



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 8048/2022

M/s Shree Ram Junawa Industries, G-121, Mia Ii Phase, Basni,
Jodhpur Through Its Proprietor Gajendra Chaudhary S/o Munna
Ram Chaudhary, Age 35, Proprietor M/s Ram Junawa Industries,
R/o Khasara No. 20/1, Plot No. 4, Gokulnagar, In Frount Of
Parshavnath City, Sangariya By Pass, Jodhpur.

-----Petitioner

Versus

M/s Rounak Steels, F 267, Mia Ii Phase Basni Industrial Area,
Jodhpur Through Its Partner Smt. Manju Salecha W/o Padam
Salecha, F 267, Mia, Ii Phase, Jodhpur.

-----Respondent

For Petitioner(s) : Mr. Manoj Bhandari, Sr. Advocate with
Mr. Akshat Verma

For Respondent(s) : Mr. Pramod Gupta

HON'BLE MR. JUSTICE VIJAY BISHNOI

Judgment / Order

18/10/2022

This writ petition is filed by the petitioner-firm being aggrieved with the order dated 21.5.2022 passed by the Commercial Court No.1, Jodhpur (for short 'the Commercial Court') whereby, it has rejected the application under Section 47 of the CPC filed by the petitioner-firm raising certain



objections in the execution petition filed on behalf of the respondent.

Brief facts of the case are that as per the respondent, the petitioner-firm had purchased goods from the respondent, however, it has failed to make payment within the stipulated time and, therefore, under the provisions of Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'the Act of 2006'), the respondent has moved an application before the Micro and Small Enterprises Facilitation Council (for short 'the MSEFC') on 27.2.2020 complaining regarding non-payment of the goods by the petitioner-firm. The MSEFC has issued notice to the petitioner-firm advising it to make payment of the due amount as mentioned immediately and in no case, later than 15 days from the date of receipt of notice with a caution that failing which, a case will be registered against it by the MSEFC.

It appears that later on, the MSEFC has initiated conciliation proceedings as provided under Section 18(2) of the Act of 2006, however, the conciliation efforts failed and the MSEFC has decided to proceed under Section 18(3) of the Act of 2006 and ultimately has passed the award dated 13.9.2021 and directed the petitioner-firm to pay the original amount of Rs.8,549,565/- along with interest to the tune of Rs.4,757,117/-, total Rs.13,306,682/- within a period of one month with a further direction that if the above-referred



amount is not paid within a period one month, the petitioner shall pay three times of compound interest on the prevalent rate of interest as determined by the Reserve Bank of India. It is also mentioned in the award dated 13.9.2021 that the same has been passed pursuant to the decision taken in the sixth meeting of the MSEFC held on 24.3.2021.

Being aggrieved with the award dated 13.9.2021, the petitioner-firm has preferred SBCWP No.371/2022 before this Court, however, the learned Single Judge of this Court vide order dated 12.1.2022 has dismissed the aforesaid writ petition on the ground of availability of alternative/statutory remedy to the petitioner-firm to challenge the award dated 13.9.2021 under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996'). The order dated 12.1.2022 reads as under :

“1. By way of present writ petition, the petitioner has challenged the order dated 13.09.2021, which is required to be treated as an award, in terms of Section 18 of the Micro, Small and Medium Enterprises Act, 2006 (for short, 'the Act of 2006').

2. Mr. Akshat Verma, learned counsel for the petitioner, argued that the award under challenge has been passed by two Arbitrators, which is clearly contrary to Section 10 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') inasmuch as, number of Arbitrators are required to be in odd numbers.

3. It is also contended that immediately after receiving the notice of reference, the petitioner had sent a mail that he was indisposed and yet petitioner's request was



not acceded to by the Arbitrators and impugned award came to be passed.

