RESERVE JUDGMENT

Court No. - 6 **AFR**

Case :- CIVIL REVISION No. - 27 of 2019

Revisionist :- Sanjay Agarwal
Opposite Party :- Rahul Agarwal And Ors.
Counsel for Revisionist :- Subhash Vidyarthi,Pritish Kumar,Shantanu Gupta
Counsel for Opposite Party :- Kshitij Mishra,Sanjay Bhasin,Sunil Sharma

Hon'ble Alok Mathur,J.

1. Heard Sri Pritish Kumar, learned counsel for the revisionist as well as Sri Sanjay Bhasin, learned Senior Advocate assisted by Sri Sunil Sharma, learned counsel for the opposite parties.

2. The present civil revision has been filed assailing the order dated 30/01/2019 passed by the District Judge, Lucknow whereby he has rejected the application under Section 47 of the Civil Procedure Code preferred by the revisionist. The controversy in the present case centers around the validity of an arbitration award made by the arbitrator Sri Anirudh Mithal, General Manager, Indian Railways (Retd.) dated 07/05/2008.

3. Sri Pritish Kumar, learned Counsel for the revisionist has submitted that National Council for Young Men’s Christian Association of India had executed a lease deed in respect of the property situated at 13, Rana Pratap Marg, Lucknow in favour of revisionist and his grandfather Sri Kishori Lal Agarwal for a period of 65 years. He submitted that the property was to be developed in the manner prescribed, and the lessees were also entitled to the gains in profits which may accrue from the said property. On 19/11/1986 Sri Motilal Agarwal, the father of the revisionist executed a deed of relinquishment declaring that the said property was and has been the absolute and exclusive property of Sri Kishori

Lal Agarwal and the revisionist, who are the exclusive lessees thereof from the society.

4. Subsequently, Sri Kishori Lal Agarwal and the revisionist entered into an agreement on 19/12/1986 providing that Wing "A" of the property will be exclusively developed by Sri Kishori Lal Agarwal and Wing "B" will be developed exclusively by the revisionist. The revisionist's father Sri Motilal Agarwal died on 31/12/2007 leaving behind his wife, Smt Sarojini Agarwal (opposite party No. 2), son - Sanjay Agarwal (Revisionist), son Rahul Agarwal (opposite party no.1) and Smt Pallavi Gupta, daughter (opposite party No. 3).

5. After the death of Sri Motilal Agarwal, there was dispute amongst the family with regard to the distribution of his assets and more specifically with regard to the leased property situated at 13,Rana Pratap Marg, Lucknow. It has been submitted that Sri Anirudh Mithal was a friend of revisionist's father and he intervened to make efforts to amicably resolve the disputes and differences among the family members. It is on his intervention that the award/family settlement dated 07/05/208 was passed after several meetings, consultations and after going through various documents.

6. Opposite Party no.1 filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "the Act of 1996"*) in the Court of District Judge, Lucknow which was rejected by means of order dated 01/01/2013 against which an appeal has been preferred before this Court being First Appeal No. 48 of 2013.

7. The award dated 07/05/2008 was never challenged before any Court as per provisions of Section 34 of the Act of 1996, and subsequently the opposite party No. 1 also filed an application for execution of the award dated 07/05/2010 which was registered as Execution Case No. 43 of 2011. The revisionist filed his objections

under Section 47 of the Civil Procedure Code inter-alia stating that no arbitration agreement was executed between the parties and the alleged award was not an outcome of arbitration proceedings and therefore could not be executed. He also submitted that the said award was a nullity in the eyes of law and cannot be executed as an arbitration award.

8. The First appeal preferred by opposite party No. 1 filed against the rejection of his application under section 9 of the Act of 1996 came up for hearing before this Court on 01/09/2016 on which date considering the fact that the application for execution was pending before the District Judge, wherein objections under Section 47 of the CPC had also been filed by the revisionist, were pending consideration, directed the District Judge, Lucknow to dispose of the application for execution along with the objections within a period of 3 months from the date of communication of the order.

9. The District Judge by means of the impugned order dated 30/01/2019 has rejected the objections preferred by the revisionist and against the said order the present revision has been filed. The District Judge while rejecting the objections filed by the revisionist relied upon the judgment of this Court in the case of **Larsen and Toubro Limited vs Maharaji Educational Trust, (2010)10SCC Online All 1866** passed in Civil Revision No. 213 of 2010 (decided on 24/09/2010) where it was held that the “award” passed in the arbitration proceedings is not a “decree” within the meaning of Section 2(2) of the C.P.C and provisions of Section 47 C.P.C would not be applicable to obstruct the execution of the award.

