

**In The High Court Of Madhya Pradesh
At Jabalpur**

Before

Hon'ble Shri Justice Duppala Venkata Ramana

On The 16th of May, 2024

Misc. Petition No. 5538 of 2023

Between:-

**Brajesh Kumar Pannalal S/o Shri Pannalal, Aged About 35
Years, R/o Village Borsal Post Chandani Tehsil Nepa Nagar
District Burhanpur (Madhya Pradesh)**

.....Petitioner

(By Shri Rahul Pathak - Advocate)

And

**Indusind Bank Limited Through Its Legal Manager R/o
New No.34 Old No. 115 116 G N Chetty Road Tnagar
Chennai (Tn) Zonal Office 211 Second Floor Saran
Chamber Second Park Road Lukenow (Uttar Pradesh)**

.....Respondent

(By Shri Manhar Dixit - Advocate)

Reserved on :- 06.05.2024

Pronounced on :- 16.05.2024

*This petition having been heard and reserved for orders, coming on for
pronouncement this day, the Court passed the following:-*

ORDER

Feeling aggrieved and dissatisfied with the impugned order, this miscellaneous petition filed under Article 227 of the Constitution of India seeking a prayer to set aside the order dated 04.09.2023 (Annexure P-5) passed by the Court of Principal District Judge, Burhanpur in Execution Arbitration No.Ex AB 62/2018.

2. The Brief facts of this case revealed from the records are that the respondent-Bank had initiated arbitration proceedings against the petitioner for recovery of overdue loan amount borrowed by him. The claim made by the respondent-Bank was allowed by the Arbitrator and award was passed in favour of the respondent-Bank on 31.03.2017 holding that respondent-Bank is entitled to recover a sum of Rs.2,03,600/- with cost of Rs.500/-and the said award had attained finality.
3. The respondent-Bank thereafterwords had filed execution petition under Order 21 Rule 11(2) of CPC and Section 36 of the Arbitration and Conciliation Act, 1996 in Ex-AB-62/2018 before the Court of Principal District Judge, Burhanpur claiming award amount with interest at the rate of 18% per annum till the date of presentation of the application, which totally amount of Rs.2,66,439/- and seeking appropriate relief under Order 21 Rule 41(2) of CPC for attachment of movables annexed to the petition.
4. The petitioner filed an objection under Section 47 of CPC and Order 21 Rule 58 of CPC and Section 35 of the Indian Stamp Act, 1899 read with Schedule 1A-12 against the recovery of the award amount dated 31.03.2017.
5. The facts, in issue, are as under that petitioner had availed finance a tractor of Eicher Company from the respondent-bank in the year 2015-16 and paid 6 monthly instalments and due to non-payment of one full instalment, the respondent-Bank seized and confiscated the tractor. Further stated that respondent-bank unilaterally appointed Arbitrator and he has passed unilateral award on 31.03.2017 and the recovery is being sought.
6. The petitioner presents the following objections against recovery of the award dated 31.03.2017 :-

(i) that, since the award dated 31.03.2017 was not passed by the Arbitrator appointed by the Hon'ble Court, the same is not eligible for recovery in the present case.

(ii) that, the award is not 'adequately stamped' as per the Indian Stamp Act Schedule-I-A, Article 12.

(iii) that, as per the Arbitration and Conciliation Act, 1996, the Arbitrator did not give any declaration that he was not an interested party, the Arbitrator is an interested party and his entire remuneration has been paid by the applicant and thus, the award dated 31.03.2017 is void and awarded amount cannot be recovered.

(iv) that, the award dated 31.03.2017 passed by the Arbitrator without hearing the applicant.

(v) that, as per Section 12(5) of the Arbitration and Conciliation Act, 1996, the award passed by the Arbitrator appointed by the applicant is void.

(vi) that, since applicant belongs to ST community (Gond Caste), no attachment proceedings can be taken against him. The land and house cannot be attached as per the provisions of Section 165 of the MP Land Revenue Code, 1956."

7. In the light of the above objections, he prays that the execution proceedings initiated by the respondent-bank in Ex-AB-62/2018 may be rejected as it is not maintainable.

8. The learned counsel for the petitioner submits that the Managing Director of respondent-Bank became 'ineligible' to appoint Arbitrator and he could not nominate the sole Arbitrator unilaterally without consent of petitioner. Further would submit that the award passed by the Arbitrator is 'ineligible' under amended Act of the Arbitration and Conciliation Act and further would submit that when the respondent-Bank sought to be enforcement of the award dated 31.03.2017 by filing the execution petition, the same is not adequately stamped as per the Indian Stamped Act read with Schedule 1-A, Article 12 and further would submit that the learned trial Judge had not mentioned in the award that the stamp duty paid by the respondent-Bank for enforcement of the award. Therefore, the order passed by the execution Court not sustainable and liable to be set aside.

9. Learned counsel for respondent-Bank submits that there was an agreement dated 29.06.2015 between the petitioner and the respondent-Bank much prior to the amendment Act, therefore, the Managing Director of respondent-Bank has empower to nominate the sole Arbitrator. Further would submit that the Arbitrator who was nominated by the respondent-Bank is not interested either of the party and he was an advocate in Chennai and independently passed an award. Further would submit that the executing Court has not attached the land or house of the petitioner, therefore, issuance of notice to the petitioner by the execution Court for attachment of the movables and annexed to the petition, is in accordance with law. Therefore, no fault can be found in the order passed by the Executing Court and the miscellaneous petition filed by the petitioner lacks of merits and is liable to be dismissed.

