

purpose of vexation or delay or defeating the ends of justice, A Sessions court may also take recourse in this regard to the enabling provision envisaged in Section 312 Cr.P.C. quoted herein before."

52. A perusal of judgment rendered by Hon'ble the Supreme Court in the case of *Dr. Rajesh Talwar & Anr. versus Central Bureau of Investigation & Anr.* reported in (2014)1 SCC 628 relied upon by learned counsel for opposite parties also does not indicate any contrary view being taken. However it only indicates that criminal Courts are not obliged to accede to the request made by accused. However even the said judgment indicates that trial courts are bound by terms of Section 233 (3) Cr.P.C. to refuse such a request only on the ground indicated therein.

53. It is a factor required to be kept in mind that the applicant is facing charges under Sections 302 and 307 IPC which carry the maximum sentence of the death penalty. In such circumstances, widest amplitude is required to be given to the accused in order to substantiate his defence. The seriousness of charge imputed against the applicant cannot be emphasized enough and therefore he would have inherent right under Article 21 of the Constitution of India for his applications to succeed to the extent indicated herein-above.

54. In view of aforesaid facts and circumstances and discussion made, the impugned order dated 17.01.2024 so far as it rejects application no.92/kha and to the extent it rejects application No.91Kha is hereby quashed with regard to the witnesses five, six and for summoning of the record of affidavit of Photo Identification Centre.

55. Trial court shall ensure that process is issued for attendance of witnesses five and six indicated in the

application no.91Kha as also production required in terms of application no. 92Kha/1. Expenses for the same shall be born by the State.

56. Considering aforesaid facts and circumstances, the application under Section 482 Cr.P.C. is *partially allowed* to the aforesaid extent.

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(2024) 11 ILRA 130

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: ALLAHABAD 11.11.2024**

**BEFORE**

**THE HON'BLE NEERAJ TIWARI, J.**

Matters Under Article 227 No. 11516 of 2024

**National Highway Authority of India & Anr.** ...Petitioners

**Versus**

**Jagpal Singh & Ors.** ...Respondents

**Counsel for the Petitioner:**

Shiv Kumar Singh

**Counsel for the Respondents:**

Devansh Misra, C.S.C., Devesh Kumar Verma

**Civil Law-The Arbitration and Conciliation Act, 1996 - Section 4 & 36-** Jurisdiction for

filing execution case lies with the Judgeship of Kanpur or Etawah---Dispute is arising out of acquirement of land of petitioners at District Etawah, meaning thereby, property and assets of the petitioners is situated at there, therefore, even if the office of petitioners is at Kanpur or arbitration award was pronounced at Kanpur, that would make no difference in filing of execution proceeding at Etawah in light of interpretation made by the Hon'ble Apex Court and the provision of CPC as well as Act, 1996 occupying the field--- Undisputedly against an award given at Kanpur, petitioners themselves have preferred appeal under Section 34 of the of the Act, 1996 before District Judge, Etawah,

therefore, petitioners acquiesce their right and their objection is certainly barred by Section 4 of the Act. (E-15)

**List of Cases cited:**

1. Ge Money Financial Services Ltd., New Delhi Vs Mohd. Azaz & anr.): 2013 SCC Online AII 13365
2. Sundaram Finance Ltd. Vs Abdul Samad and Ors.: AIR 2018 SC 956
3. Matter Under Article 227 No. 2704 of 2023 (Bharat Petroleum Corp. Ltd. Mumbai Thru. Territory Manager, Retail Territory-Gonda Vs Anoop Kumar Modi)
4. Cheran Properties Ltd. Vs Kasturi and Sons Ltd. & ors.: (2018) 16 SCC 413
5. Matter Under Article 227 No. 3384 of 2023 (Madhyanchal Vidyut Vitran Nigam Ltd. Thru. Managing Director Vs M/S Shashi Cable Thru. Its Authorized Signatory.

(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard Sri Shiv Kumar Singh, learned counsel for the petitioners, Sri Devansh Misra, learned counsel for the respondent Nos. 1 & 2 and learned Standing Counsel for the respondent No. 3.

