

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

Before: The Hon'ble Justice Shampa Sarkar

IA No: GA/1/2022

EC/87/2021

J.D. ELECTRICAL PRODUCTS PRIVATE LIMITED

VS

PURBACHAL UDYOG

For the petitioner : Mr. Satadeep Bhattacharyya , Adv.
Mr. Subhankar Chakraborty , Adv.
Mr. Saptarshi Bhattacharjee, Adv.
Ms. Sriparna Mitra, Adv.
Ms. Ruchira Manna, Adv.

For the respondent : Mr. Pratip Mukherjee, Adv.
Mr. Emon Bhattacharya, Adv.
Ms. Pooja Sah, Adv.
Mr. Purnanka Biswas, Adv.

Reserved on : 04.08.2025

Judgment on : 25.08.2025

Shampa Sarkar, J.:-

1. GA 1 of 2022 is an application under Section 47 of the Civil Procedure Code. The award debtor filed the said application for the following reliefs:-

“a) To declare that the purported Award dated 10.11.2020 is non-est and not enforceable in the eyes of law;

b) To pass an order directing that the execution proceeding being E.C. No. 87 of 2021 is not maintainable in the eyes of law and the same should be dismissed in limine;

c) An order be passed thereby staying the execution proceeding till disposal of the instant application.

d) Ad-interim order in terms of prayer (c) above.

e) To pass such order or orders as Your Lordships may deem fit and proper.”

2. The award debtor contended that the award passed by the Micro, Small and Medium Enterprises (MSME) Council dated November 10, 2020, was not executable. As the time for filing an application for setting aside the award had not expired, the execution case was not maintainable. The award was not served upon the award debtor. Section 31(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act), had not been complied with. The delivery of a signed copy of the award upon the award debtor, was the mandate of law.

3. Mr. Mukherjee, learned Advocate for the award debtor submitted that, even assuming that the award was dispatched to the award debtor, which was a partnership firm, there was no proof of delivery of the same upon any of the partners. Section 2(1)(h) of the Arbitration and Conciliation Act, read with Order 30 Rule 3 of the Code of Civil Procedure, required service upon the partners. Knowledge of the award was acquired when a copy of the execution application was served upon the award debtor. Section 31(5) of the said Act, cast a statutory duty upon the arbitrator and or the Council to deliver a signed copy of the award to each of the parties. As yet, the said compliance was awaited.

4. Referring to the decision of the Hon’ble Apex Court in the matter of ***State of Maharashtra & Ors. Vs. ARK Builders Pvt. Ltd.*** reported in ***(2011) 4 SCC 616***, Mr. Mukherjee submitted that the law required delivery of a copy of the award signed by the Council. The delivery of the award and

receipt of the same by a party, would set in motion several periods of limitation, in respect of (a) filing an application for correction and interpretation of an award under Section 33(1), (b) filing an application for making an additional award under Section 33(4), (c) and filing an application for setting aside the award under Section 34(3) and so on. Delivery of a copy of the award had the effect of conferring certain rights on the parties and the duty to exercise those rights within the prescribed period of limitation. Thus, limitation for filing an application for setting aside the award should be calculated from the date of receipt of a signed copy of the award. In this case, limitation had not begun to run and the time for challenging the award had not expired.

5. Mr. Mukherjee urged that, the procedure provided by the statute should have been followed by the MSME council. Any other mode of communication of the award would not be in accordance with law. The period of limitation to challenge such award did not start to run on mere dispatch of a certified copy of the award. Dispatch of a certified copy of the award was not due compliance of the legal mandate. The execution case could be filed when the time prescribed by law for the award debtor to challenge the award had expired. Under such circumstances, the present execution application was premature and should be dismissed upon the court holding that, the award was inexecutable at this stage. Reference was made to the decision of ***Dakshin Haryana Bijli Vitran Nigam Limited vs Navigant Technologies Private Limited*** reported in **(2021) 7 SCC 657**, in support of the contention that the law recognized only one date for calculation of the period of limitation in challenging the award, i.e. the date

on which a signed copy of the final award was received by the award debtor. The period of limitation to challenge the award would start ticking from that day.

6. According to Mr. Mukherjee, delivery of the signed copy of the award was a legal requirement and not a formality. Any contrary or contradictory view taken by the High Courts to the effect that, service of a certified copy or a photo copy of the award, bearing copies of the signatories of the members of the council, was not acceptable in the eye of law. Reliance was placed on the decision of the Bombay High Court in ***Health Care, Medical & General Stores, Dadar Mumbai vs Amulya Investment, Through Proprietor***, reported in **2025:BHC-OS:616-DB**, on the proposition that the original signed award had to be delivered upon the parties and not on any agent or representative. A Division Bench judgment of the Delhi High Court was also relied upon in the matter of ***Ministry of Health and Family Welfare and Anr. Vs. Hosmac Projects Division of Hosmac India Pvt. Ltd.*** reported in **2023 SCC Online Del 8296**, wherein it was also held that a signed copy of the award was to be delivered upon the party and not to the agent.

