate Board was dismissed on 14.11.1998. Further the appeal filed by the respondent before the Queens Bench Division of the High Court of Justice at London was also dismissed on 29.1.1999. The appellant filed an execution application in August 1998 before the High Court of Delhi for enforcement of said foreign Award dated 13.8.1996. An order of attachment was issued by the High Court against the respondent. The respondent filed an application under Section 151 CPC (E.A. 347 of 1998) seeking dismissal of the execution petition. The respondent also filed O.M.P. No. 203 of 1998 under Section 48 of the Arbitration and Conciliation Act, 1996 (for short the `Act). The High Court varied its order of attachment and ordered the respondent to lodge security. A learned Single Judge of the High Court held that the execution application filed by the appellant for enforcement of foreign Award dated 13.8.1996 was not maintainable under the Act as the arbitration proceedings were commenced prior to the coming into force of the Act and dismissed the execution petition, consequently released the security of 1.74 crores furnished by the respondent. The appellant filed Special Leave Petition No. 7674 of 1999 before this Court challenging the order passed by the learned Single Judge. This Court disposed of the Special Leave Petition observing that the order of the learned Single Judge was appealable under Section 50(1)(b) of the Act. In this view, the appellant filed FAO (OS) No. 284 of 1999 before Division Bench of the High Court. The Division Bench of the High Court by the impugned judgment and order dismissed the appeal saying that there was no fallacy in the reasoning of the learned Single Judge. Under these circumstances, the appellant is before this Court in this appeal assailing the impugned judgment and order.

Mr. Ashwani Kumar, learned Senior Counsel appearing for the appellant, contended that the learned Single Judge as well as the Division Bench of the High Court manifestly erred in holding that since the arbitration proceedings were commenced prior to 25.1.1996, i.e., before the commencement of Act, the foreign Award dated 13.8.1996 could not be enforced under Act in terms of Section 85 read with Section 21 of the Act; this Court has ruled in Thyssen Stahlunion GMBH vs. Steel Authority of India Ltd. [1999(9) SCC 334] that a foreign award passed after the commencement of Act is to be enforced/executed under the said Act alone being stamped as decree; in this ruling the reasoning and conclusions of Gujarat High Court in Western Ship Breaking Corporation vs. Clarehaven Ltd U.K. [1988 (1) Raj 367 (404)] were affirmed; at no stage before the High Court, either before the learned Single Judge or before the Division Bench, the respondent questioned the date of commencement of the Act on 25.1.1996; in fact the Division Bench proceeded on the admitted position that new Act commenced from 25.1.1996 and, therefore, it cannot be raised for the first time in these proceedings; even otherwise the question is no longer `res integra having been conclusively decided by this Court in Shettys Constructions Co. Pvt. Ltd. vs. Konkan Railway Constructions & Another [1998 (5) SCC 599], Thyssen Stahlenion GMBH vs. Steel Authority of India Ltd. (supra) and NALCO vs. Metalimpex [2000 (3) A.L.R. 422]; it is firmly established by these judgments that the new Act came into force on 25.1.1996; the principal contention advanced on behalf of the respondent that these judgments are `per incuriam on the ground that they hold 25.1.1996 as the date of commencement of the Act ignoring the specific provision and the Gazette notification according to which the Act came into force on 22.8.1996; this Court was using the word

`Act interchangeable with the first ordinance which came into force on 25.1.1996; article 367 of the Constitution and Section 30 of the General Clauses Act equate an Act with the ordinance and vice versa. Section 86(2) of the new Act itself says that all actions and orders under the ordinance as deemed to have been under the Act. Reference is invited to T.V.Venkata Reddy & Ors. vs. State of Andhra Pradesh [1985 (3) SCC 198]. Thus the learned Senior Counsel submitted that the contentions advanced by the respondent are untenable and unavailable and they cannot be permitted to re-open settled legal issues in relation to enforcement of a foreign award which has become final.

