

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 149 of 2019

Reserved on: 18.10.2024

Date of Decision: 13.11.2024

Oriental Insurance CompanyPetitioner...

Versus

Kuldip DograRespondent...

Coram

Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the petitioner: Mr. Ashwani K. Sharma, Senior Advocate with Mr. Ishan, Advocate.

For the respondent: Mr. Shrawan Dogra and Mr. T.S.Bhogal, Senior Advocates with Mr. Tejasvi Dogra and Ms. Swati Verma, Advocates.

Bipin Chander Negi, Judge

The present petition has been filed laying challenge to the impugned judgment dated 23.08.2019, whereby objections filed by the present petitioner/judgment debtor against the execution filed by the present respondent/decreed holder have been dismissed.

2. I have heard learned counsel for the parties and perused the record.

¹ Whether reporters of Local Papers may be allowed to see the judgment?

3. Brief facts giving rise, to the present petition, are that in an arbitration proceeding *inter-se* the parties, an award was passed by learned Arbitrator against the present petitioner on 05.09.2002. The aforesaid award was challenged by way of an application under Section 34 of the Arbitration and Conciliation Act 1996 (herein after for the purpose of brevity referred to as the 'Act') by the present petitioner.

4. The aforesaid application filed under Section 34 of the Act came up for consideration before a Co-ordinate Bench of this Court on 19.12.2002. On the said date, the execution of the award dated 05.09.2002 was stayed subject to the deposit of the entire amount in terms of the award. As per the order passed by the Court on 19.12.2002, the award amount had to be deposited on or before 28.02.2003. The aforesaid order was passed in OMP bearing number 500 of 2003.

5. In terms of order dated 19.12.2002, on 18.02.2003 vide cheque bearing No. 884036 dated 21.01.2003 for a sum of Rs. 14,33,025/- drawn on State Bank of India, Shimla the awarded amount was deposited in the Registry of this Court. On 12.03.2003, the Registry of the High Court issued requisite necessary directions to keep the amount, so deposited, in a Fixed Deposit. The Fixed Deposit, in the case at hand, was made

at State Bank of India on 10.04.2003. Initially the date of the maturity of the same was 20.06.2003, which was regularly renewed.

6. In the meanwhile, in the application filed under Section 34 of the Act, reply was filed by the present respondent on 22.04.2003. In the reply, so filed, a specific objection qua pecuniary jurisdiction of the Hon'ble Court was taken. Subsequent thereto, on 27.06.2003, when the matter was listed before the Court, the application filed for grant of interim order (OMP No. 500 of 2002) was held to be mis-conceived in view of the provisions of Section 36 of the Act which provides that an award can only be enforced after objections filed under Section 34 of the Act are disposed of.

7. Thereafter, on 27.08.2003, learned Counsel for the petitioner on account of non-maintainability (lack of pecuniary jurisdiction) of the application under Section 34 of the Act before the Hon'ble High Court sought return of the same for filing the application under section 34 of the Act before the appropriate forum. The prayer was allowed subject to endorsement as is contemplated under Order 7 Rule 10 CPC.

8. The section 34 application was thereafter heard and dismissed by the court of competent jurisdiction. Subsequent

thereto, an execution petition was filed by the present respondent. In the said execution objections were filed by the present petitioner. A specific objection was taken therein qua the execution being not maintainable as the entire awarded amount had been deposited in the Registry of the Court in pursuance to order dated 19.12.2002 passed in OMP No. 500 of 2002 while the application under section 34 of the Act was pending adjudication before this court.

9. Learned Trial Court after hearing both the parties and after going through the record by placing reliance on provision of **Order 21** dismissed the objections filed by the present petitioner. Other than the aforesaid, the learned Trial Court while rejecting the objections held that deposit made in the High Court, in the case at hand in pursuance to order dated 19.12.2002, passed in OMP No. 500 of 2002 had been made in a proceeding, which was void, *ab initio* and without jurisdiction.

10. The question that arises for determination, whether deposit of the entire award amount by the petitioner on 18.02.2003 in the High Court amounts to payment to the respondent and the petitioner's liability to pay interest @ prescribed rate p.a. from the date of the award ceased from that date.