7. Thus, Mr. Mukherjee urged this court to reject the application on the above grounds. He submitted that the court should not proceed with the execution case either on the principle of presumption of service or the deeming fiction on the issue of delivery of the award upon the award debtor. The decisions cited in this regard were, ***JSC Ispat Pvt. Ltd. and Ors. vs HDB Financial Services Ltd.*** reported in **2018 SCC Online BOM 538** and ***Ajibar Rahaman and Anr. vs Cholamandalam Investment and Finance Company Ltd.*** decided in **AP No. 210 of 2023 and AP No. 248 of 2023**,

of the Calcutta High Court. On the authorities cited by the award holder, Mr. Mukherjee contended that those decisions were distinguishable on facts. The decisions of the Calcutta High Court with regard to acceptance of service of a certified copy of the award, were delivered in case of multi-party arbitration proceedings. Here, there were only two parties. Moreover, those decisions did not take into account the Apex Court's decision on the statutory requirement to serve a signed copy of the award upon the parties to the proceeding. On the decision cited by the award holder with regard to proof of dispatch of the award and presumption of deemed service, it was submitted by Mr. Mukherjee that, the decision was not good law.

8. It was further contended that, the decision of ***SRS Entertainment Limited vs Home Stores (India) Ltd.*** reported in ***2009 (112) DRJ 555***, was equally not applicable as the decision was rendered in a situation when the issue before the court was refusal or avoidance by the award debtor to accept service. Further distinction was made to the decisions cited by the award holder, viz., ***Rahul S/O Omprakash Gandhi vs Akola Janta Commercial Co-Operative bank Ltd., Pus Ad*** reported in ***2023 SCC Online Bom 814***, ***Delhi Urban Shelter Improvement Board vs Lakhvinder Singh*** reported in ***2017 SCC Online Delhi 9810*** and ***Ministry of Youth Affairs and Sports, Dept. of Ports Govt. of India vs Ernst and Young Pvt. Ltd and Anr.*** reported in ***2023 SCC Online Delhi 5182***. According to Mr. Mukherjee, those decisions were distinguishable on facts. They were unrelated to the issue involved in the present *lis*.

9. Referring to the covering letter of the Council dated April 1, 2021, Mr. Mukherjee submitted that the certified copy of the original signed arbitral

award had been forwarded instead of the original copy. The letter stated that a certified copy of the signed award had been sent to the award debtor, “Vide Memo No. D/001(2)/FC/2021 dated January 6, 2021”. The use of the expression ‘you’ in the second paragraph of the letter dated April 1, 2021, was unclear, inasmuch as, a plain reading of the expression ‘you’ would indicate the buyer unit and not the supplier unit. According to law, service of the award should have been made upon the partners of the partnership firm. It was further contended that, the fact that the award holder managed to get hold of the consignment details bearing consignment no. EW 081904131 IN dated April 5, 2021, was suspicious and the same was not worthy of any credence. The consignment number was obtained from the MSME Council after almost 15 months, without any formal letter being addressed to the MSME Council. Communication of the Deputy Director of the Post Office dated July 6, 2022, with regard to delivery of the postal article was also denied. The expression ‘article in question’ could not be construed to be the signed copy of the impugned award, without specific proof. By a letter dated February 14, 2023, the learned advocate of the award debtor had written to the MSME Council, seeking information as to whether a copy of the award was sent to the award debtor. The MSME Council remained silent.

10. Under such circumstances, the ex-parte award could not be deemed to have been delivered upon the award debtor. The execution case should be dismissed.

11. Mr. Satadeep Bhattacharya learned Advocate for the award holder submitted that, the award holder was seeking enforcement of an arbitral

award dated 10th November, 2020, which was passed by the MSME Council. The award debtor had been, inter alia, directed to make payment of a principal sum of Rs. 70,99,999/- along with interest thereon, at the rate of three times the bank rate of the RBI, compounded with monthly rests till realization of the entire outstanding amount, as per Section 16 of Chapter-V of MSMED Act, 2006. The amount due and payable by the award debtor in terms of the arbitral award as on date, was about Rs. 2,78,50,610.52/-.

12. By a covering letter dated April 1, 2021, the Council had forwarded the award dated November 10, 2020, to both the parties. The covering letter specifically mentioned that the certified copy of the original award was being forwarded to both parties. Each and every page of the award had been certified to be a true copy by one AK Ghosh, Deputy Director (SSD) MSME Directorate, Government of West Bengal. Page 16 of the award reflected that signature of all the members had been affixed and those were authenticated. The date of the award was mentioned on the first page of the award and the passing of the award was mentioned in the last page. The award which was on record, was a certified copy of the original signed copy of the award dated November 10, 2020. The award debtor did not contend that the officer who certified the original signed copy of the award was not authorized to do so. A Division Bench of the Calcutta High Court in the matter of ***National Agricultural Cooperative Marketing Federation of India Ltd. vs M/s. R. Piyaarelall Import & Export Ltd.*** reported in ***(2015) 4 Cal LT 100***, had clearly held that an award dispatched to the respective parties may not be the original award containing the original signature of the members of the arbitral tribunal. A certified copy of the original award along with the copy of

the signatures of the members of the tribunal would suffice. The Division Bench held that there was no reason why copies of the signatures duly certified by an authorized office bearer of the institution, would not satisfy the requirement of Section 31(5) of the Act. A similar view was taken by the Division Bench of the Calcutta High Court in ***The State of West Bengal and Anr. vs M/s. Motilal Agarwala and Anr.*** reported in ***AIR 2016 Cal 271***. Reliance was placed on the decision of ***Delhi Urban Shelter Improvement (supra)***, to support the contention that, even if the award was not signed in the handwriting of an arbitrator, delivery of a copy of the signed award would be sufficient compliance of Section 31(5). The signature need not be in the handwriting of the arbitrator. The legislative intent was to ensure that the authentic award had reached the parties. The literal meaning of the expression 'signed copy', as a copy physically signed in the handwriting of the members of the Council, would deceive the legislative intent. Interpretation of the said provision should not be pedantic, but practical. Reliance was placed on the decision of ***Ministry of Youth Affairs and Sports (supra)***.