Shri K.K. Venugopal, learned Senior Counsel for the respondent urged that the date from which the Act came into force is an issue of fact and not an issue of law; this Court in the cases relied on behalf of the appellant has wrongly mentioned the date of commencement as 25.1.1996 instead of 22.8.1996; the error will have to be corrected as the decision would be `per incuriam. Punjab Land Development & Reclamation Corporation Ltd. Chandigarh vs. Presiding Officer, Labour Court, Chandigarh and Ors. [1990 (3) SCC 682] and State of U.P. & Another vs. Synthetics & Chemicals Ltd. & Another [1991 (4)SCC 139] are cited in support of the submissions; the decisions in Shettys Construction Co. Pvt. Ltd. vs. Konkan Railway (supra), Thyssen Stahlunion vs. Steel Authority of India (supra) and NALCO vs. Metalimpex (Supra) will have far reaching consequences. The Gazette of India produced before this Court shows that the statement of some publications of the Act to the effect it shall be deemed to have come into force on 25.1.1996 is a total error. On the other hand, Section 1(3) as shown in the Gazette is to the effect that it shall come into force on such date as the Central Govt., may by notification in the official Gazette, appoint; the Government of India by Notification GSR 375 (E) dated 22.8.1996 has notified 22.8.1996 as the date of coming into force of the Act; in Thyssen (supra) it is held that a foreign award given after the commencement of the new Act can be enforced only under the new Act; in the present case, the Award was passed on 13.8.1996 i.e. 9 days prior to coming into force of the Act. In the instant case, both events are before 22.8.1996. As such the Foreign Awards (Recognition & Enforcement) Act, 1961 (for short the `1961 Act) will apply in which case enforcement could only be through a suit; the execution petition was rightly rejected. Article 367(2) of the Constitution or Section 30 of the General Clauses Act have nothing to do with the question as to the date on which the Act comes into force; they could not alter this date to 25.1.1996 from 22.8.1996; the entire enforcement proceedings would be governed by the 1961 Act; hence the execution petition could not have been directed to be converted into an application under Section 46 or 47 of the Act for various reasons.

In the light of the rival contentions and submissions, the principal legal issue that arises for consideration is as to the very date of the commencement of the Act.

In substance and effect, similar contentions were raised in Thyssen (supra) in regard to construction and interpretation of Section 85(2)(a) as to the enforceability of foreign award passed after coming into force of the Act, although the arbitration proceedings had commenced prior to the commencement of the Act. This Court having heard the learned counsel for the parties elaborately and after referring to number of decisions of this court as well as English Courts, arrived at the conclusions as stated in para 22 of the judgment. Conclusion relevant for the immediate purpose, is in para 22(7) which reads :-

> 7. A foreign award given after the commencement of the new Act can be enforced only under the new Act. There is no vested right to have the foreign award enforced under the Foreign Awards Act (Foreign Awards (Recognition and Enforcement) Act, 1961).

It is clear from conclusion extracted above that a foreign award given after the commencement of the Act can be enforced only under the new Act. In brief, the facts that gave rise to three appeals decided in the said case are: In the case of Thyssen (C.A. No. 6036 of 1998), contract for the sale and purchase contained an arbitration agreement. The arbitration proceedings commenced on 14.9.1995 under the Arbitration Act, 1940 (for short the `old Act). Award was given on 24.9.1997 by the time the Act had come into force on 25.1.1996; Thyssen filed petition in Delhi High Court on 13.10.1997 under Sections 14 & 17 of the old Act for making the award rule of the Court; subsequently Thyssen filed an application in the High Court for execution of the award under the Act contending that the arbitration proceedings had been terminated with the making of the award on 24.9.1997 and, therefore, the Act was applicable for enforcement of the Award. The question as to the maintainability of the execution petition was raised to the effect whether the award would be governed by the Act for its enforcement or whether the provisions of the old Act would apply. A learned Single Judge of the Delhi High Court held that the proceedings should be governed by the old Act. Hence, the appeal was filed in this Court.