4. Without pronouncing anything upon the merits of the petitioner's contention, suffice it to observe that in terms of Section 18(3) of the Act of 2006, the award in question is required to be governed by the Act of 1996 and, therefore, the petitioner is supposed to challenge the same in terms of Section 34 of the Act of 1996 on all possible grounds including the one that has been canvassed before this Court.

5. In the face of availability of alternative/statutory remedy, this Court refuses to exercise its jurisdiction under Article 226 of the Constitution of India.

6. The writ petition, therefore, fails.

7. The stay application also stands disposed of accordingly.

8. It goes without saying that the petitioner shall be free to avail his remedies in accordance with law."

The petitioner-firm, has thereafter, filed an appeal under Section 34 of the Act of 1996 before the Commercial Court and it has directed the petitioner-firm to deposit 75% of the award amount as per Section 19 of the Act of 2006.

Being aggrieved with the same, the petitioner-firm has preferred SBCWP No.5022/2022 before this Court and this Court vide order dated 26.4.2022 has disposed of the aforesaid writ petition while passing the following order :

"This writ petition has been filed on behalf of the petitioner-firm being aggrieved with the order dated 24.03.2022 passed by the Commercial Court No.1, Jodhpur (hereinafter to be referred as 'the trial court'), whereby the trial court while



entertaining the appeal filed by the petitioner-firm against the arbitration award dated 13.09.2021 issued by the office of Commissioner Industries, Micro and Small Enterprises Facilitation Council, Headquarter-First, Jaipur has directed the petitioner-firm to deposit 75% of the award amount as per Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006.

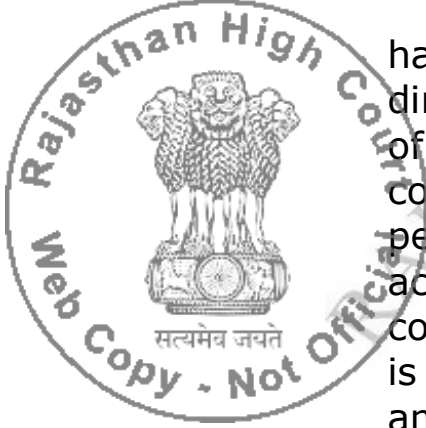
Learned counsel for the petitioner-firm has submitted that the trial court while directing the petitioner-firm to deposit 75% of the award amount has failed to take into consideration the financial condition of the petitioner-firm. It is also submitted that on account of Covid-19 pandemic, the financial condition of the petitioner-firm is poor and it is difficult for it to deposit 75% of the award amount in one go.

Learned counsel for the petitioner-firm has submitted that the petitioner-firm is ready to deposit 75% of the award amount before the trial court in three monthly installments.

Learned counsel for the petitioner-firm undertakes that the petitioner-firm will deposit first installment on 02.05.2022, second installment on 01.06.2022 and third/last installment on 01.07.2022.

Learned counsel for the respondent-firm initially has opposed the prayer of the petitioner-firm, however, later on, agreed to grant time to the petitioner-firm to deposit 75% of the award amount in three monthly installments as suggested herein above by learned counsel for the petitioner-firm.

In view of the above, this writ petition is disposed of with a direction to the petitioner-firm to deposit 75% of the award amount i.e. Rs.99,80,011/- (Rupees ninety nine lacs eighty thousand eleven) in three installments before the trial court as per the following schedule :-





Three Installments	Date of Installments Deposit	Amount of Installments
First Installment	02.05.2022	Rs.30,00,000/-
Second Installment	01.06.2022	Rs.30,00,000/-
Third/Last Installment	01.07.2022	Rs.39,80,011/-

It is made clear, if the petitioner-firm makes any default in payment of any of the installments as directed above, the appeal preferred by it before the trial court shall automatically be dismissed.

The trial court shall disburse the pre-deposit amount in favour of the respondent-firm as per its discretion.

The petitioner-firm shall furnish an undertaking in writing before the trial court to the effect that till pendency of the appeal filed by it before the trial court, it shall not alienate any of its property.