13. Mr. Bhattacharya submitted that, authenticity of any correspondence in technologically advanced times of today, did not necessarily pertain to only signatures in writing and it would be erroneous to read the expression 'signed copy of the award' in a restrictive manner. ***Akola janta Commercial Co-operative bank Ltd. (supra)*** was relied upon in support of the contention that, service of a certified copy of the award was adequate.

14. Mr. Bhattacharya referred to the covering letter by which the certified copy of the original signed award was addressed to the registered

partnership firm at its address mentioned in the agreement. At the same address, service of the execution application had been effected. The address was that of the principal place of business of the award debtor. There was no dispute with regard to such fact. When the award debtor raised the issue of non-service of the award, the award holder had enquired from the MSME Council. The MSME Council had provided the award holder with the speed post consignment number. Upon receiving the said number, a letter was written to the GPO to provide the consignment delivery report. As per such request, the letter dated July 6, 2022, had been issued by the GPO. It was stated that, the consignment bearing no. EW 081904131 IN dated April 5, 2021, was delivered to the address of the award debtor on April 7, 2021. Thus, there was clear proof of service of a copy of the award which was duly certified by the office bearer of the MSME Council, bearing the photo copied signature of all the members of the Council.

15. In view of the provisions of Section 3(1)(a) read with Section 27 of the General Clauses Act, 1897 and the presumption under Section 114(f) of the erstwhile Evidence Act, there was adequate proof of service of the certified copy of the award upon the award debtor.

16. The executing court, vide order dated April 24, 2023, had directed the MSME Council to produce the records of the arbitral proceeding. The Council provided the cause papers of the entire proceeding to the Court through the learned Registrar Original Side. The learned Advocate for the award holder also wrote a letter on June 23, 2023, requesting the Council to produce the records. By a letter dated August 18, 2023, the MSME Council informed the learned advocate for the award holder that, the arbitral award

dated November 10, 2020 was sent to both the parties under a covering letter dated April 1, 2021 and the same was delivered by speed post under postal receipt No. EW081904131IN dated April 5, 2021. On November 29, 2023, upon the MSME Council producing the records pertaining to the proceeding, the court allowed the parties to take inspection of the records. Upon causing inspection of the records, the learned advocate on record for the award holder found that the certified copy of the original signed copy of the award was duly dispatched as per the records of the Council, in the last known address of the award debtor. Relying on the decision of ***Magma Fincorp Limited vs Ashok Kumar & Ors.*** reported in **2017 SCC Online Cal 13129**, Mr. Bhattacharya submitted that the term “delivery” as used in Section 3(1)(a) of the said Act, would include the legal fiction of deemed delivery. Reliance was placed on the decisions of ***SRS Entertainments Limited (supra)***, ***R. K. Vashisht V. Union of India*** reported in **(1993) Suppl. (1) SCC 431** and ***Union of India vs Tecco Trichy Engineers & Contractors*** reported in **(2005) 4 SCC 239**, in support of the contention that the words ‘delivered’ and ‘receipt’ used in the context of section 34(3) and Section 31(5) of the Act, would attract the presumption arising under Section 114 of the erstwhile Evidence Act and Section 27 of the General Clauses Act.

17. Further reliance was placed on ***Bhagawati Prasad vs union of India and Ors.*** reported in **(2003) SCC Online Cal 825**, to urge that the presumption of delivery under Section 27 of the General Clauses Act could be applied to dispatch by speed post as well. Mr. Bhattacharya distinguished the decisions cited by Mr. Mukherjee to urge that in ***Dakshin***

Haryana (supra). The issue before the court was not whether delivery of the certified copy of the original signed award would fulfill the requirement under Section 31(5) of the said Act. Rather, the issue before the Apex Court was whether limitation would start from the date of receipt of the draft award. The decision in **Healthcare medical and general store (supra)** was submitted to be inapplicable, inasmuch as, the partners of the partnership firm were also parties to the arbitration agreement and as such service only upon the firm was found to be defective. In the present case, the partnership firm was the only party, and the law permitted service upon the principal place of business of the partnership firm.

18. **Ajibar Rahaman(supra)** was distinguished for the reason that, the said decision did not deal with the principle of deemed service or deemed delivery. **JSC Ispat (supra)** was submitted to be distinguishable on facts. The award in the said case was served by the arbitral tribunal on the advocate for one of the parties. In the decision of **Ministry of Health and Family Welfare and Anr. Vs. Hosmac Projects Division of Hosmac India Pvt. Ltd.** reported in **2023 SCC Online Del 8296**, the arbitral award was served on one of the parties.

19. Under such circumstances, Mr. Bhattacharya submitted that the facts in the present case would demonstrate that at least a certified copy of the signed award was delivered at the last known address of the award debtor, being its principal place of business. The postal department had confirmed delivery of the consignment. The records of the MSME Council and the letter addressed to the Registrar Original Side would also indicate that the award was delivered in accordance with law and as such the execution case should

continue, upon dismissal of the application under Section 47 of the Code of Civil Procedure.

20. The issue before this court is whether the execution case should be held to be not maintainable and hence dismissed on the ground that, as the original signed copy of the award, (with signature in the hand writing of the members) had not been delivered upon the award debtor, the time to challenge the award had not expired.