11. The main contention of the petitioner in the case at hand is that deposit of the award amount into the court in the case at hand is nothing but a payment to the credit of the decree-holder. The learned senior counsel has drawn my attention to Section 31(7)(b) of the Act and specifically to the word “payment” contained therein. According to the learned senior counsel, it means extinguishment of the liability arising under the award. Further it is contended that deposit of the award amount into the court is nothing but a payment to the credit of the decree-holder. In order to support his contention reliance has been placed on case reported as ***H.P. Housing & Urban Development Authority v. Ranjit Singh Rana, (2012) 4 SCC 505.***

12. Next learned senior counsel for the petitioner submitted that the Arbitration Act is a self-contained Act. Mere reference to Civil Procedure Code in the said Section 36 cannot be construed in such a manner that it takes away the power conferred in the main statute (i.e. the Arbitration Act) itself. It is to be taken as a general guideline, which will not make the main provision of the Arbitration Act inapplicable. The provisions of CPC are to be followed as a guidance, whereas the provisions of the Arbitration Act are essentially to be first applied. The provisions of CPC will apply only insofar as the same are not

inconsistent with the spirit and provisions of the Arbitration Act. In order to support the aforesaid contention, attention is invited by the learned Senior counsel to Section 36 of the Act and case reported as ***Pam Developments (P) Ltd. v. State of W.B., (2019) 8 SCC 112.***

13. Per contra the respondents have placed reliance on ***Punjab State Civil Supplies Corpn. Ltd. v. Atwal Rice & General Mills, (2017) 8 SCC 116.*** ORDER XXI CPC, which deals with EXECUTION OF DECREES AND ORDERS especially *Payment under a decree and ORDER XXIV* which deals with PAYMENT INTO COURT.

14. In ***H.P. Housing & Urban Development Authority*** the award was passed on 14-2-2001. The appellants filed objections against the award dated 14-2-2001. They also deposited the entire amount due under the award before the High Court on 24-5-2001.

15. The High Court considered the diverse provisions of the Act including Sections 31(7)(a) and (b) of the Act and few decisions of the apex Court and ultimately held that the respondent was entitled to post-award interest @ 18% p.a. from the date of the award till the date of the Actual payment. The said order was assailed before the apex Court.

16. The question that arose for determination before the apex Court, whether deposit of the entire award amount by the appellants on 24-5-2001 into the High Court amounts to payment to the respondent and the appellants' liability to pay interest @ 18% p.a. from the date of the award ceased from that date. Reversing the judgment of the High Court the question posed was answered as follows;

“15. The word “payment” may have different meaning in different context but in the context of Section 31(7)(b); it means extinguishment of the liability arising under the award. It signifies satisfaction of the award. The deposit of the award amount into the court is nothing but a payment to the credit of the decree-holder. In this view, once the award amount was deposited by the appellants before the High Court on 24-5-2001, the liability of post-award interest from 24-5-2001 ceased. The High Court, thus, was not right in directing the appellants to pay the interest @ 18% p.a. beyond 24-5-2001.”

17. In my considered view the ratio of **H.P. Housing & Urban Development Authority** squarely applies to the Acts of the case at hand. **H.P. Housing & Urban Development Authority** has been subsequently followed in **Union of India v. M.P. Trading & Investment Rac. Corpn. Ltd., (2016) 16 SCC 699**. Moreso the deposit made in terms of the order of the Court did not place the same out of the reach of the respondent as while passing the order the Court did not qualify in the order that

the money deposited could only be withdrawn on furnishing a security.