10. Assailing the impugned order dated 30/01/2019 passed by the District Judge, it has been submitted by Sri Pritish Kumar, Advocate that according to Section 36 of the Act of 1996 an award is liable to be enforced in the same manner as if it were a decree of the Court. He submits that while executing a decree, questions

pertaining to objections to execution, discharge, and satisfaction of a decree have to be considered by the executing Court while executing any decree. He submits that there was no arbitration agreement, nor was there any claim filed by any of the parties and even the award does not give any reasons and consequently it is a nullity and cannot be executed. He submitted that even though no appeal was filed under Section 34 of the Act of 1996, still the objections raised by the revisionist were liable to be considered at the stage of execution and relied on the Judgment in the case of **Dharma Prathisthanam vs Madhok Construction (P) Ltd, (2005) 9 SCC 686**.

11. He further submitted that the award passed was a nullity and cannot even be termed as an award and at best it could be termed as a family settlement. Further, the award itself states that it shall be given legal shape by expert civil lawyers/Income Tax Consultant and submitted that the said award would not be legally enforceable as such. It was further submitted that the District Judge has not complied with the order passed by this Court dated 01/09/2016, in as much as he has failed to decide the objections raised by the revisionist, and he has consequently failed to exercise jurisdiction vested in him.

12. Sri Sanjay Bhasin, Senior advocate appearing on behalf of the respondents has opposed the revision. It was submitted that a bare perusal of the award would reveal that the parties had agreed to the arbitration proceedings held by Sri Anirudh Mithal and revisionist had duly participated in the said proceedings, and vehemently disputed the facts asserted by the revisionist in with regard to the validity of the award. It was further submitted that it was open to the revisionist to have challenged the validity of the award under Section 34 of the Act of 1996, but no such challenge was made by him, and the award has become final and binding as per Section

35/36 of the Act of 1996 and is liable to be enforced as such. He further submitted that objections which could have been raised under section 34 of the Act of 1996 for the challenge of arbitration award cannot be permitted to be raised as a stage of execution. He submitted that the objections raised by the revisionist are relatable to section 16(6) of the Act of 1996 for which remedy under section 34 of Act of 1996 has been specifically prescribed and for the said objections remedy does not lie under section 47 of the C.P.C, and consequently submitted that there is no infirmity in the order passed by the District Judge Lucknow.

13. It was further stated that in the present revision, this Court in exercise of its revisional jurisdiction would only look into the aspect of the jurisdiction exercised by the District Judge and would not go into the merits of the claim and validity of the award. He further submitted, that the District Judge has rightly rejected the objections filed by the revisionist inasmuch as the executing Court would not have the same powers as provided for under Section 47 of the CPC while deciding the objections against execution of an award. It was submitted that an award attains finality as per Section 36 of the Act of 1996 and is liable to be enforced in accordance with the provisions of CPC in the same manner as if it were decree of the Court. He submitted that the distinction between an award and a decree of Court are evident and apparent and only because of deeming provision as contained in section 36 of the Act of 1996 and only for the purposes of execution the award is treated as a decree. In case objections under Section 47 of the CPC are made applicable to execution of an award, then it will run counter to the statutory scheme of the Act of 1996. In this regard he relied upon the judgment of this court in the case of **Larsen and Toubro Limited vs Maharaji Educational Trust** (Supra). It was further submitted that questions pertaining to the jurisdiction of the arbitral tribunal can be raised before the Tribunal itself as per Section 16 of the Act

of 1996, and the question of jurisdiction could be raised under Section 34 as per Section 16(6) of the Act of 1996 .He concluded by stating that the District Judge has rightly appreciated the controversy in the present case and there is no the infirmity in his order rejecting the objections filed under Section 47 of the CPC.

14. I have heard the counsels for the parties and perused the record. The undisputed facts arising in the present case are that by a registered lease deed the National Council of Young Men Christian Association of India executed a lease deed in respect of property situated at 13 Rana Pratap Marg, Lucknow in favour of revisionist and his grandfather Sri Kishori Lal Agarwal. With regard to the same property deed of relinquishment was executed by Sri Motilal Agarwal declaring that the said property is the absolute and exclusive property of Sri Kishori Lal Agarwal and revisionist and it had never been acquired by the firm M/s Motilal Agarwal & Co. Subsequently an agreement was entered into between Sri Kishori Lal Agarwal and revisionist distributing the said property amongst themselves and also with regard to the development work to be undertaken by each of them. Motilal Agarwal who was the father of the revisionist, died on 31/12/2007 and disputes arose between his legal heirs with regard to the distribution of his assets as well as the property leased by National Council of Young Men Christian Association of India.

15. Subsequent facts in the present case are disputed, which relate to the submission of the dispute for arbitration, and the proceedings held by Sri Anirudh Mithal who was a friend of revisionist father. He intervened and made efforts for amicable settlement of the disputes and differences among the family members. Meetings were held between the parties where the revisionist also participated, and the final outcome was titled as a Final award dated 07/05/2008

which was outcome of arbitration between Sarojini Agarwal, Sanjay Agarwal, Pallavi Gupta and Rahul Agarwal.