21. The background of the proceedings before this court has assumed significance. A copy of the execution application was delivered at the address of the award debtor depicted in the cause title of the execution petition. The certified copy of the signed copy of the award was sent to the same address. The same address was mentioned in the proceedings before the arbitral tribunal and in the agreement. It is not the case of the award debtor that the address was either incorrect or the award debtor had moved from the said address. The first direction upon the award debtor, by a predecessor judge, was issued on April 27, 2022. The award debtor was directed to file affidavit of assets. On June 22, 2022, the award debtor appeared before the court through learned advocates and prayed for extension of time to file the affidavit of assets. On July 20, 2022, the affidavit of assets was filed in court. On July 20, 2022, the court recorded that the award debtor had filed GA 1 of 2022. The application was listed before the court on January 2, 2023 and the parties were directed to exchange affidavits. Upon exchange of affidavits, the matter came up for hearing. Upon noting the contention of the award debtor that, the signed copy of the award had never been served and the execution case was not

maintainable, the Court directed the MSME Council to forward the records of the arbitral proceeding by its order dated April 24, 2023. Further directions were issued on September 19, 2023 and October 10, 2023. The MSME council forwarded the records to the Registrar, Original Side, High Court, Calcutta under covering letter dated November 23, 2023.

22. On November 29, 2023, learned Judge considered the report of the Registrar Original Side, High Court and recorded that the MSME Council had forwarded the records of the arbitral proceeding. Accordingly, by the said order, the court allowed the parties to take inspection of the documents. The matter was heard by several courts on various occasions. In the above backdrop, the Court proceeds to discuss the relevant laws.

23. Section 36 of the said Act provides 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).]

1 [Provided further that where the Court is satisfied that a Prima facie case is made out that,— (a) the arbitration agreement or contract which is the basis of the award; or (b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award

unconditionally pending disposal of the challenge under section 34 to the award.”

24. The legislative mandate is that, a party can execute an award upon expiry of the period prescribed by law to challenge to an award. Thus, until and unless the time prescribed for challenging an award under Section 34(3) of the said Act expires, an execution case cannot be filed. Section 34 of the said Act is quoted 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 1 [establishes on the basis of the record of the arbitral tribunal that]—

(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.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, 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.]

(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.”

25. The covering letter written by the Chairman of WBMSE, Facilitation Council, to the learned Registrar, Original Side, indicates that notices of initiation of the proceedings were sent to the parties. Copies of the postal receipts and the covering letters are also part of records. Signed copy of the award and thereafter certified copy of the signed arbitral award were duly communicated to the parties by different office memos on January 6, 2021 and April 1, 2021 respectively, as per the letter of the Council. Copies of the postal receipt were also annexed to the copies of the said letter. The relevant portions of the said letter are quoted below:-

“To.

Date: 23/11/2023

The LD. Registrar (Original Side)

High Court At Calcutta

Kolkata-700001

Sub:- E.C No. 87 of 2021 in the matter of J.D Electrical Products Pvt. Ltd. (Supplier Unit) -Vs-Purbanchal Udyog (Buyer unit)-Case no. 26 of 2019 of WBMSE Facilitation Council.

Ref:- The letter dated 18.10.2023 of Sri Paritosh Sinha, Advocate-on-Record, office of the Legal Remembrancer.

With reference to the above cited subject, as per direction of the order dated 24.04.2023 of the Hon'ble High Court, Calcutta, find the attached copy of the initial application filed by the J.D Electrical Products Pvt. Ltd on 13.02.2029 and copy of the intimation letter vide no. D/56/FC/19 dt. 28.02.2019 sent to the Buyer unit for submitting their written reply against the application filed by the Supplier unit. Please also find the copy of the statement of facts submitted by the Supplier unit before initiation of the arbitration process.

Furtherance, kindly find the copies of the notice for initiation of arbitration vide no. D/032/FC/2020 dt. 17.01.2020 and notices for arbitration hearing vide D/339(2)/FC/2020 dt. 15.09.2020 & D/414(2)/FC/2020 dt. 02.11.2020 issued by the Council through speed post in the aforesaid matter. Copies of the postal receipt for the arbitration hearing held on 10.11.2020 & notice for initiation of Arbitration process have also been enclosed for placing the same before the Hon'ble Court. Notice for the arbitration hearing held on 23.09.2020 could not be sent through postal system owing to disruption of the postal system occurred in view of covid pandemic. It is also to inform you that the Sd/- copy of the award and thereafter copy of the signed arbitral award had duly been communicated to both the parties vide this office memo no. D/001/(2)/FC/2021 dt. 06.01.2021 & D/151(2)/FC/21 dt. 01.04.2021 respectively. Copies of the postal receipt for communicating the arbitral award are enclosed for placing the same before the Hon'ble Judge of the High Court, Calcutta.

Furthermore, as the said hearing was convened on virtual platform owing to pandemic situation occurred during that period, the notices along with weblink for appearing in the arbitration hearing was also sent through email viz. purbanchalmarketing@gmail.com, sudarshanmundhra28@gmail.com, (Buyer unit) soumitra.ghosh@jde.co.in and ashmita.jd@gmail.com (Supplier unit) respectively.

Enclo: Annexure I pertaining the list of

Chairman

enclosed documents.

W.B.M.S.E Facilitation Council"

26. From the records of the proceeding, it can be gathered that notices of the arbitral proceedings were sent by the council, to the respective parties, under covering letter dated January 6, 2021. Copy of the signed award had also been forwarded to the parties. The postal receipt is available. However, the delivery report is not in the records. It is also a fact that the postal articles had not returned unserved. By a further letter dated April 1, 2021, the Council once again forwarded the certified copy of the original signed

arbitral award to the parties at their respective addresses, at the request of the award holder. The postal department has confirmed delivery.

