

**HIGH COURT OF TRIPURA
AGARTALA**

CRP 85 of 2022

1. State of Tripura

Represented by the Secretary, Department of PWD,
Government of Tripura,

2. Executive Engineer

PWD (R&B), L.T. Valley Division, Manu, District- Dhalai
Tripura.

-----Petitioner(s)

Versus

Shri Ashes Deb, Contractor,

Son of late Amalendu Deb, Dhaleshwar, Natun Palli, Road No.2,
P.O. Dhaleshwar, Agartala.

-----Respondent(s)

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B E F O R E

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

For the Petitioner(s)
in both the matters.

: Mr. D. Bhattacharya, G.A.
Mr. K. De, Addl. G.A.

For the Respondent(s)
in both the matters.

: Mr. Somik Deb, Sr. Advocate.
Mr. S. Majumder, Advocate.

Date of hearing : **24.11.2022**

Date of delivery of
Judgment & order : **21.12.2022**

Whether fit for reporting :

Yes	No
✓	

J U D G M E N T & O R D E R

These civil revision petitions are directed against the common order dated 20.08.2022 passed by the District Commercial Court, West Tripura, Agartala in case No. Ex (M) 29 of 2021 and Ex (M) 30 of 2021.

[2] The factual context of the case is as under:

In the arbitral proceeding No. 09(SCD) of 2019 in respect of a dispute between Shri Ashes Deb, contractor (petitioner) and the Executive Engineer, Longthorai Division, Public Works Department (R & B) (O.P.)

arising out of work order No. F.8(8)/EE/LTV/D/MANU/3028-39 dated 11.12.2019, Shri Justice S.C. Das, former Judge of the High Court of Tripura was appointed as the sole arbitrator in which the following arbitral award was passed on 29.01.2021:

“In view of the discussion made above, the petitioner is entitled to get Rs.29,33,141/- + Rs.60,93,104/- + Rs.4,70,000+ Rs. 2,00,000, total Rs. 96,96, 245/- out of which, an amount of Rs.5,81,500/-, as decided under Issue No. 7, shall be set off and the amount therefore stands at Rs.96,96,245/- (-) Rs.5,81,500/- = Rs.91,14,745/-, and on this amount, the petitioner is entitled to get interest @ 9% per annum from 04.12.2018.

The payment of awarded amount of Rs.91,14,745/- with 9% interest should be made within 90 days from the date of award along with cost part as awarded under Issue No.6, i.e. Rs. 1,91,743/-. In case of failure to make payment within 90 days, entire amount shall carry interest @12% per annum from 04.12.2018.”

[3] Shri Ashes Deb, being the award holder under the said arbitral award approached the Commercial Court seeking enforcement of the award in terms of Section 36 of the Arbitration and Conciliation Act, 1996 (‘the Arbitration Act’ for short). His application was registered as Ex (M) 30 of 2021. The State-respondent against whom the arbitral award was passed raised objection by filing application under Section 47 CPC which was rejected by the Commercial Court by the impugned order and the State-respondent was directed to pay the whole amount of award to the award holder petitioner.

[4] Similarly, in the other arbitral proceeding No. 10 (SCD) of 2019 in respect of a dispute between the same parties arising out of work order No. F.8(8) (Pt-II)/EE/LTV/D/MANU/3056-66 dated 05.08.2013, Shri

Justice S.C. Das, former Judge of the High Court of Tripura was appointed as the sole arbitrator who passed the following arbitral award on 29.01.2021:

“In view of the issue wise discussion and decision made above, the petitioner is entitled to get Rs.46,19,899/- + Rs.2,20,000/- + Rs.2,37,995/-, total Rs.50,77,894/- out of which, an amount of Rs.12,48,502/-, as decided under Issue No.6, shall be set off and the amount, therefore, stands at Rs. 38,29,392.00/- and on this amount, the petitioner is entitled to get interest @ 9% per annum from 04.12.2018.

The payment of awarded amount of Rs.38,29,392/- should be made within 90 days from the date of award along with cost part as awarded under Issue No.5, i.e. Rs.1,81,722/-. In case of failure to make payment within 90 days, entire amount shall carry interest @12% per annum from 04.12.2018.”

[5] The award holder filed similar application under Section 36 of the Arbitration and Conciliation Act, 1996 before the Commercial Court seeking enforcement of the said arbitral award and the said application was registered as case No. Ex (M) 29 of 2021. The State-respondent filed petition under Section 47 CPC raising objection against the enforcement of the arbitral award which was rejected by the Commercial Court by the common impugned order dated 20.08.2022.