Stay petition also stands disposed of.”

It is revealed that the petitioner-firm has not deposited 75% of the award amount as per the directions given by this Court vide order dated 26.4.2022 and the appeal preferred by the petitioner-firm came to be dismissed as observed in the said order.

In the meantime, the respondent has preferred execution petition before the Commercial Court and in those proceedings, the petitioner-firm has filed certain objections by moving an application under Section 47 of the CPC. In the said application, the petitioner-firm has raised mainly three objections, which read as under :



(a) that the award dated 13.9.2021 was passed by the even number of members, which is not permissible and in contradiction of Section 10 of the Act of 1996. It is claimed that the Arbitration Tribunal consists of three members whereas, the same is signed by two members only, which is evident from the award dated 13.9.2021. It is contended that on the day, the award was passed, the third member of the Arbitration Tribunal was already expired and, as such, the award dated 13.9.2021 itself is nullity and is non-executable.

(b) that the decree-holder has filed execution proceedings prematurely, hence, such execution is barred by Section 36 of the Act of 1996.

(c) that because the award dated 13.9.2021 is not sufficiently stamped, therefore, the same remains unenforceable.

The Commercial Court vide order dated 21.5.2022 has rejected the objections raised by the petitioner-firm by giving detailed reasonings.

In respect of the objection No.1, the Commercial Court has concluded that the Arbitration Tribunal has already decided to pass an award while exercising powers under Section 16 of the Act of 2006 and the same is evident from the order-sheet of the Arbitration Tribunal dated 1.4.2021. The Commercial Court is of the opinion that since the decision of passing the award was already taken on 1.4.2021 by the odd number of members, the death of one of the arbitrator



after 1.4.2021 will not result in declaring the award as nullity because only the signatures of the third member is not on the award dated 13.9.2021.

In respect of the objection No.2 raised by the petitioner-firm that the execution proceedings initiated by the respondent are premature, the Commercial Court has concluded that in any law, limitation is provided for filing application, appeal or suit and the same is treated as limitation period, however, there are provisions wherein the court can grant further time to file any application, appeal or suit beyond the limitation period as per its discretion, however, the said period granted by the court as per its discretion cannot be termed as limitation period. The Commercial Court is also of the view that since the award is passed on 13.9.2021 and the execution application is filed on 16.12.2021, whereas the limitation for challenging the award is provided as three months, it cannot be said that the execution proceedings are filed before expiry of three months period.

सत्यमेव जयते

So far as the objection raised by the petitioner that the award dated 13.9.2021 is not sufficiently stamped is concerned, the Commercial Court has concluded that the award passed by the Arbitration Tribunal is an instrument as defined in Section 2(xix) of the Rajasthan Stamp Act (for short 'the Stamp Act'). It is also observed that the Arbitration Tribunal was the enterprise of the competent government and



as per proviso to Section 3(b) of the Stamp Act, any instrument issued by the competent government is not required to be stamped. It is further observed that prior to year 2008, as per the Rule 5(13), an award is required to be stamped, but those Rules were repealed in the year 2018 and as per the Rules promulgated in the year 2018, there is no provision for paying any stamp duty on the award as per Rule 5(10) and (11).

Assailing the order dated 21.5.2022, learned counsel for the petitioner-firm has submitted that since the award is passed by the even number of members, the same is contrary to Section 10 of the Act of 1996 and is non-executable, but the Commercial Court has illegally held that the award though signed by even number of members cannot be said to be non-executable since the decision of passing the award was taken by all the three members of the Arbitration Tribunal. Learned counsel has further argued that as a matter of fact, when the award was passed, the fact remains that the third member of the Arbitration Tribunal was no more and, as such, the award cannot be said to be executable in any manner.

