

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Case No.	Civil Revision No.352/2019
Parties Name	<i>The State of Madhya Pradesh Vs. Rajdeep Buildcon Pvt. Ltd.</i>
Date of Order	17th of November, 2022
Bench Constituted	Justice S.A.Dharmadhikari
Order passed by	Justice S.A.Dharmadhikari
Whether approved for reporting	Yes
Name of counsel for parties	For Petitioner : Shri G.P. Singh, Government Advocate. For Respondents/State : Shri D.K. Raghuwanshi, learned counsel.
Law laid down	(i) The question of jurisdiction cannot be raised at a later stage once, the party to the award have submitted to the jurisdiction of the tribunal, filed the statement of defence, led evidence, advanced arguments and ultimately challenged the award under the provisions of the Act of 1996. (ii) If the issue of jurisdiction is not raised before the Arbitral Tribunal at the initial stage, it cannot be permitted to be raised at a subsequent stage.
Significant paragraph numbers	Para Nos.12 & 9

(S.A.DHARMADHIKARI)
JUDGE

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

ON THE 17th OF NOVEMBER, 2022

CIVIL REVISION No. 352 of 2019

BETWEEN:-

**THE STATE OF MADHYA PRADESH,
THROUGH THE EXECUTIVE ENGINEER,
PUBLIC HEALTH ENGINEERING,
CHHATARPUR, DISTT. CHHATARPUR
(MADHYA PRADESH)**

....PETITIONER

(BY SHRI G.P. SINGH – GOVERNMENT ADVOCATE)

AND

**RAJDEEP BUILDCON PVT. LTD., “RAJDEEP
HOUSE” SAVEDI AHMADNAGAR
(MAHARASHTRA)**

....RESPONDENTS

(BY SHRI D.K. RAGHUWANSHI - ADVOCATE)

This petition coming on for orders this day, the court passed the following:

ORDER

Heard finally with the consent of both the parties.

The present civil revision, under Section 115 of the Code of Civil Procedure, 1908 has been filed taking exception to the order dated 06.02.2019 passed in Execution Case No. 15/2016 by the 2nd Additional Judge to the 1st District Judge, Chattarpur (M.P.).

2. The brief facts necessary for adjudication of this revision are that an advertisement was floated for the purpose of construction of Anicut in Dhasan River situated in Tehsil- Eshanagar, District Chhatarpur. In response, the respondent applied for the same and the work was allotted to the respondent, in pursuance whereof, the agreement was entered between the parties on certain terms and conditions. Since, some dispute arose between the parties and work was not completed within the specified duration, the agreement was terminated by the applicant vide order dated 25.06.2010. The respondent being aggrieved filed a reference before the Arbitral Tribunal constituted under M.P. Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as the 'Act of 1983'). The applicant was noticed and, thereafter, response was filed. The award was passed by the Arbitral Tribunal exercising the powers under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of

1996') on 23.01.2014. The applicant being aggrieved by the award dated 23.01.2014, filed an application under Section 34 of the Act, 1996 was adjudicated and decided in favour of the respondent. The applicant again aggrieved, filed Arbitration Appeal before this Hon'ble Court which was registered as A.A. No. 27/2017. The said appeal was withdrawn vide order dated 06.09.2017 with liberty to file suitable objection before the Executing Court since during the intervening period, execution proceedings were already filed.

3. In view of the liberty granted to the applicant vide order dated 06.09.2017 in Arbitration Appeal, an objection was filed by the applicant before the Executing Court to the effect that the decree is not executable before this Court as the contract in question was 'works contract' as defined under Section 2(i) of the Act of 1983 and in view of the provisions of Section 7 of the Act, is having an overriding effect, therefore, proceedings under the Arbitration and Conciliation Act, 1996 were not maintainable before the Arbitral Tribunal and, therefore, the award passed by the Arbitral Tribunal suffers from the vice of *Coram non judis*.

4. In support of the contention, the applicant relied on the judgment passed by the Apex Court in the case of ***Punjab State Civil Supplies Corporation Limited and Another Vs. Atwal Rice and General Mills***, reported in (2017) 8

SCC 116 to contend that the contract in question was ‘works contract’ and since the executing Court can look into the jurisdictional issue, the execution filed by the award holder be dismissed as the execution of the award whereof has been sought, is null and void and non est in the eye of law and cannot be executed.

5. Learned counsel for the applicant further relied on the judgment passed by the Division Bench of this Court in A.A.No. 79/2021 (*M/s Gayatri Project Ltd. Vs. Madhya Pradesh Road Development Corporation Limited*) to contend that when there is a challenge to lack of inherent jurisdiction the same can be raised at any stage and decree by a forum lacking inherent jurisdiction on the subject matter is a nullity. Such an objection can be raised at any stage, even in execution and collateral proceeding.

6. *Per contra*, learned counsel for the respondent vehemently opposed the prayer and contended that the applicant ought to have raised the objection at the relevant stage, therefore, the same is not tenable at the stage of execution which appears to have been done merely for the purpose of lingering the legitimate claim of the respondent and, therefore, prayed for dismissal of the objection.

7. Learned counsel for the respondent further relied on the judgment passed by the Apex Court in the case of *M.P. Rural Road Development Authority Vs.*

M/s L.G. Choudhary Engineers and Contractors, reported in (2018) 10 SCC 826, wherein, the Apex Court has held that “*We do not express any opinion on the applicability of the State Act where award has already been made. In such case is if no objection to the jurisdiction of the Arbitration was taken at relevant stage, the award may not be annulled on that ground*”. On the aforesaid basis, he prays that the present revision deserves to be dismissed with costs.

8. Heard learned counsel for the parties and perused the record.

9. On perusal of the record, it is seen that it is not in dispute that the respondent/judgment debtor did not raise the issue of jurisdiction before the Arbitral Tribunal. Later on, in the proceedings under Section 34 of the Act of 1966, the objection was not raised and similarly, in Arbitration Appeal also no such objection was raised which was permitted to be withdrawn subsequently. It would be appropriate to mention that the applicant has suppressed the said fact that they never challenged/raised the objection before Arbitral Tribunal.

10. Section 35 of the Act of 1996 gives finality to the arbitration award and provides that it shall be binding on the parties and persons claiming the reliefs. Section 36 of the Act provides that the award shall be executed in the same manner as if it were a decree of the Court. Section 16(2) of the Act provides

that the plea regarding lack of jurisdiction of the Arbitral Tribunal can be raised on or before the submission of statement of defence.

11. In the case in hand, the challenge has been made to the award at the stages available to them under the law, but at no point of time the issue of jurisdiction was raised.

12. In the case of *MSP Infrastructure Ltd. Vs. Madhya Pradesh Road Development Corporation Ltd., (2015) 13 SCC 713*, the Apex Court has categorically laid down that the question of jurisdiction cannot be raised later on, once the party to the award have submitted to the jurisdiction of the Tribunal, filed the statement of defence, led evidence, advanced arguments and ultimately challenged the award under Section 34 of the Act of 1996.

13. In view of the law laid down by the Hon'ble Apex Court in the case of *MSP Infrastructure Ltd. (supra)* and *M/s L.G. Choudhary Engineers and Contractors (supra)*, the order passed by the Executing Court dated 06.02.2019 cannot be found fault with. The Court below has not committed any error apparent on the face of the record so as to interfere with the order.

14. Accordingly, this revision is hereby **dismissed**. No order as to costs.

(S.A. DHARMADHIKARI)
JUDGE