

Reserved on : 18.07.2025
Pronounced on : 30.07.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.35715 OF 2024 (GM - CPC)

BETWEEN:

MS. SUMITA ABHISHEK SUNDARAM
D/O MR. PREM KUMAR BAHL
AGED ABOUT 41 YEARS
RESIDING AT 34, ITI COLONY,
8TH CROSS, 32ND MAIN,
J.P.NAGAR, I PHASE
BENGALURU, KARNATAKA – 560 078.

... PETITIONER

(BY SRI ADITYA CHATTERJEE, ADVOCATE A/W.,
MS. SANJANA MURALEEDHARAN, ADVOCATE AND
MS. AKHILA BALAJI, ADVOCATE)

AND:

SANKALPAN INFRASTRUCTURE
PRIVATE LIMITED
A PRIVATE LIMITED COMPANY
LIMITED BY SHARES, INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956
AT: 646, 1ST 'D' MAIN ROAD, 1ST STAGE, DOMLUR
BENGALURU, KARNATAKA – 560 071

ALSO AT: 304, SENTINEL
HIRANANDANI, BUSINESS PARK
POWAI, MUMBAI, MAHARASHTRA – 400 076.

... RESPONDENT

(BY SRI DHYAN CHINNAPPA, SENIOR ADVOCATE FOR
SRI NANDISH SHENNI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 04 NOVEMBER 2024 OF THE LD. LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH 84), COMMERCIAL COURT, BANGALORE PASSED IN COM. EX. 541 OF 2024 PRODUCED AT ANNEXURE A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.07.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/decreed-holder is before this Court calling in question an order dated 04-11-2024 passed by the LXXXIII Additional City Civil and Sessions Judge, Commercial Court, Bangalore in Commercial Execution No.541 of 2024 by which the application I.A.No.III filed by the petitioner under Order XXI Rule 41 of the CPC seeking a direction to the respondent to file an affidavit of particulars of its assets including but not limited to

immovable, movable properties, bank accounts with balance, stock holdings, deposits and other investments, garnishees of the respondent along with necessary statements of accounts reflecting its current assets.

2. Heard Sri Aditya Chatterjee, learned counsel appearing for the petitioner and Sri Dhyan Chinnappa, learned senior counsel appearing for the respondent.

3. Facts, in brief, germane are as follows: -

The petitioner and the respondent, a Company incorporated under the Companies Act, 1956 ('the Company' for short) enter into an exclusive consultancy agreement (hereinafter referred to as 'the Agreement' for short) for a period of three years to commence from 23-01-2017 to 15-04-2019. The petitioner was appointed as an Exclusive Consultant and Design Director by the respondent. Remuneration payable to the petitioner was fixed at ₹4.25 lakhs per month up to March, 2017 and ₹4.80 lakhs per month from April, 2017 exclusive of service tax. The petitioner was also entitled to

variable pay of 1% of the work order value, exclusive of tax for both 'design' and 'design and build' projects.

3.1. On 02-03-2019 the petitioner resigned as a Director in the Company with a request to accept it with effect from 01-04-2019. Owing to the delay in processing her handing over, the petitioner's last pay in the Company was extended to 15-04-2019 which is said to have been originally consented to by the respondent. The petitioner's remuneration was not paid for the extended period, which led to causing of a legal notice and commencement of arbitration in terms of Clause 10 of the agreement. This Court allowed a Civil Miscellaneous Petition and appoints Sri C.K. Nandakumar, Senior Advocate as a sole Arbitrator. The Arbitrator allows the claim directing payment of ₹59,79,087/- and ₹2,78,665/- and several other amounts. The award also directed payment of interest on the aforesaid claims.

3.2. The respondent/Company files a petition under Section 34 of the Act before the Commercial Court challenging the award of the Arbitrator in A.C.No.90 of 2022. No stay of award was sought.

In that light the petitioner prefers an execution petition before the Court at Thane, for the reason that the registered office of the respondent was at Thane, Maharashtra. The said proceeding is pending consideration. The Commercial Court before which the Company had preferred Arbitration Case No.90 of 2022 dismisses the petition on 19-06-2024. After its dismissal, the petitioner files an execution petition before the Commercial Court at Bangalore in Commercial Execution No.541 of 2024 seeking execution of the award which then stood at ₹1,27,20,824/-.

