

EXECUTION PROCEEDINGS
FOR ENFORCEMENT OF
ARBITRAL AWARD

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ARBITRATION

The controversy as to whether an Arbitral Award can be directly executed in the Court where the assets are located without obtaining transfer of the decree from the court having jurisdiction over the arbitration proceedings, has been resolved by the Supreme Court in the recent following judgement¹

The Supreme Court in its judgment dated 15th February 2018, has held that execution proceedings for enforcement of an Award under the Arbitration & Conciliation Act, 1996 ("**Arbitration Act**") can be filed in any Court where such Award can be executed.

Brief facts of the case:-

In the present case, Abdul Samad ("**Respondent No.1**") had approached Sundaram Finance Limited ("**Appellant**") for grant of a loan and a Loan Agreement was executed between the parties. Since, the Respondent No.1 committed default in payment of certain installments, arbitration proceedings commenced between the parties in terms of the agreement. Thereafter, an ex-parte arbitral award was passed on 22nd October 2011 in favor of the Appellant.

In order to enforce the said arbitral award, execution proceedings were filed by the Appellant in the Trial Court at Morena, Madhya Pradesh. However, vide an order dated 20th March 2014, the Trial Court returned the execution proceedings to be filed before the competent court. Consequently, the Appellant was required to first file the execution proceedings before the Court at Tamil Nadu, obtain a transfer of the decree and then file proceedings in the Trial Court at Morena.

Aggrieved by the order of the Trial Court, the Appellant challenged the same before the Supreme Court.

Conflicting views of various Courts:-

There are several conflicting views of different High Courts on the aforesaid question. The Hon'ble Madhya Pradesh and Himachal Pradesh High Courts have taken a similar view and observed that transfer of decree should be first obtained before filing execution proceedings in the Court where the assets are located. It was observed by the Madhya Pradesh High Court that Section 36 of the Arbitration Act, stipulates that an award shall be enforced in accordance with the provisions of Code of Civil Procedure, 1908, ("**CPC**") in the same

¹ Sundaram Finance Limited v. Abdul Samad & Anr. [Civil Appeal No. 1650 of 2018] decided on 15th February, 2018

manner as if it were a decree of the Court and therefore same principle would apply as for enforcing a decree of Court. The Court further observed that since Section 37 of CPC defines the Court which passes the decree and Section 39 of the Code provides for transfer of decree, for execution of an arbitral award a transfer of the decree was mandatory.

However, a contrary view has been taken by several other High Courts including the Hon'ble Delhi High Court, Kerala High Court, Madras High Court and Karnataka High Court. It has been observed by the said Courts that provisions of Section 36 of the Arbitration Act do not imply that the award is a decree of a particular court and it is only a fiction. Under Section 36 of the Arbitration Act, an award passed is equated to a decree of the court only for the purpose of execution. Thus, Sections 38 and 39 of the Code will have no application and the award can be filed for execution as a decree of civil court wherever the judgment debtor resides or carries on business or has properties within the jurisdiction of the said court.

Judgement and Conclusion:-

The Hon'ble Supreme Court considered various provisions of the Arbitration Act and the Code and held that under Section 36 of the Arbitration Act, it is the enforcement mechanism which is akin to enforcement of a decree but the award itself is not a decree. The Arbitral Tribunal does not have power of execution of a decree and therefore for purposes of execution, award is to be enforced in the same manner as if it was a decree under the Code. The Hon'ble Supreme Court further held that under Section 32 of the Arbitration Act, arbitral proceedings terminate by the final arbitral award and therefore, Section 42 of the Arbitration Act will not have any relevance for execution of a final award.

The Hon'ble Court accordingly held that the enforcement of an award can be filed anywhere in the country where such decree can be executed. There is no requirement for obtaining a transfer of the decree from the Court, which has jurisdiction over the arbitral proceedings.

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