[6] Aggrieved by and dissatisfied with the said order dated 20.8.2022 passed by the District Commercial Court, West Tripura, Agartala, the State has preferred the said civil revision petitions for quashing the impugned order.

[7] Heard Mr. D. Bhattacharya, learned G.A. appearing for the petitioner-State along with Mr. K. De, learned Addl. GA as well as Mr. Somik Deb, learned senior advocate appearing along with Mr. S. Majumder, learned advocate for the respondent.

[8] The executing Court discarded the objection raised by the State counsel under Section 47 CPC mainly on the ground that an arbitral award passed by the arbitrator is final and binding on the parties which can be challenged only on the grounds prescribed under Section 34 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act hereunder) and the application of Section 47 CPC in a proceeding under Section 36 of the Act for enforcement of arbitral award would make Section 34 of the Arbitration Act redundant. The executing court also viewed that Arbitration Act is a self-contained Act and the provisions of CPC will apply only insofar as the same are not inconsistent with the spirit and the provisions of the Arbitration Act. In such view of the matter, the commercial court allowed the petitions filed under Section 36 of the Arbitration Act and passed an order for enforcement of the award. At this juncture, it would be appropriate to reproduce the relevant extract of the impugned order dated 20.08.2022 passed by the District Commercial Court, West Tripura Agartala which reads as under:

“Section 36 of the Arbitration Act though says the award shall be enforced in accordance with the provision of CPC, but

does not, however, envisage granting leave to a party to arbitration proceeding to raise pleas on maintainability of the arbitral award. In my considered opinion once the award has been passed it becomes final where no restraint order is passed in an application for setting aside the award under Section 34 of the Arbitration Act. An arbitral award can only be challenged on the grounds prescribed under Section 34 of the Arbitration Act and subject to the parameters set out in Section 34, an arbitral award passed by the Arbitrator is final and binding on the parties. The term 'in accordance with the CPC' employed in Section 36 cannot be read out of context or inconsistent with the rest of the Sections of Arbitration Act. The application of Section 47 of the CPC in a proceeding for enforcement of arbitral award would leave Section 34 of the Arbitration Act redundant and it will be inconsistent with the scheme of Arbitration Act. In the case of *Pam Developments Private Limited vs State of West Bengal*, Hon'ble the Supreme Court has held that the reference to CPC in Section 36 of the Arbitration Act is only to guide the Court as to what conditions can be imposed by the Court, and the same have to be consistent with the provisions of the Arbitration Act. The Supreme Court further had ruled that the Arbitration Act is a self contained Act, and the provisions of CPC will apply only insofar as the same are not inconsistent with the spirit and the provision of Arbitration Act. The Arbitration Act, therefore, being a self contained code comprehensively deals with all aspects of arbitration and it does not envisage the application of whole gamut of CPC. The CPC can only guide the Court in dealing with the applications under the Arbitration Act. Having regard to Section 34 of the Arbitration Act we cannot go into the merit of the claim and should only deal with the enforcement of the award treating the award as final.....”

[9] The State-counsel appearing for the petitioner has argued that in terms of Section 36 of the Arbitration Act, an award passed by the arbitral tribunal shall have to be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the manner as if it was a decree of the Civil Court. Therefore, any objection filed under Section 47 CPC deserves consideration by the executing court.

[10] Mr. D. Bhattacharya, learned G.A. has strenuously argued that the finding of the executing court that application of Section 47 CPC will make Section 34 of the Arbitration Act redundant is completely erroneous. Counsel contends that in view of the clear mandate of Section 36 of the Arbitration Act, an objection raised under Section 47 CPC is obviously applicable against the enforcement of an arbitral award since such award shall be treated as a decree of the court and it would be executed in the same manner as if it were a decree of the court. State-counsel, therefore, argued that the executing court has erred in declining to accept the objections raised by the State under Section 47 CPC in the execution of the arbitral award and therefore, the impugned order is liable to be set aside.