3.3. The issue that has driven the petitioner to this Court is not the merit of the claim in the execution petition. Before the executing Court, the petitioner sought declaration of movable property of the respondent at a particular address. The respondent/Company files a memo appending to it deed of surrender of lease on 26-09-2024 of its office at Bangalore and states that there are no movable assets in the City for being attached. The petitioner then files an application under Order XXI Rule 41 of the CPC directing attendance of an authorized representative of the respondent/company to inspect the property,

satisfy the award and also sought direction for disclosure of the assets on affidavit of the Company. The concerned Court rejects I.A.No.III on the score that there has been surrender of lease in the jurisdiction of the Court at Bangalore and, therefore, there is no jurisdiction for the Court to consider the Execution insofar as disclosure of assets. However, it continued *qua* other related orders. It was directed that the petitioner should seek the relief of attachment only before the Court at Thane. It is this order that drives the petitioner to this Court in the subject petition.

SUBMISSIONS:

PETITIONER:

4. The learned counsel appearing for the petitioner submits that it is by now well settled principle of law that an execution of an arbitral award can be filed before any Court in the country wherever there is semblance of assets of the judgment debtor. Filing an execution in Thane would not mean that the petitioner cannot file the execution petition in Bangalore. The judgment debtor did have assets at Bangalore and did have assets at Thane. As on the date of filing of the petition the movables were available. The lease of the

premises in which the respondent operated was deliberately surrendered on 19-04-2024 when the matter was set to come up on the next day before the concerned Court. He would further contend that the respondent/Company still operate from different offices at Bangalore. Therefore, it is necessary for it to file its affidavit of assets.

RESPONDENT:

5. *Per contra*, the learned senior counsel Shri Dhyan Chinnappa appearing for the respondent would submit that all the actions that the petitioner should take in Thane are being taken here. No doubt execution can be filed anywhere. On the concept of execution at the outset being filed, all other actions should be only at Thane. She cannot pick and choose jurisdiction for filing applications in pending execution petition. Today, no other asset in Bangalore is available either moveable or immovable. If there are no assets in Bangalore, it cannot be said that the respondent should be directed to file an affidavit of assets which are not even available. The learned senior counsel would therefore, submit that

the concerned Court has appropriately rejected the plea of the petitioner insofar as I.A.No.III for disclosure of assets is concerned.

6. Both the learned counsel for the petitioner and the respondent have placed reliance upon certain judgments of different High Courts, all of which would bear consideration *qua* their relevance in the course of the order.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, **the only issue that falls for consideration is, whether the respondent should be directed to disclose by way of an affidavit, assets of the Company in answer to an application under Order XXI Rule 41 of the CPC?**

CONSIDERATION:

8. The afore-narrated facts, link in the chain of events and the genesis of the dispute between the petitioner and the respondent are a matter of record. The petitioner sought appointment of an arbitrator which was not acceded to by the

respondent. This leads the petitioner to this Court in C.M.P.No.194 of 2021. This Court, following the judgment of the Apex Court, holds as follows:

" "

14. In the light of the vehement opposition to be Bangalore being the center, I deem it appropriate to consider the issue with regard to jurisdiction notwithstanding the parties not arriving at a consensus in terms of Clause 10 (a) of the agreement.

15. Reference to the latest judgment of the Apex Court in the case of **BGS SGS SOMA JV v. NHPC LIMITED**¹, in the circumstances is apposite. The Apex Court at paragraph 59, has held as follows:

"59. Equally incorrect is the finding in Antrix Corpn. Ltd. that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a non obstante clause, and then goes on to state "...where with respect to an arbitration agreement any application under this part has been made in a court..."

The Apex Court in the case afore-extracted, considering the fact of a part of cause of action having arisen in a particular place, where an application is made at the first instance to be the seat of arbitration. The afore-narrated chain of events have all happened in Bangalore, therefore, in the light of the judgment of the Apex Court in the case of **BGS SGS SOMA JV** (*supra*), Bangalore will be the seat of arbitration.

16. It is germane to refer to the judgment of the Apex Court in the case of Patel Road ways Limited vs. Prasad Trading

¹ (2020) 4 SCC 234

Company interpreting Section 20 of the CPC, which determines cause of action. The Apex Court has held as follows:

"The clear intendment of the Explanation, however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a sub-ordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one. "

17. It is not in dispute that the respondent - Company has its business or a branch at Bangalore, where the petitioner was functioning. Therefore, it would not lie with the respondent - Company to contend that there is no cause of action at all for the petitioner to insist upon or contend that the seat of arbitration should be Bangalore. In my considered view, in the light of the facts narrated hereinabove and the judgments of the Apex Court, part of cause of action having arisen in Bangalore, the dispute is arbitrable within the jurisdiction of Bangalore.

18. Therefore, the following:

ORDER

[a] The petition is allowed, appointing Sri C.K. Nandakumar, Advocate, No.519- 520, Prestige Centre Point, Level – 5, No.7, Cunningham Road, Bengaluru - 560 052 (Mob.No.8884713999) as the sole arbitrator to enter reference of the disputes between the parties and conduct proceedings at the Arbitration and

Conciliation Centre (Domestic and International), Bengaluru according to the Rules governing the said Arbitration Centre.

