

IN THE HIGH COURT OF KARNATAKA AT DHARWAD BENCH

DATED THIS THE 22ND DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

C.R.P. No.100067 OF 2022

BETWEEN

1 . M/S BELLARY NIRMITHI KENDRA
BY ITS CHAIRMAN
THE DEPUTY COMMISSIONER,
BALLARI
REPRESENTED BY ITS PROJECT DIRECTOR
MR. MOHANA KRISHNA

...PETITIONER

(BY SRI PRASHANT F GOUDAR, ADVOCATE)

AND

1 . M/S CAPITAL METAL INDUSTRIES
REPRESENTED BY ITS PROPRIETER
SRI. CHANDMAL P JAIN

...RESPONDENT

(BY SMT V VIDYA, ADVOCATE)

THIS CRP IS FILED UNDER SEC.115 OF CPC, 1908, PRAYING TO SET ASIDE THE ORDER DATED 19.03.2022 REJECTING THE APPLICATION FILED UNDER SECTION 47 OF CPC 1908 IN EX.C.NO.376/2018 PASSED BY THE HONBLE PRINCIPAL DISTRICT AND SESSIONS JUDGE, AT BALLARI VIDE ANNEXURE-A AND THEREBY DISMISSING THE EXECUTION PETITION FILED BY THE RESPONDENT BEARING EX.C.NO.376/2018 AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 16.02.2024 COMING ON FOR 'PRONOUNCEMENT OF ORDERS' THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The present Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1908¹ challenging the order dated 19.03.2022 passed in Execution Case No.376/2015 by the Principal District and Sessions Judge, Bellary² wherein an application filed by the Petitioner under Section 47 of the CPC was dismissed.

2. The relevant facts necessary for consideration of the present petition are that the Petitioner and the Respondent entered into an Agreement dated 26.6.2013³ for supply of Kapital Era Bus Shelters at Ballari. Alleging various violations in compliance of the terms of the said Agreement, the Respondent filed a petition in Reference Petition No.69/2014 before the Micro and Small Enterprises Facilitation Council⁴ for recovery of a sum of ₹34,48,445/-, consequent to which, a notice of Conciliation under

¹ Hereinafter referred to as 'CPC'

² Hereinafter referred to as 'Executing Court'

³ Herein after referred as the 'said Agreement'.

⁴ Hereinafter referred to as 'Council'

Section 18 r/w 17 of the Micro, Small and Medium Enterprises Development Act, 2006⁵ was issued to the Petitioner. In response, the Petitioner herein issued a reply denying the jurisdiction of the Council to adjudicate the dispute by placing reliance on clauses 8 and 9 of the Agreement.

3. Vide order/award dated 17.11.2017, passed under Section 18(3) of the MSMED Act, the Reference Petition No.69/2014 was allowed and it was ordered that the Petitioner herein who was arrayed as Respondent in proceedings before the Council was required to pay ₹30,73,037/- along with interest. Being aggrieved, the Petitioner preferred Writ Petition No.4523/2018 before the High Court of Judicature at Bombay challenging the said award dated 17.11.2017. Vide order dated 17.09.2019, the said writ petition was disposed of leaving it open for the Petitioner to avail the remedy under Section 34 of the Arbitration and Conciliation Act, 1996⁶. The Petitioner preferred a petition under Section 34 of the Act of 1996 in Arbitration Petition No.1452/2019 before the High Court of Judicature, Bombay. Along with the said petition, I.A.1/2020 was filed for stay. Vide order

⁵ Hereinafter referred to as 'MSMED Act'

⁶ Hereinafter referred to as Act of 1996

dated 21.1.2020, the interim application as well as the petition were dismissed.

4. In the interregnum, Execution Case No.376/2018 was filed by the Decree Holder before the Executing Court wherein, the Petitioner filed an application under Section 47 of the CPC for dismissal of the Execution Petition on the ground that the award dated 17.11.2017 passed by the Council is a nullity, *non est* and passed without jurisdiction. The Respondent filed objections to the said application.

5. Being aggrieved by the order dated 21.1.2020, dismissing the Arbitration Petition No.1452/2019, the Petitioner preferred Appeal No.91/2020 before the Division Bench of the High Court of Judicature, Bombay under Section 37 of the Act of 1996. By order dated 09.04.2021, the said appeal was dismissed.