16. The first issue which arises for determination is the limits and powers of this Court while deciding a revision petition, and more specifically as to whether merely the question of exercise of jurisdiction by the District Judge can be looked into, or even the validity of the award can also be judged by this Court.

17. It is pertinent to understand the context and legislative intent behind the enactment of Section 115 of the CPC. The said Section has been reproduced for reference hereunder:

"115. Revision 4 (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears--

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court. Explanation.-- In this section, the expression "any

case which has been decided" includes any order made, or any order deciding an issue in the course of a suit or other proceeding.

18. Section 115 of the CPC, deals with the High Court's power of revision. Briefly stating, in a case which is not subject to appeal, the High Court is empowered to call for the records of the case decided by the Court below, and if the Court below has exercised a jurisdiction vested in it by law, or failed to exercise jurisdiction vested by law or acted with material irregularity, etc. in the exercise of its jurisdiction, the High Court may interfere.

19. The provision thus takes within its limited jurisdiction, the irregular exercise or non-exercise of it, or the illegal assumption of it. It is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. In other words, it is only in cases where the subordinate Court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the jurisdiction of the High Court may be properly invoked.

20. In the case of **Major S.S. Khanna v. Brig. F.J. Dillon**, **(1964) 4 SCR 409**, the Hon'ble Supreme Court stated that the said Section consists of two parts, first prescribes the condition in which jurisdiction of the High Court arises, i.e. there is a case decided by the subordinate Court in which no appeal lies to the Court of higher jurisdiction, second sets out the circumstances in which the jurisdiction may be exercised. If there is no question of jurisdiction, the concerned decision cannot be corrected by the High Court in the exercise of revisional powers. The relevant paragraphs of Major S.S. Khanna (Supra) have been reproduced herein:

"*6. The jurisdiction of the High Court to set aside the order in exercise of the power under Section 115 of the Code of Civil Procedure is challenged by Khanna on three grounds:*

(i) that the order did not amount to "a case which has been decided" within the meaning of Section 115 of the Code of Civil Procedure;

(ii) that the decree which may be passed in the suit being subject to appeal to the High Court; the power of the High Court was by the express terms of Section 115 excluded; and

(iii) that the order did not fall within any of the three clauses

(a), (b) and (c) of Section 115.

The validity of the argument turns upon the true meaning of Section 115 of the Code of Civil Procedure, which provides: "The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears--

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit."

21. The primary objective of Section 115 of the CPC, is to prevent subordinate Courts from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. It clothes the High Court with the powers to see that the proceedings of the subordinate Courts are concluded in accordance with law within the bounds of their jurisdiction and in furtherance of justice.

22. The term “jurisdiction‟ has not been defined in the CPC. The said term has been defined by the Hon’ble Supreme Court and various High Courts by way of judgments. The said term means “the power of a Court to hear and decide a case or to pass a certain order‟ and “the right or authority to apply laws and administer justice”. The expression “jurisdiction” is a verbal cast of many colors, the adoptive definition of the same has to be interpreted subjectively, i.e.,

depending upon the nature of the facts and circumstances of each case.

23. It is a settled principle of law that the lower Courts have jurisdiction to decide the case, and in context of the provision of revision, even if the Court below decides the case wrongly, they do not exercise their jurisdiction illegally or with material irregularity.

24. This Court is of the view that there is no justification for the contention that the revisional jurisdiction is intended to authorize the High Court to interfere and correct gross and palpable errors of the subordinate Courts, so as to prevent grave injustice in non-appealable cases and that it would be difficult to formulate any standard by which the degree, or error of the subordinate Courts could be measured.

25. The revisional power, however, enables the High Court to correct, when necessary, the errors of jurisdiction committed by subordinate Courts and provides the means to an aggrieved party to obtain rectification in a non-appealable order. In other words, for the effective exercise of its superintending powers, revisional jurisdiction is conferred upon the High Court. The said principle has been reaffirmed by the Hon'ble Apex Court in the judgment of **Manick Chandra Nandy v. Debdas Nandy, (1986) 1 SCC 512**. The Hon'ble Court in the said judgment had observed as follows:

"*5. We are constrained to observe that the approach adopted by the High Court in dealing with the two revisional applications was one not warranted by law. The High Court treated these two applications as if they were first appeals and not applications invoking its jurisdiction under Section 115 of the Code of Civil Procedure. The nature, quality and extent of appellate jurisdiction being exercised in first appeal and of revisional jurisdiction are very different. The limits of revisional jurisdiction are prescribed and its boundaries defined by Section 115 of the Code of Civil Procedure. Under that section revisional jurisdiction is to be exercised by the High Court in a case*

in which no appeal lies to it from the decision of a subordinate court if it appears to it that the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law or has acted in the exercise of its jurisdiction illegally or with material irregularity. The exercise of revisional jurisdiction is thus confined to questions of jurisdiction.