18. In so far as the second contention of the learned Senior counsel which deals with the applicability of the CPC to arbitration matters is concerned a reference to certain provisions of the Act would be necessary. Prior to substitution by Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016), Section 36 read as follows:

Section 36. Enforcement

*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 (V of 1908)** in the same manner as if it were a decree of the Court.*

19. After amendment w.e.f 23.10.2015 Section 36 reads as follows:-

36. Enforcement.—*(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award **shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908)**, in the same manner as if it were a decree of the court.*

(2) Where an application to set aside the arbitral award has been filed in the court under Section 34, the filing of such an application

shall not by itself render that award unenforceable, unless the court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

20. Section 36(1) of the Arbitration Act which deals with enforcement of an award provides that an award shall be enforced “**in accordance with**” the provisions of the Code of Civil Procedure, 1908. Whereas Section 36(3) of the Arbitration Act which deals with staying of the operation of an arbitral award uses the expression “**have regard to the provisions**”. In order to understand the aforesaid two expressions reference can be made to case reported as ***Pam Developments (P) Ltd. v. State of W.B., (2019) 8 SCC 112***, relevant extract whereof is being reproduced hereinbelow;

“18. The backbone of the submissions on behalf of the respondent State of West Bengal is that under the provisions of Order 27 Rule 8-A CPC, no security shall be required from the

Government in case of there being a money decree passed against the Government, and the execution of which is prayed for. If such submission of the respondent is accepted then the same would mean that mere filing of an objection under Section 34 of the Arbitration Act by a Government shall render the award unenforceable as the stay order would be passed in a mechanical manner and as a matter of course, without imposing any condition against the Government, judgment-debtor. If the contention is accepted, the effect would be that insofar as the Government is concerned, the unamended provision of Section 36 of the Arbitration Act would automatically come into force.

19. *In this backdrop, we have now to consider the effect of Section 36 of the Arbitration Act, vis-à-vis the provisions of Order 27 Rule 8-A CPC. Sub-section (3) of Section 36 of the Arbitration Act mandates that while considering an application for stay filed along with or after filing of objection under Section 34 of the Arbitration Act, if stay is to be granted then it shall be subject to such conditions as may be deemed fit. The said sub-section clearly mandates that the grant of stay of the operation of the award is to be for reasons to be recorded in writing "subject to such conditions as it may deem fit". The proviso makes it clear that the Court has to "have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure". The phrase "have due regard to" would only mean that the provisions of CPC are to be taken into consideration, and not that they are mandatory. While considering the phrase "having regard to", this Court in *Shri Sitaram Sugar Co. Ltd. v. Union of India* has held that: (SCC p. 245, para 30)*

"30. The words "having regard to" in sub-section are the legislative instruction for the general guidance of the Government in determining the price of sugar. They are not strictly mandatory, but in essence directory".

20. *In our view, in the present context, the phrase used is “having regard to” the provisions of CPC and not “in accordance with” the provisions of CPC. In the latter case, it would have been mandatory, but in the form as mentioned in Rule 36(3) of the Arbitration Act, it would only be directory or as a guiding factor. Mere reference to CPC in the said Section 36 cannot be construed in such a manner that it takes away the power conferred in the main statute (i.e. the Arbitration Act) itself. It is to be taken as a general guideline, which will not make the main provision of the Arbitration Act inapplicable. The provisions of CPC are to be followed as a guidance, whereas the provisions of the Arbitration Act are essentially to be first applied. Since, the Arbitration Act is a self-contained Act, the provisions of CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act.”*

21. Hence the use of the expression **“having regard to the provisions of CPC”** in Section 36 and in the form as mentioned in Section 36(3) of the Arbitration Act, the applicability of CPC would only be directory, whereas the provisions of the Arbitration Act are essentially to be first applied. The Arbitration Act is a self-contained Act. The provisions of CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act. Whereas in terms of section 36(1) of the Arbitration Act wherein the expression used is **“in accordance with”** the provisions of CPC, the applicability of the CPC has been held to be mandatory.

22. Per contra the respondents have placed reliance on ***Punjab State Civil Supplies Corpn. Ltd. v. Atwal Rice & General Mills, (2017) 8 SCC 116.*** In the same on 1-6-2001, the arbitrator delivered a reasoned award. The arbitrator allowed the appellant's claim in part and accordingly passed a money award for Rs 10,24,847.15 with interest payable @ 21% w.e.f. 1-1-1999 till realization in the appellant's favour and against the respondents. The award was challenged under Section 34 of the Act by the respondents before the Additional District Judge but the challenge failed vide order dated 3-11-2012 of the Additional District Judge, Jalandhar. Order dated 3-11-2012 attained finality as the matter was not pursued further in appeal to the High Court. The award acquired the status of a decree of the Civil Court by virtue of Section 36 of the Act.