6. The Executing Court vide its order dated 19.03.2022, dismissed the application filed by the Petitioner under Section 47 of the CPC. Being aggrieved, the present petition is filed.

7. Learned counsel for the Petitioner assailing the order passed by the Executing Court contends that:

- i) There was inherent lack of subject matter jurisdiction for the Council to entertain the petition filed by the Respondent since the Respondent was not registered under the MSMED Act of 2006 as on the date of contract or supply and hence, the provisions of the said Act did not apply;
- ii) That the decree being a nullity, inherent lack of subject matter of jurisdiction could be raised even before the Executing Court;
- iii) That the question of inherent lack of jurisdiction can be raised in an execution proceedings, even after rejection of challenge to the award under Sections 34 and 37 of the Act of 1996 and hence, dismissal of the said challenge made by the Petitioner to the award dated 17.11.2017 does not in any way curtail the right of the Petitioner to raise the plea of inherent lack of jurisdiction before the Executing Court;
- iv) That if the provisions of the MSMED Act, were to be applied, substantive rights of parties would be effected;
- v) That the same body cannot act as both Conciliator and facilitator and there is a bar for the same under Section 80 of the Act of 1996;

vi) That the Executing Court gravely erred in rejecting the application filed by the Petitioner under Section 47 of the CPC.

8. Per contra, learned counsel for the Respondent contesting the submissions made on behalf of the Petitioner contends:

i) That the lis between the parties was not a suit and hence, Section 47 of the CPC is wholly inapplicable to the present case;

ii) That the Petitioner could not maintain an application under Section 47 of the CPC before the Executing Court;

iii) That want of jurisdiction raised by the Petitioner is misconceived as the MSMED Act governs to contract between the parties and the order of the Council has attained finality since the challenge made by the Petitioner to the same having been rejected and that the application under Section 47 of the CPC filed by the Petitioner before the Executing Court is only to drag on the matter.

iv) That the Petitioner has barred from raising the contention before the Executing Court under Section 47 of the CPC as a plea that the Respondent is not a 'supplier' under the MSMED Act was not raised in its reply filed consequent to the notice of the conciliation

proceedings issued by the Council. Hence, the Petitioner cannot be permitted to raise the question regarding want of jurisdiction of MSMED Act of 2006 before the executing Court.

v) That the Executing Court was perfectly justified in dismissing the application filed by the Petitioner and the present petition is also liable to be dismissed.

9. Both the learned counsels in the course of their submissions have relied on various judgments and they shall be considered during the course of this order to the extent that they are necessary for adjudication of the issues that arise for consideration.

10. This Court on 21.4.2022, ordered as follows:

- "1. *Sri Sriranga Subbanna, learned Senior Counsel appearing for the petitioner submits that the issue as regards the jurisdiction of the Execution Court needs to be determined by this Court. He submits that the petitioner is willing to deposit the entire amount awarded along with applicable interest as on date within a period of eight weeks from today.*
2. *Notice be issued to the respondent so as to consider the following issue:
Whether the judgment debtor having filed an appeal on an award and the appeal being dismissed, he has still raised an issue of jurisdiction under Section*

47 of the Civil Procedure Code in the execution proceedings?

3. *In view of the same, the further proceedings in Execution No.376/2018 pending on the file of the Principal District and Sessions Judge, Bellary is stayed until the next date of hearing.*
4. *If the aforesaid amount along with applicable interest is not deposited by 17.06.2022, the interim order above granted shall automatically stand vacated.*
5. *Process fee and copies to be furnished by the end of day tomorrow i.e., 22.04.2022, failing which, interim order shall automatically stand vacated.*
6. *The counsel for the petitioner shall also permitted to serve the counsel for the respondent/decreed holder in the execution proceedings.*
7. *Re-list on 20.06.2022."*

11. Having regard to the submissions made by both the learned counsel before the question framed for which the notice has been issued by this Court as is forthcoming vide order dated 21.4.2022 as extracted hereinabove, the following question is required to be considered:

"Whether the petitioner was entitled to file the application under Section 47 of the CPC raising the question regarding inherent lack of subject matter jurisdiction with respect to the award sought to be executed by the executing Court?"