- [b] All contentions *inter se* parties are left open for adjudication in the arbitration proceedings.
- [c] The Office is directed to communicate this order to the Arbitration and Conciliation Centre and Sri C.K. Nandakumar, Advocate, No.519- 520, Prestige Centre Point, Level – 5, No.7, Cunningham Road, Bengaluru - 560 052 (Mob.No.8884713999), as required under the Appointment of Arbitrators by the Chief Justice of Karnataka High Court Scheme, 1996.”

(Emphasis added)

In terms of the said order, the Arbitrator Sri C.K. Nandakumar, after hearing the parties, draws up an award. This comes to be challenged by the respondent before the Commercial Court under Section 34 of the Arbitration and Conciliation Act; that is also dismissed.

9. The petitioner then files an execution petition one before the Court at Thane owing to the fact that the registered office of the respondent is at Thane, Maharashtra. After dismissal of the petition under Section 34, the petitioner prefers a second execution before

the executing Court at Bengaluru. In the said proceedings, she files an application under Order XXI Rule 41 of the CPC. Order XXI Rule 41 of the CPC reads as follows:

"41. Examination of judgment-debtor as to his property. -[(1)] Where a decree is for the payment of money the decree-holder may apply to the Court for an order that—

- (a) the judgment-debtor, or
- (b) where the judgment-debtor is a corporation, any officer thereof, or
- (c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release."

Rule 41 deals with examination of judgment debtor as to his property. Invoking the said provision, the petitioner prefers

I.A.No.III seeking disclosure of assets of the respondent/ Company. After hearing the parties, the matter was posted for further consideration on 20-09-2024. On the previous day, the lease that the Company had at Bangalore was surrendered and on the next day it is projected that there are no assets of the Company in Bengaluru and, therefore, the petitioner will have to file it before the Court at Thane. The concerned Court accedes to the submission of the Company.

10. The issue now would be, whether the petitioner can prefer an application in the second execution petition filed by her or has to be driven to the jurisdictional Court at Thane. It is not in dispute that the jurisdiction at Bengaluru was directed to be the seat of Arbitration in terms of the order quoted hereinabove. Pursuant to the said order, the parties have arbitrated the dispute and the respondent has suffered an award. Therefore, the jurisdiction at Bengaluru becomes the seat Court, which would be the Court of preliminary jurisdiction, for execution of arbitral award.

11. In this regard, it becomes apposite to refer to two of the judgments of the High Courts of Delhi and Calcutta interpreting the said concept of seat Court. In the case of **GUJARAT JHM HOTELS LIMITED v. RAJASTHALI RESORTS AND STUDIOS LIMITED**², the Delhi High Court has held as follows:

"....

37. As this Court considers the decisions in **Associated Contractors** and **Sundaram Finance**, it fails to find any irreconcilable or discordant note between the two. **Sundaram Finance** cannot possibly be read as being an authority for the proposition that a petition for execution of the arbitral award cannot be instituted before the seat court. All that the Supreme Court in **Sundaram Finance** held was that notwithstanding the right of a party to petition the seat court for execution of the award, it would additionally have the choice to initiate execution in a court within whose jurisdiction the assets of the judgment debtor may be situate.

...

...

...

41. While in light of the principles that were enunciated by the Supreme Court in **BGS Soma**, the Court must necessarily recognize the importance and significance that stands attached to the designation of a seat of arbitration, in the considered opinion of this Court the said principles do not conflict with what was ultimately held by the Supreme Court in **Sundaram Finance**. As was noticed hereinbefore, all that **Sundaram Finance** seeks to expound is of the option that is available to a decree holder to initiate proceedings for enforcement before any court which may be in a position to proceed against the properties of the debtor with due expedition and without being bound by the rigidity or inflexibility of rules of procedure.

² 2023 SCC OnLine Del 161

...

...

...

50. However, the Court in the present is called upon to discern the true ratio decidendi of the aforementioned decisions and reconcile the principles that stand enunciated therein. On a careful consideration of the issue that arises and the precedents which govern, the Court is of the considered opinion that the position in law can be safely recognised to be the seat court being the focal point for all challenges that may arise before, during or after the conclusion of arbitral proceedings. The seat court would always be the central pivot in terms of the provisions that may be contained in the arbitration agreement. It would thus clearly be a court which would fall within the ambit and scope of Section 42 of the Act. However, insofar as petitions for enforcement are concerned and as per **Sundaram Finance**, the decree holder need not and invariably be compelled to institute proceedings before the seat court and thereafter seek a transfer of those proceedings for the purposes of effecting execution of the award. The decree holder stands conferred with the right to exercise an option of either petitioning the seat court or moving directly to the court within whose jurisdiction the judgment debtor or its properties may be situate.