23. The respondents did not pay the awarded amount to the appellant and, therefore, the appellant filed Execution Petition under Section 36 of the Act before the Additional District Judge, Jalandhar for enforcement of the award against the respondents. Objections thereto were filed.

24. However therein the executing Court did not decide any of the objections (nine) set out but confined its inquiry to one statement of accounts filed by the respondents, which

according to them, was given to them by the appellant. The executing Court, on perusal of the account statement, held that a sum of Rs 3,37,885 was paid by the respondents to the appellant on 29-8-2011 which, as per the statement, was credited in the appellant's account and hence such payment having been made has resulted in fully satisfying the decree in question and, therefore, the respondents are not liable to pay any amount towards decree in question. It is essentially with this factual finding, the executing Court came to a conclusion that the award/decreed stood fully satisfied and hence no recovery of any awarded amount can be made and, therefore, dismissed the appellant's execution application.

25. One of the questions which came up for consideration before the apex Court in ***Punjab State Civil Supplies Corpn. Ltd*** was whether the payment made therein by the respondents to the appellant is in conformity with the requirements of either Rule 1 or Rule 2 of Order 21 of CPC.

26. The factual finding was held to be perverse by the apex Court. Further keeping in view the mandatory requirements of Order 21 Rules 1 and 2 relating to payment of decretal dues made by the judgment-debtor and applying the said provisions to the undisputed facts of the case the apex Court held that no

amount was paid by the judgment-debtor to the decree-holder pursuant to the award/decreed so as to enable the executing Court to record its full satisfaction in accordance with the provisions of Order 21 Rules 1 and 2 of CPC.

27. On facts the aforesaid Judgment is distinguishable as herein on 1-6-2001, the arbitrator delivered the award. Challenge under Section 34 of the Act by the respondents before the Additional District Judge failed vide order dated 3-11-2012. Order dated 3-11-2012 attained finality as the matter was not pursued further in appeal to the High Court. The award acquired the status of a decree of the civil Court by virtue of Section 36 of the Act. Prior to 23-10-2015 in terms of *Section 36 of the Act*, an award shall be enforced when 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 awarded amount in ***Punjab State Civil Supplies Corpn. Ltd*** was not deposited, hence the execution and detailed reference to Order 21 Rules 1 and 2 CPC.

28. Whereas in the case at hand payment was made in terms of **Section 31 (7)(b)** of the Act while the Section 34 application was pending adjudication. As was the case in ***H.P. Housing & Urban Development Authority v. Ranjit Singh***

Rana, (2012) 4 SCC 505. The deposit in the case at hand can be equated to a payment of money in an appeal made against a money decree by the appellant, within such time as the Appellate Court may allow in terms of provisions of Order 41 Rule 1 sub-rule 3 CPC. Order 41 Rule 1 sub-rule 3 CPC reads as follows;

“ORDER XLI

APPEALS FROM ORIGINAL DECREES

(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.”

29. Order 21 Rule 1 sub-rule 2 CPC cannot be invoked in the case at hand as the payment in the case at hand was not deposited in the executing Court after the award had attained finality in terms of section 36 of the Act. Award amount in the case at hand was deposited while the Section 34 application made for setting aside the award was pending adjudication and the application had been filed within the prescribed period of limitation. In the case at hand, the award attained finality in terms of section 36 of the Act as it then existed after the Section 34 application had been dismissed. It is then that it became

enforceable like a decree. Prior to **23.10.2015** filing of an application under Section 34 of the Act for setting aside an award was sufficient to stay the execution of the award. Despite the same, in the case at hand, the award amount was deposited in terms of the order of the Court while the section 34 application for setting aside the award was pending adjudication. Order 21 Rule 1 CPC which deals with the Modes of paying money under decree reads as follows;

“ORDER XXI

EXECUTION OF DECREES AND ORDERS

Payment under decree

1. Modes of paying money under decree.— (1) All money, payable under a decree shall be paid as follows, namely:

(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.”