27. Thus, upon the above discussions and upon perusal of the records sent by the Council, this court is persuaded to hold that the MSME Council had complied with the requirements under Section 31(5) of the said Act. The Council neither regulated nor operated the mechanism for delivery of the award. The Council had to rely on the postal authorities. The duty of the Council was to ensure dispatch of the award at the correct address, either by speed post or registered post with proper stamp. The Council did not have the machinery to ensure actual delivery. It had to depend on the postal authority. As long as the Council dispatched the award either through post or courier, there would be a presumption under Section 114(f) of the erstwhile Evidence Act and Section 27 of the General Clauses Act.

28. The relevant provisions of the applicable laws are quoted below:-

Section 27 and 114(f) of Indian Evidence Act, 1872.

“27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

114. Court may presume existence of certain facts. — The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

The Court may presume —

(f) that the common course of business has been followed in particular cases;”

Section 3 and 14 of Indian Post Office Act, 1898:-

“3. Meanings of "in course of transmission by post" and "delivery"

For the purposes of this Act-

- (a) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the addressee or of its being returned to the sender or otherwise disposed of under Chapter VII;
- (b) the delivery of postal article of any description to a postman or other person authorized to receive postal articles of that description for the post shall be deemed to be a delivery to a post office; and
- (c) the delivery of postal article at the house or office of the addressee, or to the addressee or his servant or agent or other person considered to be authorized to receive the article according to the usual manner of delivering postal articles to the addressee, shall be deemed to be delivery to the addressee.

14. Post office marks Prima facie evidence of certain facts denoted

In every proceeding for the recovery of any postage or other sum alleged to be due under this Act in respect of a postal article,-

- (a) the production of the postal article, having thereon the official mark of the Post Office denoting that the article has been refused, or that the addressee is dead or cannot be found, shall be prima facie evidence of the facts so denoted, and
- (b) the person from whom the postal article purports to have come, shall, until the contrary is proved, be deemed to be the sender thereof."

29. The postal receipts have been annexed to the arbitral records showing dispatch of the signed award to both the parties and thereafter, dispatch of certified copies of the signed award to both the parties. In the absence of any rebuttal from the end of the respondent either, showing that the articles returned undelivered from the address of the award debtor to the MSME Council, or that the same was sent to the incorrect address, the presumption of law would be that the award was delivered in the normal course of postal business on two occasions. That apart, the same certified

copy of the signed copy of the award was received by the award holder. In the decision of ***M/s. R. Piyarelall (supra)***, the Hon'ble Division Bench of this court had held that service of photocopies of the original award along with photocopied signatures of the arbitrators, duly certified by the Indian Council of Arbitration was proper compliance of Section 31(5) of the said Act.

The relevant portions re quoted below:-

“25. There can be no doubt that the arbitral award would necessarily have to be signed by all the arbitrators or atleast by the majority of the members of the arbitral tribunal. However, in our view, it was not the intention of legislature that all the copies of the award, dispatched to the respective parties would have to be separately signed by the Learned arbitrators. A certified photocopy of the original award along with the signatures of the members of the Arbitral Tribunal would suffice.

26. Had it been the legislative intent that all copies of the award required to be furnished to the respective parties to a multi party arbitration, should actually be signed by members of the arbitral tribunal themselves and/or in other words, each of the copies should contain the original signatures of the arbitrators, Parliament would, perhaps, not have used the expression ‘signed copy of the award’ but used the expression ‘a copy of the award, duly signed by the arbitrators’, in Section 31(5) of the 1996 Act.

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31. In recent years, there has been a rise in the popularity of institutionalized arbitration. Just as the arbitration in this case has been conducted under the aegis of the ICA (Indian Council of Arbitration), there are many other established, recognized institutions which also conduct arbitrations. In case of institutional arbitrations, as in this case, we see no reason why photocopies of the award with photocopied signatures, or digitally signed awards, duly certified by an authorized office bearer of the institution, conducting the arbitration, should not satisfy the requirement of Section 31(5) of the 1996 Act.

32. Moreover there is a vast difference between Section 31(5) of the 1996 Act and Section 14(2) of the Arbitration Act, 1940, under which the original award signed by the arbitrators or a copy of the award along with signatures of the arbitrators would have to be filed in Court as observed above so that judgment could be pronounced thereon. There was no requirement in law for the arbitrators to serve copies of the award on the respective parties. On the other

hand, under Section 31(5) of the 1996 Act, copies of the award might have to be served to numerous parties in a multi party arbitration, and it may not be feasible for the arbitrators to physically sign all the copies of the awards.

33. We hold that the copy of the award and the copy of the corrigendum sent by the Registrar of the Indian Council of Arbitration to the appellant, were signed copies of the award in that they were photo copies of the original award along with the photocopied signatures of the arbitrator, and duly certified by the Indian Council of Arbitrators.

34. In our view, limitation started to run on 18th March, 2014, when the corrected award was received by the appellant and the application for setting aside of the award became barred by limitation on 16th June, 2014. The delay was condonable only by thirty days.”

