

Commercial Court, Jhansi  
Arb. Execution N0-06/2024

M/s Pitambra Construction Diviapur  
Vs  
Telecom District Manager BSNL Orai

Disposal of Application, 18C1, under Order 21 Rule 97 CPC of JD

Dated: 13.06.2025

1. That the present application has been filed by the Judgment Debtor (JD) to decide whether the award dated 23.11.2017 can be executed when the illegality has strike at the initiation of the proceedings by the sole arbitrator as the claim of the claimant was barred by limitation act and arbitrator was having no jurisdiction to entertain such belated claim.

2. That the applicant/JD has moved the present application mainly on the following grounds :-

2.1. *The Ld Arbitrator was having no jurisdiction to decide the award as the same was barred by limitation as per Limitation Act, 1963.*

2.2. *The award was obtained by fraud played by claimant in collusion with certain officer of BSNL as in this case the work was started without issuance of work order.*

3. That the Decree Holder (DH) has objected the present application mainly on the following grounds :-

3.1. *The application of the JD is barred by the principle of resjudicata as the JD has raised this issue before the Commercial Court, Kanpur while challenging the award dated 23.11.2017 in the application under section 34 of Act no. 26 of 1996 and the same has already been decided by that Court and the award passed by the Ld. Arbitrator become final.*

3.2. *The application under Order 21 Rule 97 CPC is not applicable in the facts and circumstanes of the present execution petition as the same is applicable for execution of the decree of immovable property.*

3.3. *It is clearly mentioned in Act no. 26 of 1996 that objection against the award can be be raised only on the grounds mentioned in section 34 of that Act and after disposal of application under section 34 of the Act no. 26 of 1996 the award becomes final and the award shall be executed as per section 36 of the Act no. 26 of 1996 as it is decree of a court.*

3.4. *In sub-section (2) of section 36 of Act No. 26 of 1996, it is clearly mentioned that the execution of the award can not be stayed till the Court grants an order of stay on an application of the JD for stay of the execution proceeding.*

3.5. *The law is well settled that the jursidiction of the executing court is only relating to execution of the decree and not having jurisdiction of trial Court and the executing Court cannot go behind the Decree.*

3. I heard Ld. Counsel of both the parties and perused the record of the case file.

4. It is argued by the Ld. Counsel of the JD that though the present application has not been moved on appropriate provision, but the law is well settled that even the application has been moved on wrong provision, but the court should decide the same in appropriate provision as per law on merits. It is also argued that despite observation of the Hon'ble High Court in Writ C No. 18602 of 2012 vide order dated 23.07.2015 that the issue as whether the claim is within limitation and considering the same is a mixed question of law and facts and hence the same is directed to be resolved in the course of the arbitral proceeding, but the Ld. Arbitrator has not considered this core issue and has proceeded and decided the matter. Thus, it is argued that the Ld.

Arbitrator has acted beyond the mandate of the agreed terms of contract. In this regard the Ld. Counsel of the JD has relied upon the following judgments :-

(i) *Indian Oil Corporation Ltd. Vs M/s Shree Ganesh Patroleum* [Civil Appeal No. 837-838 of 2022].

(ii) *M/s B & T AG Vs Ministry of Defence* [2023 Live (SC) 466

(iii) *Devendra Pal Singh Bhullar Vs State of Punjab*

5. It is also argued by the Ld. Counsel of the JD that the Contractor has obtained the impugned Award by fraud as the Contractor has started the work in this matter without work order in connivance with the officer of the BSNL and that officer had helped the claimant in the entire proceeding from issuance of tender, processing of false bills and even given clean chit in enquiry and later on in fear of punishment left the Department and has taken VRS, but yet the Department has not released the amount of his gratuity to that officer and proceeding is remained pending against that officer. The Ld. Counsel prayed for calling the entire file to know the misuse of public funds. The applicant has relied the judgment of *Ganga Prasad Vs State of U.P.* through Secy. Finance and Revenue Deptt. Lko [2024: AHC-LKO: 25792].

5. Per Contra, it is argued by the Ld. Counsel of the DH that the law is well settled that the executing Court cannot go behind the decree. It is also argued that in this matter the JD has already raised the aforesaid points in application under section 34 of Act No. 26 of 1996 and the Ld. Commercial Court, Kanpur has after considering all points has already dismissed the application under section 34 of the JD. Thus, the JD cannot raised the same point before this court in execution proceeding. It is also argued that the limitation is a mixed question of fact and law and the excuting court cannot decided the same. It is also argued that the issue of work order has also been considered by the Ld. Arbitrator as well as the Court while deciding application under section 34 of the Act No. 26 of 1996 and hence the same issue cannot be raised before this court in the execution proceeding as the same is barred by the principle of res judicata. The Ld. Counsel of the DH has relied upon the following judgments :-

(i) *Jagbir Singh Vs Vth Addl. District and Session Judge Bijnor & Ors* [1997 (2) JCLR 436 (All)]

(ii) *Vashudev Dhanjibhai Modi Vs Rajabhai Abdul Rehman & Ors.* [AIR 1970 SC 1475].