51. In light of the aforesaid discussion, the Court comes to ultimately conclude that there does not appear to be an irreconcilable element or conflict between the principles laid down in **Associated Contractors** and **Sundaram Finance**. The ratio of **Associated Contractors** and **Sundaram Finance** when harmoniously construed lends credence to the aforesaid conclusion. The perception of the Jaipur Commercial Court that it was imperative for the petitioner here to have first approached the court situate in the juridical seat of arbitration may not, strictly speaking, be a correct reading or understanding of the aforementioned decisions."

(Emphasis supplied)

Earlier to the aforesaid judgment of the High Court of Delhi, the High Court of Calcutta in the case of **MECHON SERVICES v. PREDOMINANT ENGINEERS & CONTRACTORS (P) LIMITED**³, has held as follows:

"....

8. Thus, when an execution of an award is levied in the Court within whose territorial jurisdiction the seat of arbitral tribunal situates, the award is deemed to have been sent to that Court for execution.

... ..

11. Since the assertion, made by the decree-holder about the availability of the asset and/or property and/or money belonging to the judgment debtor within the jurisdiction of this Hon'ble Court, is denied by the judgment debtor, the decree-holder has the right to examine the judgment-debtor for ascertaining as to whether any asset and/or property and/or money belonging to the judgment debtor lies within the jurisdiction of this Hon'ble Court or not. In the event after such examination it is found that any asset and/or property and/or money belonging to the judgment debtor is available within the jurisdiction of this Court, this Court certainly can proceed with the execution case for executing the award. However, it is equally true that in the event it is ultimately found after such examination of the judgment debtor that neither any asset nor any property nor any money belonging to the judgment debtor is available within the territorial jurisdiction of this Court, the Executing Court, by virtue of the provisions contained in Section 39 of the Code of Civil Procedure, can transmit the decree for execution to the

³ 2017 SCC OnLine Cal 19196

Court where the property and/or asset and/or money belonging to the judgment debtor lies.

12. Since examination of the judgment debtor for ascertainment of the availability of the property and/or asset and/or money belonging to the judgment debtor is a step-in aid of execution, this Court cannot at this stage decide the said issue, relating to lack of jurisdiction of this Court to entertain this execution proceeding, conclusively without examining the judgment debtor."

(Emphasis supplied)

Therefore, the Court at Bangalore did have and does have the jurisdiction to entertain the execution petition.

12. The issue now is, with regard to the application filed under Order XXI Rule 41 of the CPC. The provision is quoted hereinabove. It clearly indicates that it is not an application for execution but merely a step-in aid of execution. It is further settled that the Court that had passed the decree can entertain the application under Order XXI Rule 41 of the CPC to determine the location of the judgment debtor's assets for transfer of execution petition, if necessary. The High Court of Bombay considers this

issue in the case of **UNITED PHOSPHOROUS LIMITED v. A.K. KANORIA**⁴ and holds as follows:

"....

12. In my opinion, application under Order XXI, Rule 41 is not an application in an execution. It is an application in aid of execution or a step towards the execution. Under Clause (j) of Rule 11(2) of Order XXI of the Code of Civil Procedure, the execution petition must specify the mode in which assistance of the Court is required for the execution of a decree. Clause (j) reads as follows:

- (j) the mode in which the assistance of the Court is required whether—
 - (i) by the delivery of any property specifically decreed.
 - (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property.
 - (iii) by the arrest and retention in prison of any person;
 - (iv) by the appointment of a receiver;
 - (v) otherwise, as the nature of the relief granted may require.

Examination of a judgment debtor under sub-rule (1) of Rule 41 of Order XXI or direction to the judgment debtor to file an affidavit to be issued under sub-rule (2) of Rule 41 or Order XXI is not one of the mode of execution of a decree provided in clause (j) of Rule 11(2) of Order XXI, Rule 30. Disclosure of the assets is a preliminary step towards the execution of a decree. Rule Nos. 3 to 9 of Order XXI of the Code of Civil Procedure