[11] Mr. Somik Deb, learned senior advocate appearing for the respondent on the other hand, argued that the only recourse available to the party aggrieved by the arbitral award is to approach the Court by filing an application under Section 34 of the arbitration Act for setting aside such award. Counsel argued that the grounds on which an arbitral award can be set aside are clearly laid down under Section 34 of the Arbitration Act. Since, the petitioner-State did not challenge the arbitral award under Section 34 of the Arbitration Act, the award holder moved the Court under Section 36 of the Arbitration Act for enforcement of the award. Mr. Deb, learned senior advocate contends that there is no scope

to entertain an objection raised under Section 47 CPC while the Court exercises power under Section 36 of the Arbitration Act. The executing court can only stay the arbitral award pending disposal of a challenge under Section 34 only if it is satisfied that the arbitration agreement or the making of the award was induced or affected by fraud or corruption otherwise, there is no scope under the law to entertain any challenge against the enforcement of an award under Section 36 of the Arbitration Act. Counsel contends that any application for setting aside an arbitral award under Section 34 of the Arbitration Act has to be made within a period of three months as provided under Sub-Section (3) of Section 34 which is extendable to a further period of 30 days under the proviso to Sub-Section (3) if the applicant can satisfy the court that he was prevented by sufficient cause from making the application within the said period. It is submitted that the court can grant leave to the petitioner to amend such application for raising additional objections only if a petition under Section 34 of the Arbitration Act is filed within a period prescribed under the law. Counsel argues that in the case in hand, since no petition under Section 34 of the Act was filed by the State, it cannot be allowed to raise such objections in a proceeding under Section 36 of the Arbitration Act to resist the enforcement of the arbitral award. Counsel contends that arbitration proceedings being ADR method for settlement of disputes require early/quick resolution particularly, in cases where a money award

is passed. Having referred to the judgment of the Delhi High Court reported in **2008(2) Arb. LR 76 (Delhi) (DB) [S.N. Malhotra & sons vs. Airports Authority of India and others]** and another decision of Delhi High Court reported in **2010(3) Arb. LR 70 (Delhi) [Bhushan Steel Ltd. vs. Singapore International Arbitration Centre and another]**, counsel submits that Section 5 of the Arbitration Act which is aimed at cabining and confining the judicial intervention in the arbitration process, should be strictly construed. Counsel contends that Section 5 begins with a *non obstante* clause and clearly restricts judicial intervention insofar as, matters governed by Part I of the Act are concerned. Such intervention is not permissible except where it is so provided in Part I of the Act which implies that no objection except under the grounds set out under Section 34 in Part I of the Act can be entertained by court. It is argued by the learned counsel of the respondent that the mandate of Section 5 of the Act should be kept in mind while dealing with an application under Section 36 of the Act which is also in Part I of the Arbitration Act. It has been argued by Mr. Deb, learned counsel that no objection was raised by the State against the arbitral award under Section 34 of the Arbitration Act within the time prescribed under Sub-Section (3) of Section 34. Thereafter, the respondent award holder filed the petition under Section 36 seeking enforcement of the award. At this stage, objection raised under Section 47, CPC against execution of the award is untenable and the learned

commercial court had rightly rejected such objections. Counsel, therefore, urges the Court for rejecting the present revision petitions.

[12] Considered the submissions made by learned counsel representing the parties. Perused the entire record.

[13] In the scheme of the Arbitration Act, a challenge against an arbitral award can be made by taking recourse to Section 34 of the Arbitration Act and that too on the grounds set out under Sub-Section (2-A) of section 34 of the Act. It has surfaced from the record that the present petitioner against whom the arbitral awards were made did not prefer any application under Section 34 of the Act. After the time prescribed for filing such application expired, the respondent award holder approached the Court by filing a petition under Section 36 for enforcement of the arbitral award. Only then, the petitioner-State against whom the arbitral awards were passed raised objection under Section 47, CPC. Section 5 of the Arbitration Act clearly provides that *“Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part”*, which implies that the only remedy available to the aggrieved party against whom an arbitral award is passed, is Section 34 of the Arbitration Act. Obviously, the petitioner-State did not avail such remedy to resist the execution within the time prescribed under the

law. Petitioner raised objection to resist the execution only by filing an application under Section 47, CPC despite the specific remedy available under Section 34 of the Arbitration Act. In view of the prohibition imposed under Section 5 of the Act, objection except under Section 34 of the Act is not entertainable.

[14] In this legal and factual background, this Court is of the considered view that the civil revision petitions are devoid of merit. Resultantly, the petitions stand rejected and the case is disposed of.

Stay order, if any, stands vacated and pending application(s), if any, shall also stand disposed of.

(S.G.CHATTOPADHYAY) J