(iii) *Jet Airways (India) Ltd. & Ors Vs Subrata Roy Sahara & Ors* [2012(1) ALLMR 563]

(iv) *State of U.P. & Ors Vs Shri Raj Veer Singh* [2024: AHC: 66171]

6. That though the applicant/JD has moved the present application on wrong provision of law, but the Court will consider and decide the present application on merits.

7. That in the present application the applicant has mainly raised two issues the first the impugned award passed by the Ld. Arbitrator is time barred and second the said award is obtained by fraud as the Contractor started the work without Work Order in connivance with the Officer of BSNL.

8. That before considering both the issues it is pertinent to mention that against the Award dated 23.11.2017 passed by the Ld. Arbitrator, the JD has earlier filed an application under section 34 of the Act no. 26 of 1996 before the Commercial Court, Kanpur and that application has been dismissed by the Court vide order dated 04.11.2024 and it is stated by the Ld. Counsel of the applicant/JD that JD has filed appeal against that order before the Hon'ble High Court under section 37 of the Act no. 26 of 1996 and the same is still pending before the Hon'ble High Court.

9. That in this factual position, first of all it has to be considered how much scope of the executing court to entertain an objection of JD under section 47 of the CPC, while executing an award under section 36 of the Act no. 26 of 1996 Act and in this regard it is just to reffer the relevant paras of **State of U.P. & Ors Vs Shri Raj Veer Singh** (Supra), whic are as under :-

"27- In *Cholamandalam Investment and Finance Comany Ltd.-v-Amarpali Enterprises and Another* reported in 2023 SCC OnLine Cal, I had outlined that there is no scope for adverse

interference with an arbitral award under Section 36 of the Act. Relevant paragraph reads as under:

“18. ....There is no denying fact that the Act is a complete code in itself and at the same time, it is equally true that Section 36 provides no scope of adverse inference with an arbitral award except executing it as a decree of the court. While Section 47 of the Civil Procedure Code, 1908(hereinafter referred to as the ‘CPC’) governs the challenge to a court decree at the execution stage, there is no such similar provision provided in the Act....”

What emerges from the aforesaid judgments is that an arbitral award is not a decree as defined under Section 2(2) of the CPC, 1908. Therefore, objections under Section 47 of the CPC, 1908 which are specifically applicable to execution decrees, are not maintainable against arbitral awards. The Court have constantly emphasized the self-contained nature of the Act, which provides a comprehensive framework for challenging arbitral awards, including provisions for challenging the appointment of arbitrators. Section 36 of the Act deals with enforcement and does not provide for challenges to the merits of the arbitral awards. Challenges on the grounds of nullity or illegality can only be raised in proceedings under Section 34 of the Act which sets forth specific grounds for challenging arbitral awards. Allowing challenges on the merits in enforcement proceedings would undermine the legislative intent and procedural framework established by the Act. Any party aggrieved by an arbitral award is required to challenge the arbitral award within the framework provided by the Act, including raising jurisdictional issues before the arbitrator under Section 16 of the Act.

28. Though, the legal fiction of equating arbitral awards to court decrees serves pragmatic purposes, it is important to know that, it does not alter the fundamental nature or origin of arbitral awards. Arbitral awards are distinct from court judgments in that they arise from private contractual agreements between the parties and are issued by private arbitrators rather than state-appointed judges. Moreover, while arbitral awards are enforceable “as if they were” court decrees, they are not actually court decrees. Execution of an arbitral award, although happens in a matter “as if they were” court decrees, they are subject to specific limitation under the Act.

29. Therefore, to conclude, it can be said, that objections available under Section 47 of the Code of Civil Procedure, 1908 will not be available under Section 36 of the Act since an arbitral award is not in reality a decree of the court but is merely treated as one for limited purpose of enforcement...”