12. Before considering the said question, it is relevant to note a few aspects with regard to the factual matrix of the present case:

- i) A notice dated 9.10.2014 was issued by the Member Secretary, Council under Section 18 read with Section 17 of the MSMED Act notifying the petitioner that the respondent has filed Petition No.69/2014 for recovery of a sum of ₹34,48,445/- and requiring the petitioner to reply to the said notice within 15 days;
- ii) The petitioner sent a reply dated 29.10.2015, consequent to which on 17.10.2015 and 16.1.2016 hearings were held for conciliation, in which the respondent appeared, but the petitioner remained absent. Thereafter, arbitration proceedings were commenced;
- iii) The arbitration proceedings were held by the Council on 2.4.2016, 29.11.2016, 26.4.2017 and 22.8.2017 and it is forthcoming from the record that the petitioner herein who was arrayed as the respondent in the said proceedings attended only one hearing on 2.4.2016 and remained absent on all the other hearings, whereas the

respondent herein who was arrayed as petitioner in the said proceedings attended all the hearings. Subsequently, vide order/award dated 17.11.2017 was passed, whereunder the Reference Petition No.69/2014 was allowed and the petitioner herein was directed to pay to the respondent a sum of ₹30,73,037/- along with interest. The said order was passed under Section 18(3) of the MSMED Act.

13. Section 18 of the MSMED Act states as follows:

"18. Reference to Micro and small Enterprises Facilitation Council.

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in

pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) "

(emphasis supplied)

14. It is forthcoming that consequent to the reference made under Section 18(1) of the MSMED Act, the Council conducted proceedings under Section 18(2) and 18(3) of the said Act. In terms of Section 18(3) of the MSMED Act the arbitration proceedings have been commenced.

15. Section 7(1) of the Act of 1996 states as follows:

"7. Arbitration agreement.

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(emphasis supplied)

16. Hence, it is clear that the arbitration proceedings commenced under Section 18(3) of the MSMED Act are as if the parties had entered into an arbitration agreement as

contemplated under Section 7(1) of the Act of 1996. To execute the arbitral award the respondent has filed the execution proceedings, wherein the application under Section 47 of the CPC has been filed by the petitioner.

17. Learned counsel for the respondent objecting to the entitlement of the petitioner to file an application under Section 47 of the CPC, submits that the Section 47 of the CPC can be resorted to only in respect of a decree passed by a Civil Court and since the decree that is sought to be executed in the present case is in the nature of an arbitral award, recourse to Section 47 of the CPC is not available to the petitioner.

18. Responding to the said contention, learned counsel for the petitioner contends that the arbitral award is construed as a decree in terms of Section 36 of the Act of 1996 for the purpose of enforcement and the respondent having been filed the execution petition to enforce the arbitral award as if the same was a decree, the petitioner is entitled to take recourse to Section 47 of the CPC.

19. To consider the said contention, it is necessary to notice the relevant statutory provisions.

20. Section 47(1) of CPC reads as follows:

"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."

(emphasis supplied)

21. Section 36(1) of the Act of 1996 as follows:

"36. Enforcement—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall 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."

(emphasis supplied)

22. In the case of **Sinnamani v. G.Vettivel**⁷ the Hon'ble Supreme Court while considering as to whether the proceedings under the Trust Act can be construed as a suit, held as follows:

"12. The term "suit", as such is not defined in the Code of Civil Procedure. However, Section 26 CPC gives an indication as to the manner in which suit has to be instituted. Section 26 reads as under:

"26. Institution of suits.—(1) *Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.*

⁷ (2012) 5 SCC 759

(2) *In every plaint, facts shall be proved by affidavit."*

13. A suit can be instituted by presentation of a plaint and Orders 4 and 7 CPC deal with the presentation of the plaint and the contents of the plaint. Chapter I of the Civil Rules of Practice deals with the form of a plaint. When the statutory provision clearly says as to how the suit has to be instituted, it can be instituted only in that manner alone, and no other manner."

(emphasis supplied)

23. The Hon'ble Supreme Court in the case of **Paramjeet Singh Patheja v. ICDS Ltd.**,⁸ while considering as to whether an Arbitral award is a decree for the purpose of Section 9 of the Presidency Towns Insolvency Act, 1909, after considering the various provisions of the Act of 1996 as well as of the CPC has held as follows:

"18. Further, the Arbitration Act, 1899 clearly draws the distinction between courts and arbitrators. The Preamble of the Act shows that it is an Act for dealing with "arbitration by agreement without the intervention of a court of justice". Section 4(a) defines "court" and various sections deal with the powers of the court. Section 11 provides for the making of an "award". Section 15 provides for its enforcement. It can therefore be observed that it is only for the purpose of enforcement of the award that the arbitration award is treated as if it were a decree of the court.

