

WP-14436-2014

(UNION OF INDIA Vs M/S GALA CONSTRUCTIONS)

08-04-2015

Shri Atul Choudhary, learned counsel for the petitioner.

Shri Amit Sahni, learned counsel for the respondent.

This writ petition has been filed by the petitioner aggrieved by the order dated 3.9.2014 passed by the Additional District Judge, Jabalpur who was seized of the execution of the award delivered in favour of the respondent by the Arbitrator dated 11.9.2011 whereby, certain amount was awarded in favour of the respondent on two grounds i.e. (1) the original award was not produced before the executing Court and (2) the award was not duly stamped.

At the time when this petition was filed, the Additional District Judge who was holding the proceeding also passed an order directing the petitioner to deposit the decretal amount in Court as at that time its application under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') filing objection to the award was dismissed on account of non-compliance of certain order. Now it has been informed by the petitioner that the application under section 34 of the Act has been restored vide order dated 3.12.2014 by the Court of Additional District Judge where objections were filed.

Even though it is stated by the respondent that this order may not be appropriate but it is for the respondent to look into that aspect. The respondent may take appropriate proceedings in accordance with law in case it is not happy and wishes to challenge the order under Section 34 of the Act. However, the effect of this order under section 34 of the Act would be that the executing Court will not be in a position to execute the award because of the provisions contained under section 36 of the Arbitration and Conciliation Act, 1996 which reads as under:-

36.Enforcement.- Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

Now the question arises that if that is the position what happens to the order dated 3.9.2014 firstly because the original award has now been produced before executing Court as stated in the order itself and secondly in so far as payment of the stamp duty is concerned, that amount was also deposited by the respondent in the Court. The objection that the matter should have been gone to the Collector and then only ought to have been executed seems to be very technical in nature and this aspect was looked into by the Law Commission also while giving its report. The Law Commission vide its 194th Report wherein a letter was written by the Chairman, Law Commission of India to the then Law Minister which is reproduced for the sake of reference, as under:-

âCHAIRMAN,

LAW COMMISSION OF INDIA,

SHASTRI BHAWAN,

NEW DELHI-110001.

JUNE 7, 2005

Shri H.R. Bharadwaj,
Union Minister for Law and Justice,
Government of India,
Shastri Bhawan,
New Delhi,

Dear Shri Bharadwaj Ji,

I have great pleasure in forwarding the 194th Report of the Law Commission on 'Verification of Stamp Duties and Registration of Arbitral Awards'.

The subject was taken up *suo motu* pursuant to the communication of the judgment of the Division Bench of the Madras High Court in O.P.D. 27597/02 dated 17.12.2003 (modified on 30.1.2004) to the Law Commission and pursuant to the observations therein that the Law Commission may consider a legislative amendment.

We may state that under the new Arbitration & Conciliation Act, 1996, section 31(5) states that the arbitral tribunal shall communicate a 'signed' copy of the arbitral award to the parties. Thereafter, the parties are entitled to file the applications for setting aside the award under section 34(1) or for enforcement of the award under section 36, as the case may be, by annexing the copy of the arbitral award communicated to them. If only a copy of the award is to be filed along with the said applications under the new Act of 1996, the Court will not be in a position to know whether the original award is duly stamped or, where it requires compulsory registration, whether it is duly registered. The Madras High Court in the

above judgment, while observing that a legislative amendment is necessary, formulated an interim working solution under which the applicant could be directed by the Registry of the Court to file fresh stamp papers in the Court of the required value or to deposit the money-value of the required stamp duty, along with the application under section 34 (1) or section 36, with a right to obtain refund thereof, in case the original is thereafter found by the Court to have been duly stamped. This solution, in our view, is not satisfactory as it can cause serious hardship to the parties where the stamp duty is a heavy amount. Further, the above solution suggested by the Court does not solve the problem relating to registration. Under section 35 of the Stamp Act, 1899, an award which is unstamped or is insufficiently stamped is inadmissible for any purpose and under section 17 of the Registration Act, 1908 an award, if it affects immoveable property in the manner mentioned in the section, it requires compulsory registration, and will be invalid if it is not registered. Under the Act of 1940, the problem of verifying the original did not arise in as much as section 14(2) of that Act required the original award to be filed into Court and hence the Court was able to verify whether the original award was duly stamped or was duly registered, where it required compulsory registration.

The commission, in the present Report, has examined several alternatives solutions and compared their advantages and disadvantages. The Commission found solutions (3) and (5) (referred to in Chapter IV) as acceptable. Solution (3) would require the original award to be filed into Court as under section 14(2) of the old Act, while solution (5) would require the arbitral tribunal to make an endorsement on the photocopy of the award (which is sent to the parties) as to whether the original award is duly stamped (and specifying the value of the stamp duty paid) and specifying whether the original award is duly registered (where it requires compulsory registration). Either of these two solutions would, in the opinion of the Commission, meet the problem posed by the Madras High Court, being a problem that is being faced by the Courts whenever applications under section 34(1) or under section 36 are filed. A Draft of the Amendments suggested is also enclosed.

With regards,

Yours sincerely,

Sd./-

Justice M. Jagannadha Rao

The crux of the letter is that the issue of sending the award to the Collector may not be necessary and the Court where the execution is pending itself can require the stamp duty to be fixed on the award. In the present case, since the amount has been paid on the stamp duty, second objection of the petitioner has no consequences. Therefore, present writ petition is disposed of as infructuous.

It may, however, be observed that the amount deposited by the petitioner towards the execution of the award in the executing Court will be subject to orders passed by the executing Court. As far as release of the amount is concerned, both parties may raise their submission in this regard before

the executing Court.

C.C. as per rules.

(MOOL CHAND GARG)
JUDGE