

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

Writ Petition No.2840/2017

Jehangir D. Mehta

.... Petitioner

Vs.

The Real Nayak Sakh Sahkari Maryadit
and Another.

.... Respondents

 Shri R.T. Thanewala, learned counsel for the petitioner.
 None for the respondent No.1, though served.

Whether approved for reporting :

ORDER

(Passed on 6/9/2018)

1/ By this writ petition under Article 227 of the Constitution the petitioner has challenged the order of the executing court dated 3.3.2017, whereby the executing court has rejected the petitioner's application under Section 33 of the Stamp Act.

2/ The short facts are that the award dated 10.12.2010 (Annexure P/2) was passed by the Arbitration Council under the provisions of Madhya Pradesh Swayatta Sahakarita Adhiniyam, 1999 (for short "Act of 1999") and the certificate on that basis as per the Act was issued, which is sought to be executed by the respondent before the executing court. The petitioner by filing an application under Section 33 of the Indian Stamp Act had raised an objection that the respondent is seeking execution of award of a sum of Rs.27,11,14,559/- and the award does not bear any stamp, therefore, the respondent is

liable to pay the stamp duty as per the provisions of the Indian Stamp Act. The executing court by the impugned order dated 3.3.2017 has rejected the objection.

3/ Learned counsel for the petitioner submits that the award passed by the Arbitration Council under the Act of 1999 is not a decree but it is only executed as a decree, therefore, the stamp duty as per the provisions of the Indian Stamp act is required to be paid.

4/ Having heard the learned counsel for the petitioner and on perusal of the record, it is noticed that the executing court by the impugned order dated 3.3.2017 has rejected the petitioner's application on the ground that the award under execution is a decree of the court and for executing the decree, no stamp duty is payable and also that the proceedings are not for executing the award but for an order passed under the Act of 1999.

5/ Section 56 of the Act of 1999 deals with the disputes and the manner of its resolution. Sub-section(4) of Section 56 provides for execution of the award or order of the Arbitration Council in the following manner:-

“Section 56. Disputes-

(1) *****

(2) *****

(3) *****

(4) Every order or decision made under this section, shall be executed by Civil Court having jurisdiction, as if such order is a decree of that Court, on a certificate issued by the Arbitration Council.”

6/ In terms of the aforesaid sub-section an order or the decision of the Arbitration Council under Section 56 is not a

decree but it is only executed as a decree of the Civil Court on the certificate issued by the Council.

7/ A perusal of the order dated 10.12.2010 passed by the Arbitration Council reveals that it is an order passed under Section 56 of the Act, hence it is not a decree but is only executable as a decree of the court. Section 56(4) treats the order of the Arbitration Council as decree only for the purpose of its execution by the civil court but for all practical purposes the order of the Arbitration Council is a mere decision of the Council in the arbitration proceedings and it cannot be held to be a decree.

8/ Section 2(2) of the CPC defines decree as under:-

“Section 2. Definitions.-

(1) *****

(2) “decree” means the 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.”

9/ A bare reading of above provision makes it clear that the decree is passed by the court in a suit on adjudication, but Arbitration Council is neither the court nor the proceedings before the Arbitration Council fall within the meaning of suit as contemplated in the CPC, therefore, the executing Court in the impugned order is not justified in holding that the order of the

Arbitration Council is a decree and, therefore, stamp duty is not payable on it.

10/ The same issue came up before the Hon'ble Supreme Court in the matter of **Paramjeet Singh Patheja Vs. ICDS Ltd. reported in AIR 2007 SC 168** in reference to Section 9 of Presidency Towns Insolvency Act (3 of 1909) and while answering the question as to whether arbitration award is a decree for the purpose of Section 9 of the PTI Act, the Supreme Court has held that:-

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

In the above judgment finally the Supreme Court has concluded in Para-60 that an arbitration award is not a decree since it does not satisfy the three essential conditions of 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.

Hence, it has been held that an arbitration award does not satisfy any of the requirement of a decree. It is not rendered in a suit nor in an arbitral proceeding commenced by institution of a plaint and that a legal fiction ought not to be extended beyond its legitimate field. Though the above judgment was rendered in reference to Section 9(2) of the Insolvency Act but the judgment

applies in full force in respect of a decision or award of the Arbitration Council passed under Section 56(4) of the Act of 1999 because the phrase “as if” used therein is the same.