While in a first appeal the court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to reexamine or reassess the evidence on record and substitute its own findings on facts for those of the subordinate court"

26. In the backdrop of the aforesaid enunciation of the aspect of "jurisdiction" with regard to revisions, we have been called upon to examine the order dated 30/01/2019 passed by the District Judge Lucknow. He dealt with the objections raised by the revisionist regarding that the "Final award" dated 07/05/2008 was not an arbitration award but at best a family settlement/arrangement and was a nullity in the eyes of law. The District Judge has rejected the said objections by holding that Sri Anirudh Mithal was appointed as an arbitrator by all the parties without any demur to decide the dispute which arose between the parties and the revisionist did not raise any objections whatsoever during the entire arbitration proceedings before the arbitrator. A perusal of the award dated 07/05/2008 also reveals that there was a mutual agreement between Smt Sarojini Agarwal and 3 children to consult, obtain advice and guidance in the matter of distribution of all assets, liabilities and all matters concerning to and connected or touching with the estate of late Motilal Agarwal. He has further recorded that they all had undertaken to accept without demur whatever decision is awarded by the arbitrator. Facts were also confirmed in writing in February 2008 by Smt Sarojni Agarwal and her 3 children. The revisionist has denied the existence of any

arbitration agreement. A perusal of the revision and the objections filed by the revisionist before the executing Court indicate that none of the letters as mentioned in the award were ever produced, from which it could be gathered that there was no arbitration agreement. An arbitration agreement need not be a specific document, but the agreement can be gathered from various documents, but the intention has to be unequivocally stated, which is to refer the dispute for arbitration. The revisionist has not denied the existence of the letters submitted to the arbitrator by the respective parties wherein it has been unequivocally stated that the dispute may be decided through arbitration by Sri Anirudh Mithal. Not only is there no denial with regard to submission of the dispute for arbitration, but the revisionist has not produced the letters sent by him to the arbitrator from which it could be gathered that there was no intention to refer the dispute for arbitration. Accordingly, there is no material or evidence to return a finding in favour of the revisionist or to interfere with the finding recorded by the District Judge while rejecting the objections filed by the revisionist.

27. Even the provision of section 4 of the Act of 1996 would militate against the arguments raised by the revisionist. According to Section 4 where a party who knows that any requirements under the arbitration agreement has not been complied with and yet proceed with the arbitration without stating his objection to such non-compliance without undue delay shall be deemed to have waived his right to so object. The revisionist did not raise any objections during the arbitration proceedings despite the fact that he participated in the same and consequently cannot be permitted to turn around and raise the same at such a belated stage. Even if he was of the firm belief that there is no arbitration agreement according to the exchange of letters as mentioned in the award, it was open for him to have challenged the award under Section 34 of the Act of 1996 within the time prescribed. The respondents are right in stating that even the statutory scheme of

the Act of 1996 clearly states that any objection relating to jurisdiction of the arbitral tribunal can be raised before the tribunal itself, and the award can also be challenged under Section 34 of the Act of 1996. In not doing so, provisions of Section 36 of the Act of 1996 come into operation and the award is liable to be enforced as such. The judgment of the Hon'ble Supreme Court in the case of **Dharma Prathisthanam** was delivered in 2005 interpreting the provisions of Arbitration Act, 1940. The Act of 1940 was replaced by the Arbitration and Conciliation Act, 1996 wherein Section 4 provided that where any requirement under the arbitration agreement has not been complied and yet the person proceed with the arbitration without stating the objections to such non-compliance he would be deemed to have waived his right to object. Another major distinction between the Arbitration Act, 1940, and the Act of 1996 is that under the Act of 1940 the Arbitral Award was required to be made a rule of the Court and a decree, but Section 36 of the Arbitration Act, 1996, confers the Arbitral Award with a status of a decree to "be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court". The law has undergone sea change by introduction of Act of 1996 and accordingly, it can safely be stated that the judgment of the Supreme Court in the case of **Dharma Prathisthanam** interpreting Act of 1940 is no longer good law after coming into force of Act of 1996.

28. The other argument raised by the revisionist was with regard to the maintainability of the objections under Section 47 of the CPC filed against the application for execution of the award. In this regard it was submitted that at the stage of execution all questions relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree. It was argued that even the High Court as an interim measure had passed the order dated 01/09/2016 in the First Appeal preferred by the opposite party directing the District Judge to decide the objections under Section 47 of the CPC, and by

not doing so the District Judge has committed material irregularity and had not exercised the jurisdiction vested in him.