In the case of Western Shipbreaking Corporation (C.A. No. 4928 of 1997), arbitration proceedings were held in the United Kingdom prior to the enforcement of the Act; the award was made in London on 25.2.1996; the question that arose for consideration was whether the award was governed by the provisions of the Act for its enforcement or by the Foreign Awards Act, 1961, the learned Single Judge of the Gujarat High Court held that the Act would be applicable. Aggrieved by the same, the above appeal was filed in this Court.

In the case of Rani Constructions (P) Ltd. (C.A. No. 61 of 1999), disputes were referred to the sole arbitrator on 4.12.1993. The Arbitrator gave his award on 23.2.1996 after the Act had come into force. The Division Bench of Himachal Pradesh High Court held that Clause 25 of the Agreement does not admit of interpretation that this case is governed by the Act of 1996.

In para 13 of the judgment, it is noticed that arguments had been addressed in considerable detail for and against the application of the new Act or the old Act in the three appeals mentioned above. We consider it useful to reproduce hereinbelow paras 39 to 42 of the said judgment:

> 39.The Foreign Awards Act gives the party the right to enforce the foreign award under that Act. But before that right could be exercised the Foreign Awards Act had been repealed. It cannot, therefore, be said that any right had accrued to the party for him to claim to enforce the foreign award under the Foreign Awards Act. After the repeal of the Foreign Awards Act a foreign award can now be enforced under the new Act on the basis of the provisions contained in Part II of the new Act depending whether it is a New York Convention award or a Geneva Convention award. It is irrespective of the fact when the arbitral proceedings commenced in a foreign

jurisdiction. Since no right has accrued Section 6 of the General Clauses Act would not apply.

40. In the very nature of the provision of the Foreign Awards Act it is not possible to agree to the submission that Section 85(2)(a) of the new Act would keep that Act alive for the purpose of enforcement of a foreign award given after the date of commencement of the new Act though arbitral proceedings in a foreign land had commenced prior to that. It is correct that Section 85(2)(a) uses the words the said enactments which would include all the three Acts, i.e., the old, the Foreign Awards Act and the Arbitration (Protocol and Convention) Act, 1937. The Foreign Awards Act and even the 1937 Act contain provisions only for the enforcement of the foreign award and not for the arbitral proceedings. Arbitral proceedings and enforcement of the award are two separate stages in the whole process of arbitration. When the Foreign Awards Act does not contain any provision for arbitral proceedings it is difficult to agree to the argument that in spite of that the applicability of the Foreign Awards Act is saved by virtue of Section 85(2)(a). As a matter of fact if we examine the provisions of the Foreign Awards Act and the new Act there is not much difference for the enforcement of the foreign award. Under the Foreign Awards Act when the court is satisfied that the foreign award is enforceable under that Act the court shall order the award to be filed and shall proceed to pronounce judgment accordingly and upon the judgment so pronounced a decree shall follow. Sections 7 and 8 of the Foreign Awards Act respectively prescribe the conditions for enforcement of a foreign award and the evidence to be produced by the party applying for its enforcement. The definition of foreign award is the same in both the enactments. Sections 48 and 47 of the new Act correspond to Sections 7 and 8 respectively of the Foreign Awards Act. While Section 49 of the new Act states that where the court is satisfied that the foreign award is enforceable under this chapter (Chapter I Part II, relating to New York Convention awards) the award is deemed to be a decree of that court. The only difference, therefore, appears to be that while under the Foreign Awards Act a decree follows, under the new Act the foreign award is already stamped as the decree. Thus if provisions of the Foreign Awards Act and the new Act relating to enforcement of the foreign award are juxtaposed there would appear to be hardly any difference.

