



2025:CGHC:2394

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 39 of 2025

Amit Kumar Jain S/o Shri Chandra Kumar Jain Aged About 45 Years R/o Ward No. 8, Main Road, Lakhanpur, District Sarguja (C.G.)

... Petitioner

versus

1 - IndusInd Bank Limited Through Its Director, Registered Office No. 115, And 116, G.N. Chetty Road, T. Nagar, Chennai, 600017, Branch Office Manendragarh Road, Ambedkar Chowk, Nagar- Ambikapur, District- Sarguja (C.G.)

2 - Masavur Ansari S/o Mohd. Kuddus Ansari R/o Ward No. 5, Main Road, Lakhanpur, District Sarguja (C.G.)

... Respondent(s)

For Petitioner : Mr. Sumit Singh Rathore, Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

15.01.2025

1) The petitioner has filed this petition seeking the following relief(s):-

"10.1. That, this Hon'ble Court may kindly be pleased to allow the writ petition and be pleased to quash/set-aside the impugned order 09-08-2024 (Annexure P-1) passed by the First Additional Sessions Judge, Ambikapur, District Sarguja (C.G) in Execution Case No. 113 of 2022.

10.2. That, this Hon'ble Court may kindly be pleased to quash the whole execution proceeding in Execution Case No.113/2022 pending before the First Additional Sessions Judge, Ambikapur, District Sarguja (C.G), in the larger

interest of Justice.

10.3. That, this Hon'ble Court may kindly be pleased to grant any other relief, as it may deems fit and appropriate.”

- 2) Learned counsel appearing for the petitioner would argue that the petitioner purchased a vehicle through a hire purchase agreement with respondent No.1/bank. The said vehicle was registered as AL3718 IL260, WB BS3. He would further submit that respondent No.2 was a guarantor. He would contend that the petitioner failed to make payment of installments, therefore, according to one of the conditions of the agreement, the arbitrator was appointed. It is further contended that the arbitrator passed an award to the tune of Rs.10,09,397/- along with a cost of Rs. 500/- and arbitrator fee of Rs. 3,000/- vide award dated 30.07.2021, however, the same was an ex-parte award. The amount of the award carried interest @ 18 % per annum. It is also contended that the respondent Bank filed an application for execution under Section 36 of the Arbitration and Conciliation Act, 1996 read with Order 22 Rule 11 of the CPC before the Ist Additional District Judge, Ambikapur and the same was registered as Execution Case No. 113 of 2022.
- 3) He would argue that the summons was issued to the petitioner. He would further argue that the petitioner appeared before the learned Executing Court and filed his reply and a specific stand was taken that he never received a signed copy of the award dated 30.07.2021 passed by the arbitrator. He would also argue that the petitioner filed an application under Section 31 (5) of the Arbitration and Conciliation Act, 1996 (for short, the Act, 1996) read with Section

151 of the CPC. He would state that the respondent Bank filed a reply and the learned Executing Court vide order dated 09.08.2024 rejected the application. He would submit that the signed copy of the award was not served upon the petitioner, therefore, the award passed by the arbitrator as well as the executing Court, is liable to be set-aside. He would further state that no notice was served upon the petitioner and there was no communication with regard to the appointment of the Arbitrator by the respondent Bank; thus, he would pray to allow the application.

- 4) Heard learned counsel for the petitioner and perused the documents.
- 5) Admittedly, the vehicle was financed by the respondent Bank in favour of the petitioner through the Hire-Purchase Agreement. The petitioner failed to make payment of installments, therefore, according to the conditions of the agreement entered into between the parties, an Arbitrator was appointed by the respondent bank and against the petitioner herein, an award was passed to the tune of Rs.10,09,397/- along with the cost of Rs. 500/- and arbitrator fee of Rs. 3,000/- vide award dated 30.07.2021.
- 6) The respondent bank initiated an execution proceeding pursuant to the award passed by the learned Arbitrator. An application 31(5) of the Act, 1996 was moved by the petitioner before the learned executing Court and the same was rejected by the learned Court below vide order dated 01.12.2021.
- 7) Section 31(5) of the Act, 1996 lays down the requirements of form and contents of an arbitral award, which states that an arbitral award shall be made in writing

and shall be signed by the members of the arbitral tribunal. Where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable. Section 31 (5) specifically says that after the arbitral award is passed, a signed copy shall be delivered to each party.

8) Section 34 of the Act, 1996 deals with the application for setting aside the arbitral award. It allows a party to apply to a court to set aside an arbitral award. It limits the grounds for setting aside an award. It sets a time limit for making an application to set aside an award. It allows the court to remand the matter back to the arbitral tribunal.

9) Section 34 of the Act, 1996 is reproduced herein below:-

"34. Application for setting aside arbitral award:

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that:] [Substituted 'furnishes proof that' by Act No. 33 of 2019, dated 9.8.2019.]

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not

contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part;

or (b) the Court finds that

(I) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India. [Explanation 1. [Substituted by Act No. 3 of 2016 dated 31.12.2015.] - For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, - (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or (ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2. - For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(2A) [An arbitral award arising out of arbitration's other than international commercial arbitration's, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the

law or by reappreciation of evidence.]

[Inserted by Act No. 3 of 2016 dated 31.12.2015.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) [An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.] [Inserted by Act No. 3 of 2016 dated 31.12.2015.]”

10) In the present case, an award was passed on 30.07.2021. The petitioner filed a reply to the application moved under Section 36 of the Act, 1996, before the learned Executing Court in December, 2022 and thereafter, moved an application under Section 31(5) of the Act, 1996 on 04.11.2023. The petitioner could have obtained a certified copy of the award from the arbitral records available with the learned Executing Court but instead moved an application under Section

35(1) of the Act, 1996. Non-supply of the signed arbitral award may be a ground for setting aside an award, but on this count alone, the execution proceedings cannot be quashed. The award can be challenged by the judgment/award debtor only in accordance with the provisions of Section 34(2) of the Act, 1996, and not otherwise.

- 11) The petitioner failed to take steps to obtain a certified copy of the award despite being aware of the arbitral award. An application under Section 35(1) of the Act, 1996 read with Section 151 of the CPC was moved by the petitioner on 14.03.2024. However, on this ground alone, the execution proceedings pending before the learned Court below cannot be quashed. Therefore, in the considered opinion of this Court, no case is made out in favor of the petitioner. Accordingly, this petition fails and is hereby **dismissed**. No cost(s).

Sd/-

(Rakesh Mohan Pandey)
Judge