It is further argued that the Commercial Court has illegally observed that the execution proceedings initiated by the respondent are not premature though from the facts itself, it is clear that the execution proceedings were initiated by the respondent before expiry of the period of challenging



the award as per the provisions of the Act of 1996. It is further argued that the award was passed on 13.9.2021 and the limitation for challenging the same expires after 120 days, but the respondent has filed the execution proceedings before expiry of 120 days and, as such, it is clear that the execution proceedings initiated by the respondent are premature.

Learned counsel for the petitioner has further argued that the award was not sufficiently stamped and, as such, the same remains non-executable, but the Commercial Court has wrongly held that no stamp is required.

Learned counsel for the petitioner-firm has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Chief Engineer, Hydel Project and Others Vs. Ravinder Nath and Others**, reported in **(2008) 2 SCC 350; decision of the Madras High Court rendered in the case of S.A. Mohideen Vs. S.A. Fasluddin and Ors. [O.P. No.310 of 2018, O.A. Nos.257, 258 of 2018 and A.No.2450 of 2018, decided on 02.08.2018]; decision of Calcutta High Court rendered in the case of SRS Investments Bengal Tiger Ltd. and Ors. Vs. Rahul Todi and Ors. [C.O.Nos.39-41 of 2019 and C.O.No.197 of 2019, decided on 24.06.2019]; decision of the Chhattisgarh High Court at Bilaspur rendered in the case of R.S. Bajwa and Company Vs. State of Chhattisgarh and Ors.,** reported in **AIR 2008 Chh 75.**



Per contra, learned counsel for the respondent has submitted that the Commercial Court has not committed any illegality in rejecting the objections filed by the petitioner-firm vide order dated 21.5.2022, hence, no interference is called for in this writ petition.

Heard learned counsel for the parties and perused the material available on record.

Before going into the merits of the arguments raised on behalf of the respondent assailing the validity of the order impugned, I would like to observe that the petitioner-firm is not entitled to get any relief from this Court due to its conduct.

Earlier, against the order dated 13.9.2021, the petitioner-firm has preferred SBCWP No.371/2022, which came to be dismissed by this Court while observing that the petitioner-firm has an alternate and efficacious remedy to challenge the award under Section 34 of the Act of 1996. It is to be noticed that a Coordinate Bench of this Court has dismissed the above-referred writ petition while taking note of the argument of the learned counsel for the petitioner-firm that the award is contrary to Section 10 of the Act of 1996. The petitioner-firm though filed an appeal under Section 34 of the Act of 1996 against the award dated 13.9.2021, but has not deposited 75% of the award amount as per Section 19 of the Act of 2006 and when the Commercial Court has insisted upon the petitioner-firm to deposit the same, the petitioner-



firm has preferred SBCWP No.5022/2022 before this Court claiming that on account of COVID-19 Pandemic, the financial condition of the petitioner-firm is poor and it is difficult for it to deposit 75% of the award amount in one go. It is urged on behalf of the petitioner-firm before this Court that the petitioner-firm is ready to deposit 75% of the award amount in three monthly installments and thereafter undertakes to deposit three installments running from 2.5.2022 to 1.7.2022.

This Court, after taking into consideration the said undertaking given before this Court, has directed the petitioner-firm to deposit 75% of the award amount in three monthly installments and the last installment of which was to be paid on 1.7.2022 itself. This Court has made it clear that if the petitioner-firm makes any default in payment of any of the installments as directed above, the appeal preferred by it before the trial court shall automatically be dismissed.

Admittedly, the petitioner-firm has not deposited 75% of the award amount before the Commercial Court and the appeal filed by it challenging the award dated 13.9.2021 came to be dismissed.

The conduct of the petitioner-firm of not depositing 75% of the award amount despite giving an undertaking before this Court is a clear case of disobedience and cannot be appreciated. It appears that the petitioner-firm has used



different forums including this Court to deny the decree-holder the fruits of the decree.