41. Again a bare reading of the Foreign Awards Act and the Arbitration (Protocol and Convention) Act, 1937 would show that these two enactments are concerned only with recognition and enforcement of the foreign awards and do not contain provisions for the conduct of arbitral proceedings which would, of necessity, have taken place in a foreign country. The provisions of Section 85(2)(a) insofar these apply to the foreign Awards Act and the 1937 Act, would appear to be quite superfluous. A literal interpretation would render section 85(2)(a) unworkable. Section 85(2)(a) provides for a dividing line dependent on commencement of arbitral proceedings, which expression would necessarily refer to Section 21 of the new Act. This Court has relied on this Section as to when arbitral proceedings commence in

> the case of Shettys Constructions Co. (P) Ltd. vs. Konkan Rly. Construction. Section 2(2) read with Section 2(7) and Section 21 falling in Part I of the new Act make it clear that these provisions would apply when the place of arbitration is in India, i.e., only in domestic proceedings.

There is no corresponding provision anywhere in the new Act with reference to foreign arbitral proceedings to hold as to what is to be treated as date of commencement in those foreign proceedings. We would, therefore, hold that on a proper construction of Section 85(2)(a) the provision of this sub-section must be confined to the old Act only. Once having held so it could be said that Section 6 of the General Clauses Act would come into play and the foreign award would be enforced under the Foreign Awards Act. But then it is quite apparent that a different intention does appear that there is no right that could be said to have been acquired by a party when arbitral proceedings are held in a place resulting in a foreign award to have that award enforced under the Foreign Awards Act.

42. We, therefore, hold that the award given on 24.9.1997 in the case of Thyssen Stahlunion GMPH v. Steel Authority of India Ltd. (Civil appeal No. 6036 of 1998) when the arbitral proceedings commenced before the Arbitration and Conciliation Act, 1996 came into force on 25.1.1996, would be enforced under the provisions of the Arbitration Act, 1940. We also hold that clause 25 containing the arbitration agreement in the case of Rani Constructions (P) Ltd. vs. H.P. SEB (Civil Appeal No. 61 of 1999) does admit of the interpretation that the case is governed by the provisions of the Arbitration and Conciliation Act, 1996. We further hold that the foreign award given in the case of Western Shipbreaking Corporation v. Clareheaven Ltd. (Civil appeal No. 4928 of 1997) would be governed by the provisions of the Arbitration and Conciliation Act, 1996. Thus, we affirm the decisions of the Delhi High Court in Execution Petition No. 47 of 1998 and of the Gujarat High Court in Civil Revision Application No. 99 of 1997, and set aside that of the Himachal Pradesh High Court in Civil Suit No. 52 of 1996.

It may be stated here again that this Court affirmed the judgment of Gujarat High Court in the case of Western Shipbreaking Corporation (supra) and held that the foreign award given after the commencement of the Act would be governed by the Act although arbitration proceedings had commenced in that case prior to the enforcement of Act. In view of the law laid down by this Court as to the enforcement of foreign award passed after the commencement of the Act even in cases where the arbitration proceedings were commenced prior to enforcement of the Act after consideration of various aspects, in particular, question relating to the construction and interpretation of section 85(2)(a) of the Act, we do not think it necessary to consider the same contentions again when we are in respectful agreement with the law laid down in the Thyssen judgment.

It may be noticed that the provisions of the Ordinance as well as the Act are same. Article 367 (2) of the Constitution states that any reference in the Constitution to Acts or laws of, or made by Parliament, or to Acts or laws of or made by the Legislature of a State shall be construed as including a reference to an Ordinance made by the President or to an Ordinance made by a Governor as the case may be. This Article read with Clause 30 of the General Clauses Act clearly

indicate that when a reference is made to an Act, it shall be construed including a reference to an Ordinance. Under Articles 123 and 213, subject to the limitation, stated therein, an Ordinance promulgated shall have the same force and effect as an Act of Parliament or an Act of a Legislature of a State.