11/ It is also worth noting that Section 56(4) of the Act of 1999 uses the phrase “as if such order is a decree of that court”. Similar is the provision contained in Section 36 of the Arbitration and Conciliation Act, 1996 relating to enforcement of the arbitral award which contains the phrase “in the same manner as if it were a decree of the court” and the Bombay High Court in the matter of **In re Siddharth Srivastava reported in AIR 2002 Bombay 494** has held that such an award does not fulfill the essential condition of decree as contemplated by Section 2(2) of the CPC by holding as under:-

“11. It is true that the above observations made by the Supreme Court are in connection with the term “decree” used in Schedule II, Article 11 of the Act but they are based on the definition of S.2(2) of the C.P. Code. Therefore, even for the purpose of the Act, the same meaning deserves to be made applicable to the term “decree” as defined by S.2(2) of the C.P. Code. As stated above, the Award in favour of the petitioning creditor came to be passed on the basis of the consent terms dated 7-8-1997. No application for setting aside the said Award was made by the judgment debtor and therefore, after the expiry of the period specified in S.34 of the Act, 1996, the Award become final and binding on the parties and it became enforceable under S.36 of the Act, 1996 as if it were the decree of the Court. However, making of the award was not the basis of an adjudication. The award which has the force of decree does not fulfilled the essential conditions of the decree as contemplated by S.2(2) of the C.P. Code. Having regard to the ratio and weight of the above mentioned decisions cited before me, it will have to be held that even though the

Award dated 5-9-1997 is enforceable as if it were a decree still it is not a decree within the meaning of the term as defined in S.2(2) of the C.P. Code and therefore, obtaining of such an Award does not fulfil the requisite conditions contemplated by Clause (l) of S.9(1) of the Act. Consequently, on that basis the respondent cannot be said to have committed act of insolvency, either under clause (l) of Section 9(1) or sub-sec. (2) of S.9 of the Act. The judgment debtor has denied that he was either served with a notice of insolvency. However, at the time of the hearing it was found on checking the record of the case that such a notice had been served upon the judgment debtor. Mr. Bulchandani therefore, did not press the contention regarding non-service of the insolvency notice.”

12/ Hence, I am of the opinion that the executing court has committed an error in holding that the stamp duty is not payable on the order/award of the Arbitration Council because it is a decree of the court.

13/ Another reason assigned by the executing court is that what is sought to be executed is the order passed under the Act of 1999. In terms of Section 56(1) of the Act the dispute is required to be referred to the Arbitration Council and as per Section 57 of the Act the Arbitration Council is consists of three members. It is the arbitration council which decides the dispute by following the prescribed procedure, hence its decision is nothing but an award, therefore, it is held to be executable as decree. Thus the order Annexure P/2 is held to be an award passed by the Arbitration Council. Hence, the stamp duty is required to be paid on the said award as per Clause 11 of Schedule 1A of the Indian Stamp Act, 1899 (MP amendment).

14/ In view of the above analysis, the order of the

executing court dated 3.3.2017 cannot be sustained and is hereby set aside and it is held that the respondent is required to pay the stamp duty as per the provisions of the Stamp Act on the award which is sought to be executed.

15/ The writ petition is accordingly allowed.

(PRAKASH SHRIVASTAVA)
J u d g e

Trilok.

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	Case No.	Writ Petition No.2840/2017
2	Parties Name	Jehangir D. Mehta Vs. The Real Nayank Sakh Sahkari Maryadit and Another.
3	Date of Judgment	6/9/2018
4	Bench constituted of	Hon'ble Shri Justice Prakash Shrivastava
5	Judgment delivered by	Hon'ble Shri Justice Prakash Shrivastava
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	Shri R.T. Thanewala, learned counsel for the petitioner. None for the respondent No.1, though served.
8	Law laid down	The order or decision of the arbitration council under Section 57 of the Madhya Pradesh Swayatta Sahakarita Adhinyam, 1999 is an arbitration award and it is not a decree passed by the civil court as defined under Section 2(2) of the CPC, hence the stamp duty as required by the Schedule 1A of the Indian Stamp Act, 1889 is payable for its execution.
9	Significant paragraph numbers	4 to 13.

(PRAKASH SHRIVASTAVA)

J u d g e