29. The applicability of Section 47 of the CPC have been considered by this court in the case of **Larsen and Toubro Limited vs Maharaji Educational Trust 2011 (2) AWC 1682 (All)** passed in Civil Revision No. 213 of 2010 (decided on 24/09/2010) where it was held:-

"*The aforesaid scheme of the Act go to show that Section 34 of the Act prescribes the ground under which arbitral award can be challenged. If no application is made under Section 34 within the prescribed period of limitation or the application is refused the award becomes final under Section 35 of the Act and enforceable in terms of Section 36. Section 34 of the Act enumerates specific grounds on which an application for setting aside an award can be made.*

Intention of legislature is a guiding factor for interpreting the provision of a Statute and the same is to be gathered from the words used in various provisions and the scheme of the Statute. Under 1996 Act, the grounds of challenge having been specified by the legislature by enacting Section 34 of the Act and finality having been attached under Section 35, the legislature obviously did not intend to either enlarge the scope of grounds of challenge or to provide another opportunity of challenge after the stage of Section 34 is over. Thus, the objection to the award on the grounds enumerated in Section 34 of the Act once adjudicated cannot be allowed to be raised or re-agitated by permitting to raise objection during the execution proceedings under Section 36 by pressing Section 47 CPC in service as the same would render the provisions of Section 34 and 35 of the Act virtually redundant.

The use of words "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 section 36 of the Act would not mean that the provisions of

the Code of Civil procedure with regard to execution of decree would become applicable in the execution of the award. Section 36 only creates a fiction that an award would be enforceable as if it were a decree of the Court within the scope of Order XXI C. P. C. This enforcement of the award under Order XXI CPC would not attract the application of Section 47 CPC simply by use of the expression "shall be enforceable as a decree" in Section 36 nor Section 36 can be read independent of other provisions contained in the Act itself. The provisions of the Act are to be reconciled with each other. Section 36 cannot be read out of context and independent of the scheme of the Act. Reference to another statute does not attract application of such other statute to the referring statute unless expressly provided. A reference in a statute to another statute cannot be read in a manner to invite inconsistency in the referring statute. Any such reference, if made, has to be interpreted in the context in which the reference is made so as not to make inconsistent the provisions of the referring statute itself. If it brings inconsistency, then the same is to be avoided. If Section 47 CPC is to be attracted, then the restrictions provided in Section 34 of the Act and finality to arbitral award by virtue of Section 35 of the Act would be redundant. Section 36 cannot be interpreted in the manner inconsistent with the provisions contained in the other part of the Act. That apart the finality of the decree under the Code is reached after the decision under Section 47 C. P. C., if raised. But the legislature in its wisdom thought it fit to incorporate the scope similar to Section 47 C. P. C. in Section 34 of the Act in order to bring finality before the award becomes executable. Same procedure cannot be expected to be incorporated in a statute twice. Legislature can never be interpreted to intend repetition. At the same time, the object of the Act is directed towards speedy and hazard-free finality with a view to avoid long drawn proceeding based on technicalities. Therefore, having regard to the provisions of Sections 13, 16, 34 and 35, Section 36 cannot be interpreted in a manner

inconsistent with any of the provisions of the Act to attract the provisions contained in the Code in its entirety. Therefore, while considering the application filed under Section 36 of the Act for the execution of an award, the Court cannot overlook the scope and ambit within which the Court is to execute the award taking aid of the provisions for execution contained in the CPC not inconsistent with the provisions contained in the 1996 Act. Therefore, in my view, Section 47 CPC cannot be attracted despite the words "in the same manner as if it were a decree of the Court" used in Section 36 when the award is sought to be executed thereunder.

The matter can be viewed from another angle. Section 47 CPC provides for questions to be determined by the Court executing the decree. The said section reads as under :

"47. Questions to be determined by the Court executing decree.- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2)Omitted by the Code of Civil Procedure (Amendment Act, 1976, S. 20 (w.e.f. 1.2.1977) (3)Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation I.- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.- (a) for the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to

be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section."

It is, thus, clear that in order to invoke section 47 CPC, there must be a decree. Section 2 (2) CPC defines the decree. For a decision or determination to be a decree, it must necessarily fall within the fore-corners of the language used in the definition. Section 2 (2) CPC defines decree to mean "formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include - (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default."

Explanation. _ A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

The use of words "adjudication' and "suit' used by Legislature clearly goes to show that it is only a court which can pass a decree in a suit commenced by plaint adjudicating the dispute between the parties by means of a judgment pronounced by the Court. The Hon'ble Apex Court in the case of Paramjeet Singh Patheja Vs. ICDS Ltd., AIR 2007 SC - 168 after considering the definition of decree as contained in CPC in paragraph 29 has held that "it is obvious that an arbitrator is not a Court, an arbitration is not an adjudication and, therefore, an award is not a decree". Again in paragraph 31, it has been held that words "decision', and "Civil Court' unambiguously rule out an award by arbitrators to be a decree. In the said case, the Hon'ble Apex Court while considering the question as to whether an insolvency notice under Section 9 of the Presidency Town Insolvency Act, 1909 can be

issued on the basis of an arbitration award, held that such notice cannot be issued for the reason the arbitration award is neither a decree nor an order for payment within the meaning of Section 9(2) of the Insolvency Act and it is not rendered in a suit. Thus, the award not being covered under the definition of a decree, objection with respect to its validity can only be raised as provided under Section 34 of the Act and not by taking resort to section 47 C. P. C..