A Constitution Bench of this Court in A.K. Roy vs. Union of India & Ors. (1982 (1) SCC 271) has in clear terms stated that an ordinance issued by the President or the Governor is as much law as an Act passed by the Parliament and is, fortunately and unquestionably, subject to the same inhibitions. In those inhibitions lies the safety of the people Para 18 of the said judgment reads thus:

> In one sense, these contentions of Shri Garg stand answered by what we have already said about the true nature and character of the ordinance-making power. The contention that the word `law in Article 21 must be construed to mean a law made by the legislature only and cannot include an ordinance, contradicts directly the express provisions of Article 123(2) and 367(2) of the Constitution. Besides, if an ordinance is not law within the meaning of Article 21, it will stand released from the wholesome and salutary restraint imposed upon the legislative power by Article 13(2) of the Constitution.
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> In another Constitution Bench Judgment of this Court in R.K. Garg vs. Union of India & Ors. (AIR 1981 SC 2138), in para 5 has observed thus:-
>
> ..... It may also be noted that Clause (2) of Article 123 provides in terms clear and explicit that an Ordinance promulgated under that Article shall have the same force and effect as an Act of Parliament. That there is no qualitative difference between an ordinance issued by the President and an Act passed by Parliament is also emphasized by Clause (2) of Article 367 which provides that any reference in the Constitution to Acts or laws made by Parliament shall be construed as including a reference to an Ordinance made by the President.....
>
> A Constitution Bench of this Court again in T.Venkata Reddy and Others vs. State of Andhra Pradesh (1985 (3) SCC
>
> 198) while reiterating the position in para 14 observed:
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> 14. The above view has been approved by another Constitution Bench of this Court in A.K. Roy vs. Union of India. Both these decisions have firmly established that an ordinance is a `law and should be approached on that basis.

The language of clause (2) of Article 123 and of clause (2) of Article 213 of the Constitution leaves no room for doubt. An Ordinance promulgated under either of these two Articles has the same force and effect as an Act of Parliament or an Act of the State Legislature, as the case may be.

Thus an Ordinance operates in the field it occupies, with same effect and force as an `Act as stated in the aforementioned Articles of the Constitution.

A foreign Award passed on 13.8.1996 could be enforced with the same vigour under the Ordinance as it could be under the Act. May be that is a reason why this point was not raised by the respondent before the High Court. The learned senior counsel for the appellant reminded us that now attempt is made by the respondent to overcome Thyssen judgment. It is not understandable as to how any prejudice is caused to the respondent. Thus, the contention advanced in this regard by the learned senior counsel for the respondent does not help the respondent in any way.

The other argument with emphasis was that the Thyssen judgment is `per incuriam as it was pronounced ignoring Section 1(3) and the notification bringing Act into force from 22.8.1996. It is useful to refer to certain decisions of this Court before taking a decision whether the Thyssen judgment is `per incuriam or not as to the date of commencement of the Act in the given situation.

In Mamleshwar Prasad and Another vs. Kanhaiya Lal (Dead) through L.Rs. (1975 (2) SCC 232) reflecting on the principle of judgment per incuriam, in paras 7 & 8, this Court has stated thus:-

> 7. Certainty of the law, consistency of rulings and comity of courts all flowering from the same principle converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam.
>
> 8. Finally it remains to be noticed that a prior decision of this Court on identical facts and law binds the Court on the same points in a later case. Here we have a decision admittedly rendered on facts and law, indistinguishably identical, and that ruling must bind.

This Court in A.R.Antulay vs. R.S. Nayak & Another (1988 (2) SCC 602), in para 42 has quoted the observations of Lord Goddard in Moore vs. Hewwit [(1947) 2 All.ER 270] and Penny vs. Nicholas [(1950) 2 All.ER 89] to the following effect:-

> Per incuriam are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.....
>
> This Court in State of U.P. & Another vs. Synthetics & Chemicals Ltd. & Another (1991 (4) SCC 139) in para 40 has observed thus :-

> 40. `Incuria literally means `carelessness. In practice per incuriam appears to mean per ignoratium.