⁴ 2002 SCC OnLine Bom 503

contemplate transfer of a decree by the Court which passed the decree to another Court for execution. The decree holder, who is not aware of the assets of the judgment debtor, is often unable to decide in which Court he should file the execution petition or in which Court he should get the decree transferred unless he knows the particulars of the assets of the judgment debtor. Rule 41 of Order XXI enables the decree holder to get from the judgment debtor the information of the assets, which is within the special knowledge of the judgment debtor. Therefore, an application under Order XXI, Rule 41 is not an application for execution of the decree but, merely an aid to the decree holder to enable him to execute the decree by obtaining information which is within the special knowledge of the judgement debtor. If this be so, the application under Order XXI, Rule 41 would ordinary precede the filing of an execution petition, though it can also be filed in the pending execution petition itself. I am fortified in this view by the judgment of the Calcutta High Court in *Shew Kumar Company v. Grindlays Bank Limited* reported in AIR 1986 Cal. 328 wherein the Division Bench observed in para-9 of its judgment:

"We accept the contention of the Respondent that an application for examination of a judgment debtor (under Order XXI, Rule 41) is strictly not an application for execution".

In the said case, the Division Bench further held even after the decree is transmitted for execution to another Court, the Court passing the decree retains jurisdiction in respect of the decree and can examine the judgment debtor, under Order XXI, Rule 41. It is not necessary in this case to consider whether the Court which passes the decree retains jurisdiction over the decree even after its transmission for execution to another Court, but I am of the opinion that the Court which passed the decree does not cease to have a jurisdiction to entertain an application under Order XXI, Rule 41 atleast till the decree is transmitted to another Court for execution."

(Emphasis supplied)

The High of Kerala also considers this issue in the case of **STATE BANK OF INDIA v. M.K. RAVEENDRAN**⁵, and holds as follows:

"....

4. Rule 41 of Order 21 C.P.C. is captioned as 'attachment of property'. That does not postulate it is applicable only when the execution relate to attachment of property. The object of the section is to enable the decree holder to get the necessary information with respect to the properties of the judgment debtor so that he can realise his debt without difficulty and trouble. It is an effective provision to obtain discovery in aid of the execution of the decree which is obtained. The Bombay High Court in *United Phosphorus Ltd. v. A.K. Kanoria* (AIR 2003 Bombay 97) has considered the scope and ambit of Rule 41 of Order 21 of the C.P.C. It has been held that examination of a judgment debtor under sub-rule (1) of Rule 41 of Order 21 or direction to the judgment debtor under sub-rule (2) to file affidavit, is not one of the modes of execution of a decree provided in clause (j) of Rule 11(2) of Order 21 of the C.P.C. What is contemplated by Rule 41 of Order 21 C.P.C. is disclosure of the assets of the judgment debtor as a preliminary step towards the execution of the decree. In the above decision, the Bombay High Court has also expressed the view that an application under Rule 41 of Order 21 C.P.C. by the decree holder can be filed even before presentation of the execution petition. A decree holder who is not aware of the assets of the judgment debtor is often not able to decide in which court he should file the execution petition, to which court he should get the decree transferred. He can resort to Rule 41 of Order 21 to get the details from the judgment debtor the information of his assets, which is within his special knowledge and that can be sought for even before proceeding with the execution by filing an execution petition is the view taken by the above High Court. **Opinion expressed by the Bombay High Court that the court which passed the decree does not cease to have**

⁵ 2009 SCC OnLine Ker 5078

jurisdiction to entertain application under Order 21 Rule 41 C.P.C. at least till the decree is transmitted to another court for execution appears to be sound considering the scope and ambit of Rule 41 of Order 21 of the Code of Civil Procedure. Since the provision covered by the rule is intended only to aid the execution and not one of the modes of the execution, it is just and reasonable to hold that even on the trial side in proceedings under Order 38 of the C.P.C. resort to Rule 41 of Order 21 of the Code can be sought for to get details of the assets from the defendant to secure the decree likely to be passed in the suit subject to the satisfaction of the other conditions for getting an order of interim attachment before judgment. To restrict the scope of Rule 41 of Order 21 of the Code only in a case of attachment of property, but, not to cases wherein enquiry on a plea of no means is raised by the judgment debtor to resist the execution, solely for the reason that the above rule is dealt with the provisions relating to attachment of property under the Code will not be conducive to justice. Only safeguard before passing of an order under sub-rule (1) and (2) under Order 41 of Rule 21 of the Code over and above the satisfaction of the court in passing of such orders, whether it be on the trial side or execution, is that it must be done only after notice to the judgment debtor. Disclosure of the assets of the judgment debtor is a preliminary step towards the execution of the decree and in very many cases the information of assets is within the special knowledge of the judgment debtor. An executing court is bound to facilitate the execution of the decree passed by a court and as Rule 41 of Order 21 of the C.P.C. is only an aid in execution, its scope and applicability cannot be confined to cases where attachment of property is sought as mode of execution, but, in cases of personal execution of the judgment debtor by arrest and detention as well. Setting aside the impugned orders challenged in the writ petition, the court below is directed to pass appropriate orders taking note of the observations made above, and in accordance with law.”