In the case of ***Pramjeet Singh Patheja*** *(supra), the Hon'ble Apex Court has interpreted the words "as if' used in Section 36 of the Act as under:*

"The words "as if' demonstrate that award and decree or order are two different things. Legal fiction is created for limited purpose of enforcement as a decree. The fiction is not intended to make a decree for all purposes under all statutes, whether State or Central."

While comparing the provisions of Section 15 of the Arbitration Act, 1899 which also provided for enforcing the award as a decree with Section 36 of the Arbitration and Conciliation Act, 1996, the Hon'ble Apex Court has observed in paragraphs 56 and 57 as under :

"56. Section 15 of the Arbitration Act, 1899 provides for "enforcing' the award as if it were a decree. Thus a final award, without actually being followed by the decree (as was later provided by Section 17 of the Arbitration Act of 1940), could be enforced, i.e., executed in the same manner as a decree. For this limited purpose of enforcement, the provisions of CPC were made available for realizing the money awarded. However, the award remained an award and did not become a decree either as defined in the CPC and much less so far purposes of an entirely different statute such as the Insolvency Act."

"57. Section 36 of the Arbitration and Conciliation Act of 1996 brings back the same situation as it existed from 1899 to 1940. Only

under the Arbitration Act, 1940, the award was required to be made a rule of Court i.e. required a judgment followed by a decree of court.

The issue that an award made in arbitral proceedings is not a decree within the meaning of CPC having been settled by the aforesaid pronouncement by the Hon'ble Apex Court, the provisions of Section 47 C. P. C. cannot be available to obstruct the execution of the award.

Much emphasis has been laid by the learned counsel for the applicant on the decision of the Hon'ble Apex Court in the case of ***Dharma Pratishthanam Vs. Madhok Constructions*** *(2005) 9 SCC 686 wherein it has been held that in the event of appointment of an arbitrator and reference of disputes to him being void ab initio as totally incompetent or invalid the award shall be void and liable to be set aside in any appropriate proceedings when sought to be enforced or acted upon. However, the said case relied upon by the learned counsel for the applicant is distinguishable and will have no application in the facts of the present case. In the said case when the award was filed in the court for making rule of the Court under 1940 Act, objections were filed by the judgment-debtor under Section 30 of the said Act which were dismissed on the ground that they were filed beyond the prescribed period of limitation. The intra-court appeal preferred against the said order was also dismissed by the Division Bench against which appeal by special leave was filed. The dispute being under 1940 Act, the question of interpretation of Sections 35 and 36 of the Act and applicability of section 47 C. P. C. to the execution of an award was not under consideration before the Hon'ble Apex Court. The Hon'ble Apex Court was considering the validity of the objection filed under Section 30 of 1940 Act and having found that since the appointment of Arbitrator and reference of dispute was void and as such the award was also void and the fact that application was filed beyond the period of limitation was not of*

much significance and delay was liable to be condoned. The same can be inferred from the following observations made in paragraph 32 of the judgment :

"In the present case, we find that far from submitting to the jurisdiction of the arbitrator and conceding to the appointment of and reference to the arbitrator Shri Swami Dayal, the appellant did raise an objection to the invalidity of the entire proceedings beginning from the appointment till the giving of the award though the objection was belated. In ordinary course, we would have after setting aside the impugned judgements of the High Court remanded the matter back for hearing and decision afresh by the learned single Judge of the High Court so as to record a finding if the award is a nullity and if so then set aside the same without regard to the fact that the objection petition under Section 30 of the Act filed by the appellant was beyond the period of limitation prescribed by Article 119 (b) of the Limitation Act, 1963. However, in the facts and circumstances of the case, we consider such a course to follow as a futile exercise resulting in needless waste of public time. On the admitted and undisputed facts, we are satisfied, as already indicated hereinabove, that the impugned award is a nullity and hence liable to be set aside and that is what we declare and also do hereby, obviating the need for remand."

In the present case, the situation is quite different. The applicant invoking section 34 of the Act filed their objection challenging the validity of the award which were dismissed as barred by limitation. The judgment came to be affirmed by the Hon'ble Apex Court on dismissal of the special leave petition. The grounds of challenge to the arbitral award which were dismissed as barred by limitation, were much before the Hon'ble Apex Court but it did not find it fit to condone the delay and to consider grounds of challenge on merit, itself or remand back the proceedings for the said purpose. Hon'ble

Apex Court rather chose to affirm the orders passed by the District Judge and this Court dismissing the objection as barred by limitation. Thus, the reliance placed by the learned counsel for the applicant on the aforesaid pronouncement of the Hon'ble Apex Court is totally misfounded.