English courts have developed this principle in relaxation of the rule of stare decisis. The `quotable in law is avoided and ignored if it is rendered, `in ignoratium of a statute or other binding authority. (Young v. Bristol aeroplane co. Ltd). .....

The two judgments (1) Punjab Land Development and Reclamation Corporation Ltd., Chandigarh vs. President Officer, Labour Court, Chandigarh and Others (1990 (3) SCC

682) and (2) State of U.P. and Another vs. Synthetics and Chemicals Ltd. and Another (1991 (4) SCC 139) were cited in support of the argument. Attention was drawn to paras 40, 41 and 43 in the first judgment and paras 39 and 40 in the second judgment. In these two judgments no view contrary to the views expressed in the aforesaid judgments touching the principle of judgment per incuriam is taken.

A prior decision of this court on identical facts and law binds the Court on the same points of law in a latter case. This is not an exceptional case by inadvertence or oversight of any judgment or statutory provisions running counter to the reason and result reached. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment `per incuriam. It is also not shown that some part of the decision based on a reasoning which was demonstrably wrong, hence the principle of per incuriam cannot be applied. It cannot also be said that while deciding Thyssen, the promulgation of the first Ordinance, which was effective from 25.1.1996, or subsequent Ordinances were not kept in mind more so when the judgment of Gujarat High Court in Western Shipbreaking Corporation (supra) did clearly state in para 8 of the said judgment thus:-

> 8. We now come to the arbitration and Conciliation Ordinance, 1996 which was promulgated on 16.1.1996 and brought into force with effect from 25.1.1996. The second Ordinance, 1996 was also promulgated on 26.3.1991 as a supplement to main Ordinance giving retrospective effect from 25.1.1996. The Ordinance received assent of the President on 16.8.1996 giving the retrospective effect from 25.1.1996. Thus the Ordinance has now become an Act. All the provisions of the Ordinance as well as Act are same.

Therefore, the use of word The Ordinance shall also mean the Act and vice versa.

It appears in the portion extracted above there is a mistake as to the date of promulgation of the second Ordinance as 26.3.1991. But the correct date is 26.3.1996.

It is noticed in the above paragraph that all provisions of the Ordinance as well as the Act are same; therefore, use of the word `the Ordinance shall also mean the Act and vice-versa. The said judgment of the Gujarat High Court is affirmed by this Court in Thyssen. The Thyssen judgment has not failed to notice either a statutory provision in substance and effect or a binding precedent running counter to the reasoning and the result reached.

Having regard to the facts of the case on hand and in the light of the position of law stated in the aforementioned decisions, we are unable to agree that the Thyssen judgment is per incuriam. Same is the position in respect of Shettys Construction (supra) & NALCO (supra) on this aspect of `per incuriam. As already noticed above, the facts of Western Shipbreaking Corporation (supra) and the case we are dealing with are similar as to the commencement of arbitration proceedings and passing of foreign award.

The Arbitration and Conciliation Ordinance, 1996 was originally promulgated by the President on 16.1.1996 and was made effective from 25.1.1996. The Second Ordinance came in its place on 26.3.1996 which was again replaced by the Third Ordinance on 26.6.1996. These Ordinances were issued, necessitated by the circumstances for continuing the operation of the new Law. The new Act No. 26 of 1996 received the Presidents assent on 16.8.1996 and was published in the Gazette of India (Extra) Part II Section I dated 19.8.1996.