The Hon'ble Supreme Court in ***Ravinder Kaur Vs. Ashok Kumar and Another***, reported in ***AIR 2004 SC 904***

has deprecated such practice while observing as under :

"Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. This type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing laws delay and bringing bad name to the judicial system."



Apart from that, I am also of the opinion that challenge of the petitioner-firm to the execution of the award dated 13.9.2021 is also barred by the principles of res judicata. The award dated 13.9.2021 has attained finality with the dismissal of the appeal filed by the petitioner-firm under Section 34 of the Act of 1996 before the Commercial Court in view of the order passed by this Court in SBCWP No.5022/2022 decided on 26.4.2022 because admittedly, the petitioner-firm has failed to make payment of 75% of the award amount within the stipulated time granted by this Court.

It is settled that the principles of res judicata apply between two stages of the same litigation and in this reference, reliance can be placed on the decision of the Hon'ble Supreme Court in the case of ***Satyadhyan Ghosal and Ors. Vs. Smt. Deorjin Debi and Anr.***, reported in ***AIR***



1960 SC 941, wherein the Hon'ble Supreme Court has held

as under :

"7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a respondent is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation, when a matter whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in S.11 of the Code of Civil Procedure; but even where S.11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again?"

(Emphasis Supplied)





On merits, I am of the view that the findings recorded by the Commercial Court while rejecting the objections filed by the petitioner-firm cannot be said to be perverse in any manner.

Though, it is true that at the time of passing of the award dated 13.9.2021, the third member of the Arbitration Tribunal was no more as he expired prior to passing of the award dated 13.9.2021, but the fact remains that the Arbitration Tribunal has principally decided to pass the award on 1.4.2021 and on that day, all the members of the Arbitration Tribunal were present and signed the proceedings. Simply because the detailed award was passed on 13.9.2021, when one of the members of the Arbitration Tribunal was not alive, it cannot be said that the award became contrary to Section 10 of the Act of 1996. It is not the case of the petitioner-firm that immediately after the death of one of the members of the Arbitration Tribunal, it has raised any objection or prayed for appointment of new Arbitration Tribunal pointing out that one of the members of the Arbitration Tribunal is no more. As a matter of fact, the petitioner has not raised any objection till the execution petition is filed and this fact itself is sufficient to draw a presumption that though the petitioner-firm was aware about the death of one of the members of the Arbitration Tribunal, but it has not raised any objection with regard to the fact that





the decision to pass the award was not taken by all the three members of the Arbitration Tribunal.

The finding recorded by the Commercial Court whereby it has rejected the objection that the execution proceedings initiated by the respondent prematurely is concerned, I do not find any fault in the same as the award was passed on 13.9.2021 and the execution application was filed on 16.12.2021. As per Section 34(3) of the Act of 1996, the limitation for challenging the award is three months, however, any application challenging the award can be entertained by the Court within a further period of thirty days if the person challenging the award is able to show sufficient cause that he was prevented from making the application within a period of three months. The said period of thirty days can be extended by the Court with its discretion, however, the limitation for challenging the award remains three months. As said earlier, the award was passed on 13.9.2021 and the limitation of three months was expired on 12.12.2021, whereas, the execution application was filed on 16.12.2021.

In view of the above, the Commercial Court has not committed any illegality in not treating the execution proceedings premature and has rightly rejected the objection raised by the petitioner-firm.

So far as the objection of the petitioner-firm to the effect that the award dated 13.9.2021 was not sufficiently stamped is concerned, learned counsel for the petitioner-firm has



failed to convince this Court that the award was required to be stamped.

So far as the judgments, on which, learned counsel for the petitioner-firm has placed reliance are concerned, the facts of the above-referred judgments are quite distinguishable, hence, the same are of no help to the petitioner-firm.

In view of the above discussion, I do not find any merit in this writ petition and the same is hereby dismissed.

Stay petition is also dismissed.



(VIJAY BISHNOI),J

ms rathore