10. However, the Hon’ble Apex Court in the matter of **State of Uttar Pradesh & Anr. Vs R.K.Pandey** [2025 INSC 48], it is held in para 24 that-

“24. We have made our observations in the context of Section 47 of the Code of Civil Procedure, 1908 which even at the stage of execution, permits a party to object a decree, both on the grounds of fraud, as well as lack of subject matter jurisdiction. It is apparent that the arbitration proceedings were a mere sham and a fraud played by Respondent No. 1, R.K.Pandey, by self appointing /nominating arbitrators, who have passed Ex-parte and invalid awards. To reiterate, Respondent No.1, R.K.Pandey is not a signatory to the purported arbitration agreement. Moreover, the parties thereto, DPNBID Hospital and the Governor of Uttar Pradesh, do not endorse any such agreement. From the cumulative facts and reasons elucidated above, this is a clear case of lack of subject matter of jurisdiction.”

11. That the Hon’ble Apex Court in the matter of **Electrosteel Steel Ltd. (Now M/s ESL Steel Ltd) Vs Ispat Carrier Pvt. Ltd.** [2025 INSC 526], it is held in paras 47 that-

“47. High Court is correct in answering the first issue that a plea of nullity qua an award can be raised in a proceeding under section 47 CPC but such a challenge would lie in a very narrow compass.”

12. That from the aforesaid judgments of the Hon’ble Allahad High Court and Hon’ble Apex Court, it is crystal clear that though the executing Court can consider the plea of nullity qua an award on the ground of fraud under section 47 CPC, but such a challenge would be in a very narrow compass.

13. That in this matter the applicant/JD has raised two issues first is the award passed by the Ld. Arbitrator is time barred and the second is it is obtained by fraud as the work was started by the Contractor without Work Order in connivance with the officer of the Department and against him enquiry is still pending.

14. As far as first issue is concerned the law is well settled that the issue of limitation is a mixed question of fact and law. The applicant/JD has stated that the cause of action starts from the date when the work is completed. However, it is contended by the Ld. Counsel of the DH that the bills are yet pending at the end of the JD and the cause of action starts from the date when the bill is prepared by the department. Thus, it is a mixed question of fact and law and the executing Court cannot decide the same particularly when the matter is still pending before the Hon'ble High Court under section 37 of the Act no. 26 of 1996.

15. The next issue raised by the applicant/JD is of fraud on the ground that the Contractor has started the work without Work Order in connivance with the officer of the BSNL. However, this issue has already been dealt by the Ld. Arbitrator and the Ld. Arbitrator after considering the fact that the work was started by the Contractor on the verbal order of the SDOT concerned and in this regard a committee was also formed by TDM and that committee has also recommended for issuance of the covering Work Order and after considering all this fact the Ld. Arbitrator has decided this issue and the same was also upheld by the Commercial Court, Kanpur while deciding application under section 34 of the Act No. 26 of 1996. The applicant/JD has raised the same issue again in this Court. Once, the Ld. Arbitrator has decided the issue and confirmed by the Court while deciding application under section 34 of the Act No. 26 of 1996 and as per the applicant/JD the order of the Commercial Court, Kanpur under section 34 of the Act is under challenge under section 37 of the Act No. 26 of 1996 before the Hon'ble High Court and is still pending and hence raising the same issue before the executing Court is nothing but an abuse of the process of law and this Court cannot consider the same on the very narrow compass of interference while executing the award, as if it were, a decree as mentioned above.

16. That this Court has also perused the case laws and legal maxim i.e. *sublato fundamento cadit opus*, which is relied by the Ld. Counsel of the applicant/JD, but the Court is of the considered view that the same is not applicable in the facts and circumstances of the present case.

17. That the Hon'ble Allahabad High Court in the matter of ***State of U.P. & Ors Vs Shri Raj Veer Singh*** (Supra), it is held in para 51 that-

*" 51. In conclusion, the imposition of costs in cases of frivolous litigation is not merely a punitive measure but rather an essential tool for maintaining the integrity of the judicial system, deterring abuse of the legal processes, and promoting access to justice. By holding litigants accountable for their actions and imposing costs when warranted, the legal system reaffirms its commitment to upholding the principles of justice, fairness, and equity for all members of the society."*

18. Thus, this Court is of the considered view that the present application of the applicant/JD being devoid of merits and is an abuse of the process of law and it seems that the same has been moved just to prolong the execution proceeding and hence the same deserves to be dismissed with costs.

### ORDER

The present application, 18C1, under Order 21 Rule 97 CPC of the applicant/JD is hereby dismissed with cost of Rs. 2000/-. The JD is directed to furnish the particulars of its assets as per Order 21 Rule 41(2) CPC within 15 days failing which appropriate action will be taken as per Order 21 Rule 41(3) CPC. List the matter for further proceeding on 30.06.2025.

Presiding Officer,  
Commercial Court, Jhansi