(Emphasis supplied)

Both the High Courts clearly hold that Order XXI Rule 41 CPC is a step towards execution and the jurisdiction *qua* such execution can be determined only if there is a compliance on oath in terms of Order XXI Rule 41 CPC. The Calcutta High Court, in a later judgment, in the case of **MSTC LIMITED v. KRISHNA COKE (INDIA) PRIVATE LIMITED**⁶, has held as follows:

"....

7. Sundaram Finance Limited (supra) has held that, execution can be filed anywhere in the country where the decree can be executed and that, there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the Tribunal proceedings. The proposition laid down in *Sundaram Finance Limited* (supra) does not help the award-debtor. The arbitral award can be executed as a decree of a Court in any Court in India without the requirement of obtaining a transfer of the decree from the Court which would have jurisdiction over the arbitral proceedings. **In the present case, the award-holder is seeking to execute the arbitral award on the basis that, there are assets and properties of the award-debtor lying within the territorial jurisdiction of this Hon'ble Court. It has to be conclusively established that, the award-debtor does not have any asset within the territorial jurisdiction of this Hon'ble Court for this Hon'ble Court to denude itself of jurisdiction over the execution proceeding. Such stage is yet to arrive in the facts of the present case. There is an order for examination of the award-debtor. On examination of the award-debtor, there is a possibility that, the award holder may discover assets and properties of the award-debtor lying within the jurisdiction of this Hon'ble Court. In such an eventuality, it cannot be said that, this Court does not have**

⁶ 2019 SCC OnLine Cal 7293

jurisdiction to proceed with the execution proceeding. As held in *Shew Kumar Nopany* (supra) an application for execution of the award-debtor is not an application for execution but an application in aid of the execution.”

(Emphasis supplied)

Therefore, jurisprudence across the Nation has converged in recognition of the aforesaid principle. The High Courts of Delhi, Bombay, Calcutta and Kerala have with one voice has affirmed that an application under Order XXI Rule 41 of the CPC is a preliminary step in execution, not contingent upon the success of an execution but, aimed at enabling it. The seat Court of Arbitration as held in the aforesaid judgments, retains jurisdiction to entertain application, even when an another execution is pending in another jurisdiction.

13. When the proceedings were instituted, the concerned Court did have jurisdiction, as the assets were still available. It is only when a date was fixed for further submissions, the lease is surrendered. The surrender of the lease, by a party during the proceedings, cannot knock off jurisdiction of a Court, which it did

have at the time of institution of proceedings. The High Court of Delhi considers the issue on identical facts and holds in the case of **MOTOROLA INC v. MODI WELLVEST PRIVATE LIMITED**⁷, as follows:

"...."

26. The second plea of the judgment debtor is that no bank accounts of the JD or any amount therein existed in Delhi today. It is not in dispute that the Bank accounts existed when this execution petition was filed and had about ₹50,000/-in them. While in the pleadings an attempt was made by the judgment debtor to obfuscate the issue by pleas which while averring that bank accounts no longer existed in Delhi, nevertheless omitted to give the dates of closure of the accounts, the learned senior counsel for the JD, Shri Andharujina, however, very fairly stated that the bank accounts in Delhi were closed during the pendency of this execution petition. Consequently, when at the time of filing of this execution petition assets of the JD in the form of monies were available in bank accounts in Delhi, the jurisdiction of this Court to proceed with this execution was established. Whether the amount available in the bank account was sufficient to satisfy the decree or that the account stood closed during the execution proceedings in my view are not considerations which have any bearing on the applicability of Section 47 to enable the availability of and indeed the maintainability of the present execution proceedings under Section 47 of the 1996 Act."

(Emphasis supplied)

⁷ 2004 SCC OnLine Del 1094

The High Court of Delhi clearly holds that at the time of institution of execution petition the assets of Motorola INC were still in existence in Delhi. The property was sold during the proceedings. The Court, in the aforesaid paragraph, holds that it would not strip off the jurisdiction that was available at the time of execution of proceedings. It holds that the judgment debtors making attempts to obfuscate the issue would not lead the Court to accept and direct that the decree holder should be ousted on the issue.

14. The High Court of Bombay, again on an identical issue, in the case of **GLOBAL ASIA VENTURE COMPANY v. ARUP PARIMAL DEB**⁸, holds that the word 'Court' as obtaining under Section 2(1)(e) of the Act being the Court of seat of arbitration, it continues to have jurisdiction to execute the arbitral award. In the following paragraphs, it holds as follows:

"....