30. Similarly order 24 CPC would also not be applicable as the payment in question had not been deposited before the

arbitral tribunal while the arbitration proceedings were on. Order 24 which deals with the deposit by a defendant of amount in satisfaction of a claim at any stage of the suit reads as follows;

“ORDER XXIV

PAYMENT INTO COURT

1. Deposit by defendant of amount in satisfaction of claim. The defendant in any suit to recover a debt or damages may, **at any stage of the suit**, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

2. Notice of deposit. **Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.”**

31. Conceptually, revision jurisdiction is a part of appellate jurisdiction but it is not vice versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate Court is coextensive with that of the trial Court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but

ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of Revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the Tribunal/appellate authority, the decision of the Revisional Court is the operative decision in law. As regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction. (*Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh, (2014) 9 SCC 78*).

32. In the case at hand, the trial Court had the jurisdiction but in exercising jurisdiction the Court has Acted illegally, (a) in breach of Section 31(7)(b) of the Arbitration Act and (b) in referring to provisions of Order 21 CPC it has taken into account provisions which were not applicable to the facts of the case at hand. (*M.L. Sethi v. R.P. Kapur, (1972) 2 SCC 427, at page 433*). For the said reasons the present revision petition is maintainable.

33. Other than the aforesaid, the learned Trial Court has illegally held while rejecting the objections that the deposit made

in the High Court, in the case at hand in pursuance to order dated 19.12.2002, passed in OMP No. 500 of 2002 had been made in a proceeding which were void *ab initio* and without jurisdiction. In fact it was not a case of an inherent lack of jurisdiction rather this court at that stage only lacked the pecuniary jurisdiction. Deposit in the case at hand had been made in terms of the order of the Court dated 19.12.2002. Even when OMP No. 500 of 2002 was dismissed on 27.06.2003, being mis-conceived in view of the provisions of Section 36 of the Act which provides that an award can only be enforced after objections filed under Section 34 of the Act are disposed of, no order for return of amount deposited in pursuance thereof was passed. Even otherwise after having actively participated in the proceedings, the respondent cannot be permitted to plead ignorance qua orders, deposit passed and made in the proceedings respectively. The proceedings in which the deposit had been made was at best irregular on account of lack of pecuniary jurisdiction and not void on account of lack of inherent jurisdiction. The conduct of the respondent in the facts and attending circumstances of the case at hand precludes the respondent from objecting to the deposit made by the petitioner in pursuance to the order dated 19.12.2002 passed by this

Court. Waiver, estoppel could not have been raised against the respondent had the proceedings been void on account of lack of inherent jurisdiction. Reference in this respect can be made to ***Indira Bai v. Nand Kishore, (1990) 4 SCC 668, at page 671/672, Ashok Leyland Ltd. v. State of T.N., (2004) 3 SCC 1, at page 44*** . For the said reason also, the present revision petition is maintainable.

34. The expression “as it thinks fit” appearing in section 115 CPC confers a very wide jurisdiction enabling a revisional Court to take an entirely different view on the same set of facts. The expression “as it thinks fit” has the same connotation, unless context otherwise indicates, “as he deems fit” and the latter expression was interpreted by the apex Court in ***Raja Ram Mahadev Paranjype v. Aba Maruti Mali AIR 1962 SC 753*** to mean to make an order in terms of the statute, an order which would give effect to a right which the Act has elsewhere conferred. (***Babulal Nagar v. Shree Synthetics Ltd., 1984 Supp SCC 128***). Hence, the power/justification to setting aside the impugned order and passing the present judgment.

For the reasons stated herein above, the revision petition is allowed. The impugned judgment dated 23.08.2019, whereby objections filed by the present petitioner/judgment debtor

against the execution filed by the present respondent/decreed holder have been dismissed is quashed and set-aside. The present respondent/decreed holder is free to moving an appropriate application for withdrawing money lying deposited in terms of order dated 19.12.2002 passed in OMP No. 500 of 2002 along with interest accrued thereupon subject to proper verification.

All pending applications are disposed off.

(Bipin Chander Negi)
Judge

November 13th, 2024.
(vs/Nisha)