23. The words "decision" and "civil court" unambiguously rule out an award by arbitrators.

39. Section 15 of the Arbitration Act, 1899 provides for "enforcing" the award as if it were a decree. Thus a final

⁸ (2006) 13 SCC 322

award, without actually being followed by a 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 realising the money awarded. However, the award remained an award and did not become a decree either as defined in CPC and much less so far the purposes of an entirely different statute such as the Insolvency Act are concerned.

43. For the foregoing discussion we hold:

(i)

(ii)

(iii)

(iv) *An arbitration award is neither a decree nor an order for payment within the meaning of Section 9(2). The expression "decree" in the Court Fees Act, 1870 is liable to be construed with reference to its definition in CPC and hold that there are essential conditions for a "decree":*

(a) that the adjudication must be given in a suit,

(b) that the suit must start with a plaint and culminate in a decree, and

(c) that the adjudication must be formal and final and must be given by a civil or Revenue Court.

An award does not satisfy any of the requirements of a decree. It is not rendered in a suit nor is an arbitral proceeding commenced by the institution of a plaint.

(v) A legal fiction ought not to be extended beyond its legitimate field. As such, an award rendered under the provisions of the Arbitration and Conciliation Act, 1996 cannot be construed to be a "decree" for the purpose of Section 9(2) of the Insolvency Act.

(emphasis supplied)

24. The Hon'ble Supreme Court in the case of **Morgan Securities & Credit (P) Ltd., v. Modi Rubber Ltd.**,⁹ while considering as to whether the provisions of Act of 1996 would prevail over the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, noticing the provisions of Act of 1996, has held as follows:

"40. An award under the 1996 Act indisputably stands on a different footing vis-à-vis an award made under the Arbitration Act, 1940. Whereas under the 1940 Act, an award was required to be made a rule of the court to make it enforceable, the 1996 Act, however, raises a legal fiction. When an award is made, an application under Section 34 is required to be filed questioning the validity thereof. Once such an application is filed, it remains under suspension in the sense that it would not be enforceable. Only upon expiry of the period specified in Section 34 to challenge an award or when such objection is refused, the same would become enforceable. Section 36 merely specifies as to how such an award can be enforced by laying down that it can be enforced as if it were a decree.

41. The legal fiction created under Section 36 has, therefore, a limited application. An award is, thus, to be treated to be a decree even without intervention of the court only for the purpose of its enforceability.

(emphasis supplied)

25. The Hon'ble Supreme Court in the case of **Government of India v. Vedanta Limited** ¹⁰, while considering a question as to the limitation for filing an enforcement/execution

⁹ (2006) 12 SCC 642

¹⁰ (2020) 10 SCC 1

petition of a foreign award under Section 46 of the Act of 1996,
has held as follows:

"69. Section 36 of the Arbitration Act, 1996 creates a statutory fiction for the limited purpose of enforcement of a "domestic award" as a decree of the court, even though it is otherwise an award in an arbitral proceeding [Umesh Goel v. H.P. Coop. Group Housing Society Ltd., (2016) 11 SCC 313 : (2016) 3 SCC (Civ) 795] . By this deeming fiction, a domestic award is deemed to be a decree of the court [Sundaram Finance Ltd. V. Abdul Samad, (2018) 3 SCC 622 : (2018) 2 SCC (Civ) 593] , even though it is as such not a decree passed by a civil court. The Arbitral Tribunal cannot be considered to be a "court", and the arbitral proceedings are not civil proceedings. The deeming fiction is restricted to treat the award as a decree of the court for the purposes of execution, even though it is, as a matter of fact, only an award in an arbitral proceeding. In Paramjeet Singh Patheja v. ICDS Ltd. [Paramjeet Singh Patheja v. ICDS Ltd., (2006) 13 SCC 322] , this Court in the context of a domestic award, held that the fiction is not intended to make an award a decree for all purposes, or under all statutes, whether State or Central. It is a legal fiction which must be limited to the purpose for which it was created.