14. *Sundaram Finance* therefore says that an Award Holder has a choice. Its ratio does not operate to strip the 2(1)(e) Court of its jurisdiction. It only says that a successful claimant is not compelled to come to the 2(1)(e) Court only to

⁸ **2018 SCC Online Bom 13061**

then have to detour to a local court for enforcement. He may go to that local court directly to execute his award.

15. Conceptually this is significant because I suspect the arguments from the Respondents before me tend to obliterate a fundamental distinction between a civil decree in execution and an arbitral award in enforcement. Arbitration is not a distinct judicial forum like a subordinate Court. It is an alternative dispute resolution mechanism with a standalone statute. It is intended to provide for the speedy resolution of disputes and enforcement with a minimal level of judicial intervention. The essence of arbitration is an agreement unlike a civil proceeding in a law Court. The fact that Section 36 uses a phraseology which equates an award with a decree cannot be divorced from the legislative intent. Section 36(1) is enabling. It was meant to allow for the smooth enforcement of arbitral awards and it, therefore, allows these to be enforced 'as' decrees. Read as the Respondents would have it Section 36(1), far from being enabling, suddenly becomes *disabling*, and itself becomes a restriction, wholly contrary to the statutory intent of arbitration law, for rapid and quick enforcement. When, therefore, Section 36(1) says that an award shall be enforced in accordance with the Code in the same manner as if it was a decree of a Court, what this really tells us is not that limitations and ousters of jurisdiction will apply but that the enabling provisions of the Code must apply to arbitral award as well. Section 36(1) has to be read not in isolation but also as part of the framework of the Arbitration Act. Mr. Jagtiani is correct in pointing out that if this is read in isolation, then Section 9 and its post-award provisions are rendered entirely otiose. That Section allows the Court to take interim steps before the award is enforced. These include several steps in aid of enforcement, such as orders of receivership, injunction, deposit, disclosure and so on.

16. The correct view is, therefore, that while there may be certain restrictions on the enforcement of a decree of a Civil Court, since the Arbitration Act 'actually transcends all territorial barriers' as *Sundaram Finance* said, those restrictions cannot be made to apply to the enforcement of arbitral awards without resulting in a completely incongruous situation. Award holders have a jurisdictional choice that decree holders do not. The source or provenance of that jurisdictional choice is the

fundamental nature of the dispute resolution process. A decree results in a lawsuit brought in a causal court governed by Section 20 of the Code. An award emanates from an arbitration. Arbitral proceeding jurisdiction is wholly independent of Section 20 of the Code, as *BALCO* tells us. That arbitral proceeding jurisdiction is created by Section 2(1)(e) of the Arbitration Act, not Section 20 of the Code. Therefore, the result returned in *Sundaram Finance* that arbitral proceeding jurisdiction transcends territoriality. There is no warrant at all to drag a now firmly defenestrated territoriality back into arbitration only at the time of enforcement.

17. I believe this needs some illustration. We must return to the *BALCO* principle. The 2(1)(e) Court need not be the causal Court. It is a court of the parties' choice. Nothing has happened there — see the illustration quoted from *BALCO*, paragraph 96. A civil Court could not possibly exercise such jurisdiction in a civil suit. It would be constrained causally by Section 20 of the Code. An arbitral Court is not. *BALCO* says so, and entirely consistent with it, so does *Sundaram Finance*. It is for this reason that *Sundaram Finance* says that there is a transcending of territorial barriers. That transcending starts from the inception of the arbitration. It continues throughout. The suggestion from the Respondents that this transcending of territoriality somehow comes to a grinding halt at the time of enforcement, and *only* at the time of enforcement, seems to me to be nothing more than an argument designed to defeat the effective enforcement of arbitral awards.

18. The second decision in *Mr. Jagtiani's* arsenal is the recent Full Bench decision of this Court in *Gemini Bay Transcription Pvt. Ltd., Nagpur v. Integrated Sales Service Ltd.*⁵ Speaking for the Bench, AS Chandurkar J set out the facts leading to the reference and in paragraph 3 re-framed the question for consideration. This is how he put it:

"3. We have accordingly re-framed the question to be considered and answered as under:

"Whether an Award made under Part-I of the Arbitration and Conciliation Act, 1996 has to be executed only by the Court as defined by section 2(1)(e)(i), or, whether it can also be executed by the Court to which it is sent for execution under section 38 of the Code of Civil Procedure, 1908?

19. Again this was a discussion (post the 2015 Arbitration Act amendment) whether arbitral award enforcement had to be in the arbitral 2(1)(e) Court or whether it could be done in a Court to which 'it was sent' for execution under Section 38 of the Code.