30. Although, the contention of Mr. Mukherjee was that the said decision was rendered in the context of multi-party arbitral proceeding and not in a proceeding between two parties, the ratio of the decision was that, the legislature did not intend to mandate by law that, copies of the award dispatched to the respective parties would have to be separately signed by each of the arbitrators or the members of the Council. It was held that, a certified photocopy of the original award bearing the signatures of the members of the Council would suffice. Had it been the legislative intent that all copies of the award which were required to be furnished to the respective parties should actually be signed by the members of the arbitral tribunal themselves, or in other words, each of the copies should contain the original signatures of the arbitrators, the parliament would perhaps not have used the expression ‘signed copy of the award,’ but would have used the expression “a copy of the award duly signed by the arbitrators”. The same view was followed in ***Motilal Agarwala (supra)***. The relevant portions are quoted below:-

24. In recent years, there has been a rise in the popularity of institutionalized arbitration. There are many established, recognized institutions which conduct arbitrations. We see no reason why photocopies of the award with photocopied signatures, or digitally signed awards, duly certified by an authorized office bearer of the institution conducting the arbitration, should not satisfy the requirement of Section 31(5) of the 1996 Act.

25. Moreover there is a vast difference between Section 31(5) of the 1996 Act and Section 14(2) of the Arbitration Act, 1940, under which the original award signed by the Arbitrators or a copy of the award along with signatures of the Arbitrators would have to be filed in Court as observed above so that judgment could be pronounced thereon. There was no requirement in law for the Arbitrators to serve copies of the award to the respective parties. On the other hand, under Section 31(5) of the 1996 Act, copies of the award might have to be served to numerous parties in a multi party arbitration, and it may not be feasible for the Arbitrators to physically sign all the copies of the awards.

26. In our view, limitation under Section 34(3) would start running from the date on which the party applying for setting aside of the arbitral award received a signed copy of the award from the Arbitral Tribunal. Such copy need not necessarily be signed in original by the Arbitrator/majority of the Arbitrators. An authentic photo copy along with signatures would suffice. This issue is covered by a judgment dated 28th August, 2015 of this Bench in APOT 337 of 2015 (*National Agricultural Cooperative Marketing Federation of India Ltd. v. R. Piyarelall Import & Export Ltd.*).

27. The award made over by the learned Arbitrator to Sri. Pradip Saha, Assistant Engineer was a signed copy. However, the question is whether the period of limitation for making an application under Section 34 of the 1996 Act, would start running from the date on which the signed copy was received by Mr. Pradip Saha, Assistant Engineer.

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30. In *ARK Builders* (supra) the Arbitrators had not supplied a copy of the award to the appellants. The award holder had, however, forwarded a photocopy of the award to the appellant and claimed payment in terms of the award. The Supreme Court held that limitation would run from the time the award duly signed, was received by the appellant, from the Arbitrator.

31. In *ARK Builders* (supra) the Supreme Court did not consider the question of whether the copies served by the Arbitrators to the parties concerned, would all have to actually and separately be signed by the Arbitrators themselves. However, the Supreme Court clearly held that limitation would start running from the date on

which a copy of the award was received by the applicant from the Arbitral Tribunal.

31. In the decision of ***Logic Eastern India Pvt. Ltd. (supra)***, the Bombay High Court expressed the same view and came to the conclusion that Section 31(5) used the expression “delivery” and the expression would squarely fall within the scope and ambit of Section 27 of the General Clauses Act. The cumulative effect of Section 3 of the said Act read with Section 27 of the General Clauses Act would be that, the award would be deemed to have been delivered when the Council properly addressed the same to the award debtor at the last known address of the award debtor on pre-paying and posting the same by registered speed post. Admittedly, the presumption of deemed delivery is rebuttable. However, the award debtor could not rebut the presumption by demonstrating that, either the postal article had not been properly stamped or sent to the incorrect address or not posted at all.

32. In ***Magma Fincorp Limited (supra)***, a Division Bench of this court held that the expression “delivery” and “receipt” could not be interpreted in a pedantic fashion. Insisting upon actual delivery of the award would defeat a practical view of the existing practice. As, the arbitral tribunal was entitled to serve and deliver the award on the parties through the medium of post or courier, the law relating to deemed service and the presumption of service under Section 114(f) of the Evidence Act and Section 27 of the General Clauses Act, would get attracted.

33. The Division Bench held as follows:-

“**11.** It is a rule of interpretation that in construing the scope of a legal fiction it would be proper and even necessary to ascertain as to

whether all those facts on which the fiction can operate, have been performed. The records reveal that the envelope containing the forwarding letter dated August 13, 2014 and the arbitral award dated August 13, 2014 were properly addressed to the respondents at the addresses mentioned in the arbitration agreement and proper stamps were affixed thereon and the envelopes were posted from Princep Street Post Office on August 21, 2014. Due postage was paid by affixing prepaid adhesive postage stamps and the postal article was duly put in course of transmission by registered post in the manner provided in chapter VI of the Indian Post Office Act, 1898. The postal acknowledgement cards have not been returned by the postal authority to the learned arbitrator. The procedure for serving notices as mentioned in the arbitration agreement has thus been strictly followed and as such upon application of the legal fiction the communication should be deemed to have been received on the day it is so delivered.”