Apart from above, the extent of judicial intervention has been circumscribed by Section 5 of the Act. In other words, judicial interpretation is prohibited except as provided under the Act. Section 5 of the Act reads as under :

"Section 5. Extent of judicial intervention._ Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

Section 5 of the Act falls under Part-I which includes within its ambit Section 2 to Section 43 of the Act. Thus, Sections 34 and 36 are also included in Part-I of the Act. The judicial intervention having been limited by the legislature, the Court cannot interfere at any and every stage on a ground other than those available in the Act itself. Thus, once stage of Section 34 is over and the award becomes final under Section 35, judicial intervention in the execution of the award under Section 36 cannot be held to be permissible on any ground, whatsoever, in view of the limitation imposed by Section 5 of the Act.

Thus, having regard to the provisions of Sections 5, 12, 13, 16, 34, 35 and 36 of the Act, the irresistible conclusion is only grounds which can be pressed into service for challenge to an award is within the ambit and scope of Section 34 of the Act. Once the stage of section 34 is over and the questions that were raised or could have been raised at that stage cannot be allowed to be raised again and again by pressing into service section 47 of the Code of Civil Procedure at the time of execution of award under Section 36 of the Act."

30. Coordinate Bench of this Court considering the issue of maintainability of objections under Section 47 of the CPC for execution of an award in the case of **Sanjay Gupta Vs. Suresh Kumar Mishra, 2023 (7) ADJ 747 (LB)** has observed as under :-

"*11. The aforesaid proposition of law has also been enunciated by Hon'ble the Supreme Court in Government of India v. Vedanta Limited(supra) as well as Amazon.Com NV Investment Holdings LCC(supra), which also holds that an application to enforce an award is in fact an Application under the Arbitration Act and not an Application under Order 21 of the Code. The relevant portion of the judgment is as follows:-*

"77. The application under Sections 47 and 49 for enforcement of the foreign award, is a substantive petition filed under the Arbitration Act, 1996. It is a well-settled position that the Arbitration Act is a self-contained code. [Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178; Kandla Export Corpn. v. OCI Corpn., (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664; Shivnath Rai Harnarain (India) Co. v. Glencore Grain Rotterdam, 2009 SCC OnLine Del 3564 : (2009) 164 DLT 197; Usha Drager (P) Ltd. v. Dragerwerk AG, 2009 SCC OnLine Del 2975 : (2010) 170 DLT 628; Sumitomo Corpn. v. CDC Financial Services (Mauritius) Ltd., (2008) 4 SCC 91; Conros Steels (P) Ltd. v. Lu Qin (Hong Kong) Co. Ltd., 2014 SCC OnLine Bom 2305 : (2015) 1 Arb LR 463 : (2015) 2 Bom CR 1] The application under Section 47 is not an application filed under any of the provisions of Order 21 CPC, 1908. The application is filed before the appropriate High Court for enforcement, which would take recourse to the provisions of Order 21 CPC only for the purposes of execution of the foreign award as a deemed decree. The bar contained in Section 5, which excludes an application filed under any of the provisions of Order 21 CPC, would not be applicable to a substantive petition filed under the Arbitration Act, 1996.

Consequently, a party may file an application under Section 5 for condonation of delay, if required in the facts and circumstances of the case."

12. The same analogy has been followed by a coordinate Bench of this Court in M/s Larsen & Toubro Limited(supra) which has also been followed by another coordinate Bench in M/s Bharat Pumps and Compressors Ltd.(supra) as well as by Delhi High Court in Hindustan Zinc Ltd.(supra). Even in judgment relied upon by learned counsel for petitioner in Punjab State Civil Supplies Corporation Ltd. (supra), it has been held by Hon'ble the Supreme Court in paragraph 27.3 that all objections referred and ought to have been raised by the respondents before arbitrator or under Section 34 of the Act of 1996 cannot be allowed to be raised in execution once the award became final and attained finality as a decree of a Civil Court. The relevant paragraph of aforesaid judgment is as follows:-

"27.3. Thirdly, all the objections referred above ought to have been raised by the respondents before the arbitrator or/and the Additional District Judge under Section 34 of the Act but certainly none of them could be allowed to be raised in execution once the award became final and attained finality as decree of the civil court. In other words, having regard to the nature of objections, it is clear that such objections were not capable of being tried in execution proceedings to challenge the award. It is for the reason that they were on facts and pertained to the merits of the controversy, which stood decided by the arbitrator resulting in passing of an award. None of the objections were in relation to the jurisdiction of the court affecting the root of the very passing of the decree. If the executing court had probed these objections then it would have travelled behind the decree, which was not permissible in law. An inquiry into facts, which ought to have been done in a suit or in an appeal arising out of the suit or in proceedings

under Section 34 of the Act, cannot be held in execution proceedings in relation to such award/decree."

13. Upon perusal of aforesaid judgments, the single thread running through all of them with regard to maintainability of objections under Section 47 of the Code is that such objections are not maintainable in execution proceedings for the enforcement of an arbitration award on the twin analogies that: (a) an arbitration award not having been passed by a ?court?, does not come within definition of a decree as envisaged under Section 2(2) of the Code; and (b) once the award attains finality, objections thereto can be taken only in proceedings under Section 34 of the Act of 1996 and the same cannot be bypassed to be taken in execution proceedings for the purposes of enforcement of the award.