20. Mr. Jagtiani's submission is that the Full Bench not only considered *Sundaram Finance* but also took into account a previous three-Judge decision of the Supreme Court in *State of West Bengal v. Associated Contractors* which *Sundaram Finance* did not notice. The Full Bench in *Gemini Bay* reconciled all views. The conclusion that the Full Bench reached is that the provisions of the Arbitration Act 'permit a decree to be executed either by the Court which passed it', i.e. the Section 2(1)(e) Court, *or* the court to which it was sent for execution. The 2(1)(e) Court can *also* transfer for execution to any subordinate Court of competent jurisdiction. The Full Bench then went on to hold that the expression 'Court' used in Section 36 has to be read in a certain context, and that the provisions of Section 39(1) of the Code must be read independently of the provisions of Section 2(1)(e)(i) of the Act. In paragraph 30, the Full Bench answered the reference by saying that an arbitral award under Part I of the Arbitration Act can be executed not only by the 2(1)(e) Court but *also* the court to which it is sent under Sections 38 and 39 of the Code. Mr. Jagtiani, therefore, submits, and in this is supported by Mr. Khandeparkar, that there is no 'ouster' of the 2(1)(e) Court's jurisdiction at the stage of enforcement as contended by the Respondents. The Claimants have their choices. They can come to the 2(1)(e) Court, or they can go to the local court, but the local court's jurisdiction does not oust the jurisdiction of the 2(1)(e) Court. There

is nothing in any of these judgments or any fair reading of these statutes that would warrant an interpretation resulting in the cessation of a 2(1)(e) Court's jurisdiction at the stage of enforcement.

21. Interestingly, both Mr. Pratap and Mr. Samdani in oral arguments as well as in their written submissions endeavoured to argue that *Sundaram Finance* and *Gemini Bay* actually support their view. The essence of their argument, as I have understood it, is that execution or enforcement is one thing and the supervisory jurisdiction of an arbitral Section 2(1)(e) Court is quite another. A Court that has no territorial jurisdiction whatsoever and which is not a causal Court in any sense of the word may nonetheless be a perfectly legitimate Section 2(1)(e) arbitral Court. That ends, in their formulation, once an award is passed simply because Section 36 then says that the enforcement must be in accordance with the Code 'in the same manner' as if it were a decree. If a decree could not be thus enforced against the Respondents or their assets outside jurisdiction, nor should an award. Both learned Senior Counsel say that in *Sundaram Finance* the issue was not whether the 2(1)(e) Court had jurisdiction at all but whether it needed to send the decree to a local Court, or whether the Claimant could go to that Court directly. But this undermines their construct, for their own reading of *Sundaram Finance* posits that the 2(1)(e) Court is *not* robbed of jurisdiction. If *Sundaram Finance* says a party may go to the 2(1)(e) Court *or* the local court, and does not have to go to the local court via a transfer from the 2(1)(e) Court, then necessarily this means that the 2(1)(e) continues to have jurisdiction. All that *Sundaram Finance* says is that the local court *also* has jurisdiction, not that the 2(1)(e) court does not."

(Emphasis supplied)

In the light of the aforesaid elucidation of law by different High Courts, to which I am in respectful agreement of, the petitioner cannot now be non-suited, on the score that execution proceedings are pending at Thane. The seat of Arbitration was at Bengaluru. At the time of execution, the assets of the judgment debtor, movable or otherwise, were at Bengaluru. **Therefore, it cannot legally preclude the decree holder to seek an order of filing of assets of the judgment debtor, in compliance with Order XXI Rule 41 of the CPC, in the execution filed before the Court at Bengaluru. The attempt by the respondent to escape scrutiny by shifting its base mid proceedings cannot be countenanced. Such acts far from depriving jurisdiction of a Court would only strengthen the necessity compelling affidavit disclosure.** What was sought in the leased premises was not the premises, but movables inside the premises. Surrendering the lease cannot make the movables vanish overnight. Therefore, the affidavit becomes imperative. The concerned Court has erred in rejecting the application filed by the petitioner in I.A.No.III filed under Order XXI Rule 41 of the CPC.

15. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is **allowed**.
- (ii) The order dated 04-11-2024 passed by the LXXXIII Additional City Civil and Sessions Judge, Commercial Court, Bengaluru on I.A.No.III in Commercial Execution No.541 of 2024 stands quashed.
- (iii) I.A.No.III filed by the petitioner before the concerned Court under Order XXI Rule 41 of the CPC in Com.Ex.No.541 of 2024 is allowed. The judgment debtor shall file its affidavit of assets before the executing Court in the subject proceedings, within an outer limit of 15 days from the date of receipt of a copy of this order.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

bkp
CT:SS