10. I have given my anxious consideration to the argument advanced by the leaned counsel for parties and also perused material on record.

11. The procedure for enforcement of execution of the arbitral award is governed by Code of Civil Procedure, 1908 while the arbitral award in India is primarily governed by the Arbitration and Conciliation Act, 1996 as well as Code of Civil Procedure, 1908. Section 36(1) of the Arbitration Act, 1996 provides for execution of arbitral award. The said act does not expressly lay down any legal requirement that mandates the parties to an arbitration agreement to pay stamp duties on an arbitral award.

12. In the case of *M. Anasuya Devi v. M. Manik Reddy*¹, the Hon'ble Apex Court has held that the objection as to non-stamping of the arbitral award is required to be dealt with at the stage of enforcement of arbitral award and not at the stage of objections under Section 34 of the Arbitration

1. 2003 (8) SCC 565

Act. In para 4 of the said judgment, the Hon'ble Apex Court has observed as follows:

“4. After we heard the matter, we are of the view that in the present case this issue was not required to be gone into at the stage of the proceedings under Section 34 of the Act. In fact, this issue was premature at that stage. Section 34 of the Act provides for setting aside of the award on the grounds enumerated therein. It is not in dispute that an application for setting aside the award would not lie on any other ground, which is not enumerated in Section 34 of the Act. The question as to whether the award is required to be stamped and registered, would be relevant only when the parties would file the award for its enforcement under Section 36 of the Act. It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act. In that view of the matter, the exercise undertaken to decide the said issue by the civil court as also by the High Court was entirely an exercise in futility. The question whether an award requires stamping and registration is within the ambit of Section 47 of the Code of Civil Procedure and not covered by Section 34 of the Act. ”

13. Section 17 of the Indian Stamp Act 1989 is applicable to the State of Madhya Pradesh, it provide the time for stamping the instruments. The said provision read as follows :-

“17. Instruments executed in India – All instrument chargeable with duty and executed by any person in India shall be stamped before or at the time of execution.”

14. A plain reading of the said provision of law makes it clear that an instrument/award shall be stamped before or at the time of execution. Therefore, it is an option given to the parties in whose favour the arbitral award has been passed to pay the applicable stamp duty either before or at the time of execution. The word ‘execution’ has been defined in Section 2(12) of the Indian Stamp Act which read as follows :-

“Section (12) Executed and execution - executed and execution, used with reference to instruments, mean signed and signature.

15. Therefore, it is very clear that the date for the purpose of quantifying the stamp duty payable on the instrument/award, is the date on which the

instrument was signed. In the case of **M.Ansuya Devi (supra)**, the Hon'ble apex Court has held that at the time of enforcement of the award under Section 36 of the Arbitration and Conciliation Act, the parties can raise objection on account of non-registration and also for non-stamping under Section 17(e) of the Registration Act, therefore, it is clear that with regard to the deficiency of stamp duty, objection can always be raised at the stage of execution of the said award. The arbitral award has been passed on 31.03.2017. The execution petition filed on 11.12.2018 and as per the Article 12 of Schedule 1-A, two percent (2%) of the awarded amount has to pay stamp duty.

16. On perusal of the order of the trial Court, it does not disclose about the payment of stamp duty, the award lacks of proper stamping for enforcing the award. A bare perusal of the order of the Execution Court, it reveals all the objection raised by the judgment-debtor cannot be decided by the Executing Court and dismissed. Further observed that since the matter is pending from 2018 and the judgment-debtor since beginning sought time to deposit awarded amount and instead of depositing the awarded amount, he filed the present application just in order to delay and rejected the application and proceed for attachment of moveables property annexed to the petition. In the instant case the Executing Court had erred in rejecting the objections filed by the petitioner without holding whether the award is 'adequately stamped' as per the Indian Stamp Act Schedule-I-A, Article 12. The Executing Court ought to have decided whether the award is required to be stamped and registration under Schedule 1-A, Article 12. The Executing Court ought to have passed a reasoned order on the second objection i.e. the award is not adequately stamped.

17. If the Arbitrator appointed unilaterally and the award is passed as result of such unilateral appointment, the same would be decided under Section 34

of the Arbitration Act. In a case where only one party has a right to appoint a sole Arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole Arbitrator. That has to be taken as the essence of the amendments brought in by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#).

18. The position of law on unilateral appointment of an Arbitrator is no more res-integra and has been settled by Hon'ble Supreme Court through various pronouncements. The option left open to the petitioner herein, the impugned award can be challenged under Section 34 of the Arbitration Act before the Civil Court. If award is not set aside under the procedure established in Section 34 of the Arbitration Act, the Courts, at the stage of execution can step in and declare a unilateral appointment award as non-est in law, declare the same as nullity. However the parties to re-agitate their issues before the Arbitral Tribunal/Civil Court constituted in accordance with law. In such circumstances, the impugned order passed by the Executing Court in EX-AB 62/2018 dated 04.09.2023 cannot be sustained.

19. Accordingly, the miscellaneous petition is allowed. The impugned order passed by the Principal District Judge, Burhanpur in Ex.AB 62/2018 dated 04.09.2023 is set aside. The Executing Court has to decide as to whether the stamp duty is collected from the respondent/Bank for enforcement of arbitral award as per the Schedule 1-A Article 12 of the Indian Stamp (Madhya Pradesh) Amendment Act, 2014 and pass appropriate order in accordance with law.

DUPPALA VENKATA RAMANA, J