70. A Constitution Bench of this Court in Bengal Immunity Co. Ltd. V. State of Bihar [Bengal Immunity Co. Ltd. V. State of Bihar, (1955) 2 SCR 603 : AIR 1955 SC 661] , held that legal fictions are created only for some definite purpose. A legal fiction is to be limited to the purpose for which it was created, and it would not be legitimate to travel beyond the scope of that purpose, and read into the provision, any other purpose how so attractive it may be.

(emphasis supplied)

26. A coordinate Bench of the Allahabad High Court in the case of **M/s.Larsen & Toubro Limited v. M/s Maharaji**

Educational Trust¹¹ considering a similar situation has held as follows:

"15. 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

¹¹ 2010 SCC OnLine All 1866

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.

16. 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:

17. 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.

18. 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 v. 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.

20.

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.

24. 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.

25. In view of the aforesaid facts and discussions, the applicant did not have any right to challenge the

enforceability of the award by taking recourse to Section 47 C. P. C. and the same were liable to be dismissed. It is altogether different question that the objections have been dismissed by the court below on different grounds and reasons but since they are liable to be dismissed, the impugned order does not require any interference. The revision accordingly stands dismissed."

27. A coordinate Bench of the High Court of Tripura and Agartala in the case of **State of Tripura, Rep.by Secy., Dept.of PWD, Govt.of Tripura & anr., v. Ashes Deb**¹² has held as follows:

"14. In the scheme of the Arbitration Act, a challenge against an arbitral award can be made by taking recourse to Section 34 of the Arbitration Act and that too on the grounds set out under Sub-Section (2-A) of section 34 of the Act. It has surfaced from the record that the present petitioner against whom the arbitral awards were made did not prefer any application under Section 34 of the Act. After the time prescribed for filing such application expired, the respondent award holder approached the Court by filing a petition under Section 36 for enforcement of the arbitral award. Only then, the petitioner-State against whom the arbitral awards were passed raised objection under Section 47, CPC. Section 5 of the Arbitration Act clearly provides that "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", which implies that the only remedy available to the aggrieved party against whom an arbitral award is passed, is Section 34 of the Arbitration Act. Obviously, the petitioner-State did not avail such remedy to resist the execution within the time prescribed under the law. Petitioner raised objection to resist the execution only by filing an application under Section 47, CPC despite the specific remedy available under Section 34 of the

¹² 2022 SCC OnLine Tri 760

Arbitration Act. In view of the prohibition imposed under Section 5 of the Act, objection except under Section 34 of the Act is not entertainable."

(emphasis supplied)

28. In the present case, it is relevant to note that what is sought to be executed in the execution proceedings is the award passed by the Council which is required to be treated as a Arbitral award having regard to Section 18(3) of the MSMED Act.

29. The Trial Court while considering the application under Section 47 of the CPC, noticing that the petitioner had challenged the award under Section 34 and 37 of the Act of 1996, has held that Section 47 of the CPC has no application in the present execution petition.

30. Although it is the vehement contention of the learned counsel for the petitioner that having regard to Section 36 of the Act of 1996 the award passed under the provisions of the Act of 1996 is to be treated as a decree and Section 47 of the CPC could be invoked, it is relevant to note that having regard to Section 36(1) of the Act of 1996, the award passed under the provisions of the said Act is required to be construed as a decree only for the purpose of enforcement of the same and it is not open to the

petitioner to invoke Section 47 of the CPC before the executing Court.

31. Having regard to the judgments of the Hon'ble Supreme Court in the cases of ***Paramjeet Singh Patheja***⁸, ***Morgan Securities***¹¹, ***Vedanta Limited***¹⁰, this Court is in complete agreement with the view expressed in ***Larsen and Tubro***¹¹ as well as ***State of Tripura***¹² and in view of the said authoritative pronouncements, it is clear that the petitioner cannot take recourse of Section 47 of the CPC in the execution proceedings initiated by the respondent.

32. Although various contentions have been urged on the merits of the matter that the provisions of the MSMED Act are not applicable, in view of the discussion made above that it shall not be open to the petitioner to invoke Section 47 of the CPC. The question framed for consideration at para 11 hereinabove is answered in the negative.

33. In view of the aforementioned, the above petition is dismissed as being devoid of merit.

34. The amount deposited by the petitioner before this Court be transmitted to the Executing Court which shall be entitled to pass appropriate orders regarding the same in accordance with law.

No costs.

**Sd/-
JUDGE**

BS/nd