34. In ***Delhi Urban Shelter Improvement Board (supra)***, it was held that a copy of the award duly authenticated would qualify as a signed copy under Section 31(5) of the said Act. The purpose for enactment of such provision was to ensure that the parties received the award and were in a position to act on the same. Authenticity of correspondence in technically advanced times did not necessarily pertain to only signatures in writing and it would be adverse to read the expression “signed copy” of the award in a restrictive manner. Therefore, the photocopy of the award which was duly authenticated by the tribunal was also accepted as service of the award and compliance of Section 31(5). Paragraph 24 is quoted below:-

“**24.** As previously highlighted, Section 34(3) stipulates, the period within which an award can be challenged is three months from the date on which the party making the application for setting aside the award receives a signed copy of the same. Thus, by the expression ‘received’, it is meant that an award complete in itself including signature thereon, which may be original or an attested copy thereof. From a factual observation of the present case, it is evident that the copy of the award was received in the month of March 2016, as has been validated by the Appellant, DUSIB in its affidavit as well as conduct, and their contrary assertion will not impede the petition from being barred by limitation, as was similarly held in *Bhageeratha Engineering Ltd. (supra)*. Moreover, the impugned award, as well as,

the award sent to DUSIB on 14.03.2016 sufficiently qualify as a 'signed copy' within the meaning of Section 31(5); the mere technicality that it is not in the handwriting of the arbitrator will not disqualify it from the meaning of a 'signed copy'. The legislative intent behind the Section is to ensure authenticity of the award and from the facts of the present case, the impugned award satisfies such intent."

35. In ***Ministry of Youth Affairs (supra)***, a similar view was taken by the Delhi High Court, inasmuch as, it was held that the expression signed copy in Section 31(5) of the Arbitration Act, indicated the legislative intent that the copy of the award, duly authenticated by the arbitrator, could also be served on each of the parties. The relevant portions are quoted below:-

"45. It may be noted that along with the email dated 17th May, 2018 sent on behalf of the Arbitral Tribunal to the counsel for petitioner and other parties, scanned copy of the Addendum to the Award dated 17th May, 2018 was also mailed, which was a duly signed copy. Once a duly scanned signed copy of the Addendum to Award dated 17th May, 2018, had been received by petitioner, the period of limitation for the purposes of filing petition under Section 34 of the Arbitration Act for challenging the Award commenced. Subsequent act on behalf of petitioner of physically collecting signed copy of the said Addendum on 01st June, 2018 will not in any manner extend the limitation period to 01st June, 2018.

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47. When scanned signed copy of order dated 07th March, 2018 was received by petitioner by email dated 22nd May, 2018 and scanned signed copy of Addendum to Award dated 17th May, 2018 was received by the petitioner on 17th May, 2018 itself, the same was valid delivery in terms of Section 31(5) of the Arbitration Act. The law has to keep its pace in tandem with the developing technology. When service by email is an accepted mode of service, then sending scanned signed copy of the award/order of the Arbitral Tribunal to the parties would be a valid delivery as envisaged under Section 31(5) of the Arbitration Act.

48. A Division Bench of this Court in the case of Delhi Urban Shelter Improvement Board v. Lakhvinder Singh⁶ has held that the expression 'signed copy' in Section 31(5) of the Arbitration Act indicates the legislative intent that a copy authenticated by the Arbitrator is served on each party. It was held that authenticity of correspondence in the technologically advanced times of today does not necessarily pertain to only signatures in writing, and it would be adverse to read the expression 'signed copy' of the award/order in a

restrictive manner so as to connote a copy bearing the original signatures of the Arbitrator in his hand writing.... ”

36. In ***Bhagwati Prasad (supra)***, the Hon'ble Division Bench of the Calcutta High Court held that if a notice was sent by registered post, by legal fiction the notice was served.

37. Upon discussion of the judicial authorities above, this court comes to the conclusion that the award has been served not only by applying the deeming fiction, but also upon relying on a document annexed to the affidavit-in-opposition filed by the award holder. The letter states that the postal article in question was delivered on April 7, 2021 under clear receipt. The letter of the Deputy Director PO (Admin) Kolkata GPO in this regard, is quoted below:-

“To.

Sri Arindam Brahmachari (Director)

J.D. Electrical Products Pvt. Ltd.

Bakrahat Road, Samali

Kolkata – 700104

NO: CR-II/06/2022-23/124

Dated at kol GPO, the 06.07.2022

Sub: Regarding disposal of New Secretariat Building S.O Speed post article no. EW08190413IN dated 05.04.2021 destined to Purbanchal Udyog, Kolkata – 700001.

Sir,

With reference to the matter cited above, an enquiry was made after receipt of your complaint at this office. As per this office records, it is intimated that the article in question was delivered on 07.04.2021 under clear receipt.

This is for your kind information. Hence the case file is treated as closed at this end.

Yours faithfully,
Dy. Director PO (Admin)
Kolkata-G.P.O, Kolkata – 700001”

38. Thus, this court has adequate reason to believe that, at least the authenticated copy of the award which was certified by an office bearer of the Council, bearing the photo copied signatures of all the members had been delivered at the address of the award debtor.

39. Therefore, as per the records forwarded by the Council and the contents of the letter dated November 23, 2023, written by the chairman of the MSME Council, a signed award had been sent to both the parties first on January 6, 2021. There is no acknowledgement of such service. Later, certified copy was sent on April 5, 2021, under covering letter dated April 1, 2021. The postal department confirmed service of the same. Moreover, a Division bench of the Calcutta High Court held on two occasions that, a copy of the award signed by all the members or majority of the members, duly certified by a senior official, would be substantial compliance of Section 31(5) of the said Act. Service of the original signed award bearing the signature (in writing) of each of the members of the Council was not necessary.

40. As the postal envelope containing certified copy of the award was properly addressed, adequately stamped and sent by registered speed post at the correct address and the postal department has confirmed delivery, service has been effected upon the award debtor.

41. In ***C.C Alavi Haji vs Palapetty Muhammed & Anr.*** reported in ***AIR 2007 SC (SUPP) 1705***, it was held that sending a notice to the correct address by registered post gave rise to a presumption of service, unless rebutted by the addressee. The relevant portion is quoted below:-

“14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement refused or not available in the house or house locked or shop closed or addressee not in station, due service has to be presumed. [Vide Jagdish Singh Vs. Natthu Singh ; State of M.P. Vs. Hiralal & Ors. and V.Raja Kumari Vs. P.Subbarama Naidu & Anr.] It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.”