We have already expressed above that the Ordinance had the same force and effect as the Act. This Court in Thyssen, Shettys Construction and NALCO appears to have taken the date of commencement of the Act as 25.1.1996 in the background of ordinances and their continuance with same force effective from 25.1.1996. May be the Court was using the word `Act interchangeable with the first Ordinance which came into force on 25.1.1996 which ultimately culminated into Act. As already noticed above, the judgment of Gujarat High Court in Western Shipbreaking Corporation (supra) was in appeal before this court in Thyssen and in para 8 of the said judgment, there is specific mention that the use of the word `the Ordinance shall mean the Act and vice-versa. Even in the Thyssen judgment itself in para 16, reference is made to M.S. Shivananda vs. Karnataka SRTC (1980 1 SCC 149). In paras 12 and 13 of the said judgment, discussion is there as to the effect of expiration of a temporary Act and effect of repealing the Ordinance as to the rights and liabilities. As brought to our notice that some of the private publications mentioned that the Act came into force on 25.1.1996, this might have also contributed in mentioning the date of commencement of the Act as 25.1.1996. Be that as it may, in the light of the successive Ordinances and the provisions of the Ordinances and the Act being same and the new Law continued with the same effect and force from 25.1.1996. There is no alteration or change in the legal position and effect in relation to enforcement of foreign award including the one made between the period 25.1.1996 till 22.8.1996, the date on which the Act came into force in terms of Section 1(3) read with the Gazette Notification inasmuch as the first Ordinance was operative with the same force and effect from 25.1.1996. In the present case with which are concerned in this appeal, a foreign Award was passed on 13.8.1996 and as such in terms of the conclusion arrived at in Thyssen, the said Award is to be enforced only under the Act. Even in the impugned judgment, it is stated that it is an admitted position that the said Act has commenced from 26.1.1996. This point that the date of the commencement of the Act is 22.8.1996 and not 25.1.1996 was neither raised nor contested. It may be added that the High Court of Delhi did not have the benefit of Thyssen judgment as it was delivered subsequently on 7.10.1999 whereas the impugned judgment was passed on 27.9.1999. Section 1(3) of the Act reads thus:-

(1) Short title, extent and commencement:

(1) .....

(2) .....

(3) It shall come into force on such date as the Central government, may by notification in the Official Gazette, appoint.

The Gazette Notification GSR 375 (E) dated 22.8.1996 reads:

> In exercise of the powers conferred by sub- section (3) of Section 1 of the Arbitration and Conciliation Act, 1996 (26 of 1996), the Central Government hereby appoints the 22nd day of August, 1996, as the date on which the said Act shall come into force.
>
> From the plain and literal reading of the said provision and the Gazette Notification, it is clear that the Act came into force on 22.8.1996. But the purposive reading would show that the Act came into force in continuation of the first Ordinance which was brought into force on 25.1.1996. This makes the position clear that although the Act came into force on 22.8.1996, for all practical and legal purposes it shall be deemed to have been effective from 25.1.1996 particularly when the provisions of the Ordinance and the Act are similar and there is nothing in the Act to the contrary so as to make the Ordinance ineffective as to either its coming into force on 25.1.1996 or its continuation upto 22.8.1996. Thus we conclude that the Act was brought into force with effect from 22.8.1996 vide Notification No. G.S.R. 375 (E) dated 22.8.1996 published in the Gazette of India and that the Act being a continuation of the Ordinance is deemed to have been effective from 25.1.1996 when the first Ordinance came into force.

Alternatively it was contended that a party holding a foreign award has to file a separate application and produce evidence as contemplated under Section 47 and also satisfy the conditions laid down under Section 48 and it is only after the Court decides about the enforceability of the award, it should be deemed to be a decree under Section 49 as available for execution. In other words, the party must separately apply before filing an application for execution of a foreign award. The Arbitration and Conciliation Ordinance, 1996 was promulgated with the object to consolidate and amend the law relating to domestic arbitration, interntional commercial arbitration and enforcement of foreign arbitral award and to define law relating to conciliation and for matters connected therewith or incidental thereto. In para 4 of the Statement of Objects and Reasons contained in the Act, the main objects of the Bill are stated. To the extent relevant for the immediate purpose, they are: i) to comprehensive cover international commercial arbitration and conciliation as also domestic arbitration and conciliation;

ii) .....

iii) .....

iv) to minimize the supervisory role of courts in the arbitral process;

v) .....

vi) to provide that every final arbitral award is enforced in the same manner as if it were a decree of the court; .....

