

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 28th OF MAY, 2024

MISC. PETITION No. 1182 of 2024

BETWEEN:-

**VIJAY S/O RAMESHCHANDRA
SISODIYA OCCUPATION: BUSINESS SAI
NATH COLONY, BARWANI DISTRICT
BARWANI (MADHYA PRADESH)**

.....PETITIONER

(SHRI KULDEEP PATHAK, ADVOCATE)

AND

**CHOLAMANDLAM INVESTMENT AND
FINANCE COMPANY LIMITED
THROUGH ITS AUTHORIZED OFFICER
BRANCH OFFICE AT IN FRONT OF
KALKA MATA MANDIR, PALA BAZAR,
BARWANI DISTRICT BARWANI
(MADHYA PRADESH)**

.....RESPONDENT

(SHRI ROHIT SHARMA, ADVOCATE FOR RESPONDENT NO.1)

*This miscellaneous petition coming on for order this day, the court passed
the following:*

ORDER

1. This miscellaneous petition has been filed by the petitioner/judgement debtor under Article 227 of the Constitution of India against the order dated 23.1.2024 (Annexure P-3) passed by the First Additional District Judge, Barwani District Barwani in

Execution (Arbitration) 32/2015 and, vide the impugned order the Executing Court has held that the Court fees of Rs.4245/- paid by the respondent, can be accepted in lieu of the stamp duty of the same amount.

2. In brief facts of the case is that the respondent/judgement debtor herein has filed an execution of an arbitral award dated 6.5.2014, passed in Arbitration Case No.409/2013 for a sum of Rs.2,12,208/-. In the aforesaid case, initially an objection was raised by the petitioner regarding the non-payment of the stamp duty on the award as prescribed under Section 19-A of M.P. Amendment Act and (article 11 of schedule 1A of the Indian Stamp Act,1899 (hereinafter to be referred to as “ Act of 1899”), and while allowing the objections raised by the petitioner, the Executing Court directed the respondent to pay the Court fees as per stamp Act, and the respondent has also paid the Court fees to the tune of Rs.4245/-.

3. After the aforesaid court fees was paid by the respondent, an objection was again raised by the petitioner by filing an application for review, stating that the court fees which respondent had paid cannot be accepted towards the stamp duty, as the arbitration award is required to be properly stamped as per s.19 A of the Act M.P. amendment Act, and thus, the executing Court, while allowing the aforesaid review application vide order dated 22.1.2022, directed the respondents to pay the stamp duty instead of the Court fees.

4. However, subsequently, after a year, a new presiding officer was appointed who, vide order dated 23.1.2024, *suo moto* held that since the respondent has already paid the Court fees instead of stamp duty of the same amount, it may be a technical impediment only which should not come in the way of the execution proceedings, and thus, the presiding officer has continued with the executing proceedings by issuing warrants of attachment. The aforesaid order dated 23.1.2024 is under challenge before this Court.

5. Counsel for the petitioner has submitted that the Court fees Act and the Stamp Act are two different enactments catering to different needs, and also has different purposes, and once the executing Court had already held that the amount of court fees cannot be adjusted towards stamp duty, it was binding upon the subsequent presiding officer, and there was no reason for the subsequent presiding officer to take a different view from the one which is already taken by the earlier presiding officer. Thus, it is submitted that the impugned order be set aside.

6. On the other hand, learned counsel for the respondent has opposed the prayer, and it is submitted that the petitioner has already paid the court fees as earlier directed by the Executing Court vide order dated 26.7.2021, and vide order dated 23.1.2024, the Court was justified in taking a different view as it is only a technical objection, and thus, it is submitted that the court has exercised its jurisdiction under Section 47 of the CPC.

7. Heard. Having considered the rival submissions and on perusal of the documents filed on record, it is found that the executing proceedings in the present case were started way back on 15.4.2015, in which after much efforts, the judgment debtor, who is the present petitioner herein, could only be served on 10.12.2015, and counsel appearing for the petitioner sought time to file reply on the said date, and the matter continued to be listed and adjourned before the Executing Court for one reason or the other, and it was only on 26.7.2021 ,i.e, after a period of around five years,when the counsel for the judgment debtor raised an oral objection that the execution is of arbitration award which is only on the stamp of Rs.150/-, whereas, as per the amendment under Section 19-A of the Stamp Act in the State of MP, the advoleram duty comes to 2% of the award of Rs.2,12,208/-.

8. On a close scrutiny of the record, the issue involved is a short one, and has to be decided in the same manner.

9. It is apparent that the learned judge of the executing court, vide the order dated 23.1.2024, has reviewed the earlier order passed by the same Court on 22.1.2022, which, in turn was on an application filed under Section 114 of the CPC for review of the earlier order dated 29.11.2021. However, while passing the order dated 23.1.2024, the learned judge of the Executing Court lost sight of the bar as provided under Rule 9 of Order 47 of the CPC which reads as under:-

“9. Bar of certain applications.— No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained. “

10. Thus, apparently the executing court has acted in excess of its jurisdiction while passing the impugned order on 23.1.2024.

11. In view of the same, without going into the merits of the case, the impugned order, being contrary to law is not tenable and is **hereby set aside.**

12. However, considering the fact that the petitioner has apparently succeeded in his plans to further delay the execution proceedings, despite there being no fault on the part of the decree holder, and the fact that the objection of stamp duty was raised by the judgment debtor after a period of 5 years, this Court would not allow the petitioner to laugh all the way to home, hence the petition is allowed with a cost of Rs.5000/-, which shall be deposited by him in the account of - President and Secretary H.C. Employees Union

H.C. (Account No.63006406008, Branch Code No. 30528, IFSC No.SBIN0030528, CIF No. 73003108919) within a period of 60 days from the date of receipt of this order.

13. It is also directed to the respondent/deGREE holder to ensure payment of stamp duty in accordance with law, and if any such application is filed by the decree holder, the same shall be decided by stamp collector positively within a month's time, and the learned judge of the executing court is then requested to proceed further with the execution, and conclude the same within a further period of further period of six months, in accordance with law.

14. The petition *stands disposed of*.

(SUBODH ABHYANKAR)

JUDGE

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