14. So far as aforesaid twin analogies are concerned, it is now settled law as seen herein above that award passed by the arbitrator does not come within definition of a decree in terms of Section 2(2) of the Code and therefore objections under Section 47 of the Code are clearly not maintainable in execution proceedings for the purposes of enforcement of the arbitration award. Nonetheless, the second aspect of the matter on which it has been held that application under Section 47 of the Code would not be maintainable arises in such situations where objections to the award can be taken in proceedings under Section 34 of the Act of 1996. As a natural corollary, objections which cannot be taken under Section 34 of the Act of 1996 can very well be examined and decided by the executing court if they do not touch upon the merits of the award. In case these twin conditions apply, a judgment debtor cannot be left remediless.

15. A situational aspect with regard to aforesaid proposition would be in a case such as the present one where objections have been taken by judgment debtor to the fact that by means of execution application, a relief which was never awarded is being sought. In such a situation

where objection is being raised to aforesaid extent, naturally cause of action arises only upon filing of an execution application for enforcibility of award and in such circumstances there can be no occasion for the judgment debtor to raise such objections to award under Section 34 of the Act of 1996. However, in such circumstances also, a word of caution is required that such objections would be maintainable only in case they do not touch upon the merits of the award or where such objections can be taken under Section 34 of the Act of 1996. Although for the purposes of enforcibility of an arbitration award in terms of Section 36 of the Act of 1996, recourse can be taken to Order 21 of the Code of Civil Procedure, but in the circumstances delineated herein above, the execution court, in the considered opinion of this court, would have an inherent right even exercising such powers under Section 151 of the Code to examine that such objections are raised by judgment debtor which do not pertain to merits of the award or which cannot be taken under Section 34 of the Act of 1996.

16. The aforesaid proposition would find support from judgment of Hon'ble Supreme Court in Punjab State Civil Supplies Corporation Ltd.(supra) in which it has been held that it is a well-settled principle of law that the executing court has to execute the decree as it is and cannot go behind the decree but can undertake limited enquiry regarding jurisdictional issue which goes to root of the decree and has the effect of rendering the decree a nullity. Aforesaid enunciation of law although would not be completely applicable where enforcibility of an arbitration award is concerned but nonetheless the aspect that the executing court can only execute the decree as it is and cannot go behind the decree would still be applicable."

31. Analyzing the above decisions, it is now well settled that once an award is passed by the Arbitrator, any party aggrieved by the award is required to challenge the award in accordance with the procedure

provided under the Act of 1996 including the issue relating to the jurisdiction of the Arbitrator, which such issue however, should be raised before the Arbitrator under Section 16 of the Act, 1996. Therefore, a party, aggrieved by the award, not having taken any of the measures provided in the Act, 1996, is barred in law to challenge the validity or legality of the award at the execution stage when such award is put into execution under Section 36 of the Act, 1996. Thus, the application filed by the opposite party under Section 47 of the Code of Civil Procedure challenging the legality and/or validity of the award on diverse grounds, was not maintainable, and thus the District Judge did not commit any illegality by rejecting the same.

32. This Court by means of order dated 01/09/2016 passed in First appeal had merely directed the District Judge to dispose of the objections pending before him. The District Judge has rejected the same as being not maintainable. The order of the High Court stands complied with by passing of the impugned order. By merely directing the District Judge to dispose of the objections, the order of this Court cannot be interpreted in a manner as if he was directed to assume jurisdiction and decide objection raised by revisionist on merits which jurisdiction was not available to him under law.Thus, the submissions advanced by Mr Pritish Kumar, learned Advocate for the revisionist, assailing the order dated 30/01/2019 rejecting the application filed by the revisionist under Section 47 of the Code of Civil Procedure, are devoid of any merit and accordingly rejected.

33. Considering the above discussion, this Court is of the considered view that the District Judge had rightly exercised his jurisdiction and rejected the objections filed by the revisionist under Section 47 of the Civil Procedure Code. This Court also affirms the view taken by the coordinate Bench in the case of **Larsen and Toubro Limited vs Maharaji Educational Trust** passed in Civil Revision No. 213 of 2010 (decided on 24/09/2010) which has subsequently been affirmed

by another coordinate Bench of this court in the case of **Sanjay Gupta Vs. Suresh Kumar Mishra, 2023 (7) ADJ 747 (LB)**. The objections to the award ought to have been raised by the revisionist before the District Judge under Section 34 of Act of 1996 and could not have been allowed to be raised in execution proceedings once the award became final and attained finality as a decree of the Civil Court. Accordingly, the writ petition is bereft of merits and is **dismissed**. The interim order is vacated.

Order Date :- 09.01.2024
A. Verma

(Alok Mathur, J.)