42. In ***Samittri Devi and Anr. vs Sampuran Singh and Anr.*** reported in ***AIR 2011 SC 773***, it was held that if a properly directed letter is shown to have been posted, a presumption arises that it was received.

“9. We may fruitfully refer to a few judgments laying down the propositions relating to service of notice. To begin with, we may note two judgments in the context of the notice to quit, sent to the tenants under Section 106 of the Transfer of Property Act 1882, though both the judgments are concerning the notices sent by registered post. Firstly, the judgment in the case of Harihar Banerji Vs. Ramshashi Roy³ [AIR 1918 PC 102], wherein the Privy Council quoted with approval the following observations in Gresham House Estate Co. Vs. Rossa Grande Gold Mining Co.⁴ [1870 Weekly Notes 119] to the following effect:

“.....if a letter properly directed, containing a notice to quit, is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed. That presumption would appear to their Lordships to apply with still greater force to letters which the sender has taken the precaution to register, and is not rebutted but strengthened by the fact that a receipt for the letter is produced signed on behalf of the addressee by some person other than the addressee himself.”

20. Secondly, we may refer to the judgment of a Full Bench of the Allahabad High Court in the case of Ganga Ram Vs. Smt. Phulwati [AIR 1970 Allahabad 446], wherein the Court observed in paragraphs 12 and 13 as follows:

“12. When a registered article or a registered letter is handed over to an accepting or receiving post office, it is the official duty of the postal authorities to make delivery of it to the addressee. Human experience shows that except in a few exceptional cases letters or articles received by the post office are duly, regularly and properly taken to the addressee. Consequently as a proposition it cannot be disputed that when a letter is delivered to an accepting or receiving post office it is reasonably expected that in the normal course it would be delivered to the addressee. That is the official and the normal function of the post office.”

43. Moreover, the notice with regard to service of the execution case at the same address of the award debtor, is available from the record. The execution case also contains the award. On June 22, 2022, the award debtor appeared before the court upon receipt of the said execution case. The matter continued before the court till 2025, but the respondent was not interested to challenge the award. No serious intention was displayed in challenging the award by taking proper steps even after the execution case was filed, and the arbitral records were produced by the Council. The decisions of the Hon’ble Apex Court cited by Mr. Mukherjee with regard to the mandatory requirement of service of a signed copy of the award upon the parties, were rendered in a situation when the issue before the court was whether service of a draft award would be taken as good service in computing the period of limitation to file an application for setting aside the award. The other decisions are not relevant in the given context.

44. Under such circumstances, the application is dismissed. The execution case is maintainable and the same shall proceed. Filing of the application has resulted in abuse of the process of court. There is delay in the enjoyment of the fruits of the award. The Hon’ble Apex Court has time and again emphasized the need for timely disposal of execution cases. The intention of the award debtor was only to delay the execution. In the matter

of **Rahul S. Shah v. Jinendra Kumar Gandhi and Ors.** reported in **(2021)**

6 SCC 418, the Hon'ble Apex Court held as follows :-

“22. These appeals portray the troubles of the decree-holder in not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of decree. As on 31-12-2018, there were 11,80,275 execution petitions pending in the subordinate courts. As this Court was of the considered view that some remedial measures have to be taken to reduce the delay in disposal of execution petitions, we proposed certain suggestions which have been furnished to the learned counsel of the parties for response. We heard Mr Shailesh Madiyal, learned counsel for the petitioner and Mr Paras Jain, learned counsel for the respondent.

23. This Court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Council in General Manager of the Raj Durbhunga v. Coomar Ramaput Sing [General Manager of the Raj Durbhunga v. Coomar Ramaput Sing, 1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605] which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in Shub Karan Bubna v. Sita Saran Bubna [Shub Karan Bubna v. Sita Saran Bubna, (2009) 9 SCC 689 : (2009) 3 SCC (Civ) 820] , wherein it recommended that the Law Commission and Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or Parliament must give effect to appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.

* * *

41. Having regard to the above background, wherein there is urgent need to reduce delays in the execution proceedings we deem it appropriate to issue few directions to do complete justice. These directions are in exercise of our jurisdiction under Article 142 read with Article 141 and Article 144 of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law.

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42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 CPC the term "... in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law."

45. In the matter of ***Periyammal (dead) Through LRS & Ors. vs V. Rajamani & Anr. Etc.*** reported in ***2025 INSC 329***, the same principles

were reiterated by the Hon'ble Apex Court. The relevant portions are quoted below:-

“72. Before we close this matter, we firmly believe that we should say something as regards the long and inordinate delay at the end of the Executing Courts across the country in deciding execution petitions.

* * *

74. The mandatory direction contained in Para 42.12 of Rahul S. Shah (supra) requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in Bhoj Raj Garg v. Goyal Education and Welfare Society & Ors., Special Leave Petition (C) Nos. 19654 of 2022.

75. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports.

76. Registry is directed to forward one copy each of this judgment to all the High Courts at the earliest.”

46. By a circuitous manner, the award debtor sought to frustrate the award. In order to challenge the award, a deposit of 75% of the awarded sum was mandatory. The award debtor avoided to deposit the amount and was made a frivolous and malafide attempt to delay the execution of the award, on the specious plea that, the same is not maintainable on account of non-compliance of section 31(5) of the said Act.

47. No order is passed as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)