Prior to the enforcement of the Act, the Law of Arbitration in this country was substantially contained in three enactments namely (1) The Arbitration Act, 1940, (2) The Arbitration (Protocol and Convention) Act, 1937 and (3) The Foreign Awards (Recognition and Enforcement) Act, 1961. A party holding a foreign award was required to take recourse to these enactments. Preamble of the Act makes it abundantly clear that it aims at to consolidate and amend Indian laws relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. The object of the Act is to minimize supervisory role of court and to give speedy justice. In this view, the stage of approaching court for making award a rule of court as required in Arbitration Act, 1940 is dispensed with in the present Act. If the argument of the respondent is accepted, one of the objects of the Act will be frustrated and defeated. Under the old Act, after making award and prior to execution, there was a procedure for filing and making an award a rule of court i.e. a decree. Since the object of the act is to provide speedy and alternative solution of the dispute, the same procedure cannot be insisted under the new Act when it is advisedly eliminated. If separate proceedings are to be taken, one for deciding the enforceability of a foreign award and the other thereafter for execution, it would only contribute to protracting the litigation and adding to the sufferings of a litigant in terms of money, time and energy. Avoiding such difficulties is one of the objects of the Act as can be gathered from the scheme of the Act and particularly looking to the provisions contained in Sections 46 to 49 in relation to enforcement of foreign award. In para 40 of the Thyssen judgment already extracted above, it is stated that as a matter of fact, there is not much difference between the provisions of the 1961 Act and the Act in the matter of enforcement of foreign award. The only difference as found is that while under the Foreign Award Act a decree follows, under the new Act the foreign award is already stamped as the decree. Thus, in our view, a party holding foreign award can apply for enforcement of it but the court before taking further effective steps for the execution of the award has to proceed in accordance with Sections 47 to 49. In one proceeding there may be different stages. In the first stage the Court may have to decide about the enforceability of the award having regard to the requirement of the said provisions. Once the court decides that foreign award is enforceable, it can proceed to take further effective steps for execution of the same. There arises no question of making foreign award as a rule of court/decree again. If the object and purpose can be served in the same proceedings, in our view, there is no need to take two separate proceedings resulting in multiplicity of litigation. It is also clear from objectives contained in para 4 of the Statement of Objects and Reasons, Sections 47 to 49 and Scheme of the Act that every final arbitral award is to be enforced as if it were a decree of the court. The submission that the execution petition could not be permitted to convert as an application under Section 47 is technical and is of no consequence in the view we have taken. In our opinion, for enforcement of foreign award there is no need to take separate proceedings, one for deciding the enforceability of the award to make rule of the court or decree and the other to take up execution thereafter. In one proceeding, as already stated above, the court enforcing a foreign award can deal with the entire matter. Even otherwise, this procedure does not prejudice a party in the light of what is stated in para 40 of the Thyssen judgment.

Part II of the Act relates to enforcement of certain foreign awards. Chapter 1 of this Part deals with New York Convention Awards. Section 46 of the Act speaks as to when a foreign award is binding. Section 47 states as to what evidence the party applying for the enforcement of a foreign award should produce before the court. Section 48 states as to the conditions for enforcement of foreign awards. As per Section 49, if the Court is satisfied that a foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that court and that court has to proceed further to execute the foreign award as a decree of that court. If the argument advanced on behalf of the respondent is accepted, the very purpose of the Act in regard to speedy and effective execution of foreign award will be defeated. Thus none of the contentions urged on behalf of the respondent merit acceptance so as to uphold the impugned judgment and order. We have no hesitation or impediment in concluding that the impugned judgment and order cannot be sustained.

In the light of the discussion made and the reasons stated hereinabove, the impugned judgment and order are set aside. The case is remitted to a learned Single Judge of the High Court for proceeding with enforcement of the award in the light of the observations made above. The appeal is allowed in terms indicated above. No costs.