2. Brief facts of the case are that land of respondent Nos. 1 & 2 has been acquired for widening of National Highway No. 2 at Maneyamau, Tehsil- Etawah, District- Etawah and in light of Section 3G(2) of the National Highways Act, 1956(hereinafter, referred to as, 'Act, 1956'), amount of compensation has been determined. Section 3G(5) of the Act, 1956 also provides that if either of the parties are not satisfied with the determination of the amount, on an application by either of the parties the amount shall be determined by the arbitrator to be appointed by the Central Government. In the present case,

Additional District Magistrate, Etawah vide order dated 23.12.2016 has fixed the amount of compensation. Against that, petitioners filed arbitration application under Section 3G(5) of the Act, 1956 before the Additional Commissioner, Administration, Kanpur Division, Kanpur, who is the competent authority appointed by the Central Government. Ultimately, the final award was passed vide order dated 05.08.2019. Petitioners also filed restoration application along with delay condonation application dated 17.10.2019 against the order dated 05.08.2019 and the same was rejected vide order dated 06.01.2022. Against the said award, petitioners have preferred Civil Misc. Case No. 64 of 2022 under Section 34(3) of Arbitration and Conciliation Act, 1996(hereinafter, referred to as, 'Act, 1996'), which was also rejected vide order dated 18.07.2023 by the Additional District Judge(POCSO Act), Etawah. Against the order dated 18.07.2023, petitioners preferred Appeal Under Section 37 of Arbitration and Conciliation Act 1996 Defective No. 652 of 2023, delay was condoned vide order dated 21.03.2024 and direction was issued to allot regular number to Appeal. It is undisputed between the parties that till date, no stay or interim order has been passed upon the aforesaid appeal filed by the petitioner.

3. Now, respondent Nos. 1 and 2 have preferred execution of award before the District Judge, Etawah, which was transferred to Additional District Judge, Etawah and numbered as Execution Case No. 46 of 2023. In the said case, petitioner has filed objection, numbered as 17Ga raising the issue of jurisdiction of the court, which was objected by the respondent Nos. 2 & 3 by filing rebuttal numbered as Paper No. 18Ga. The objection of petitioners has

been rejected vide order dated 05.08.2024. Hence present petition.

4. Sri, Shiv Kumar Singh, learned counsel for the petitioners submitted that office of respondent No. 1 is situated at Kanpur and from there it carries its business. Further, arbitration also took place at Kanpur, therefore, Section 36 of the Act, 1996 and provisions of CPC would be applicable and jurisdiction of execution case shall lie with the District Judge, Kanpur.

5. In support of his contention, he placed reliance upon the judgment of Hon'ble Apex Court in the matter of *Sundaram Finance Limited Vs. Abdul Samad and Ors.: AIR 2018 SC 956*, judgment of this Court in the matter of *Ge Money Financial Services Ltd., New Delhi Vs. Mohd. Azaz & Anr): 2013 SCC Online AII 13365* and judgment of High Court of Delhi in the matter of *Daelim Industrial Co. Ltd. Vs. Numaligarh Refinery Ltd.: MANU/DE/1316/2009*.

6. Per contra, Sri Devansh Misra, learned counsel for the respondent Nos. 1 & 2 vehemently opposed the submission raised by learned counsel for the petitioners and submitted that against the said award, petitioners have preferred Civil Misc. case No. 64 of 2022 under Section 34(3) of the Act, 1996, which was rejected vide order dated 18.07.2023. Once he has filed appeal before the District Judge, Etawah under Section 34 of the Act 1996, he acquiesces the jurisdiction with the District Judge, Etawah, therefore, in light of Section 4 of the Act, 1996, now he has waived of his right to objection. He further submitted that the very same issue was before the Hon'ble Apex Court and many other Courts. He also pointed out that in light of Section 32

of the Act, 1996, arbitral proceeding shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section(2). In the present case, undisputedly, arbitral proceeding has been terminated after pronouncement of award, therefore, Section 42 of the Act, 1996 about the jurisdiction would not be applicable for filing of execution proceeding. He next submitted that so far as Section 36 of the Act 1996 is concerned, it is a deeming provision in light of other provisions of the Act, 1996 and the interpretation made by the court, therefore, provision of CPC would not be applicable in the present case.

7. In support of his contention, he placed reliance upon the judgment of Hon'ble Apex Court in the matters of *Sundaram Finance Limited(Supra) & Cheran Properties Limited Vs. Kasturi and Sons Limited and Others: (2018) 16 SCC 413*, and judgment of this Court in the matters of *Ge Money Financial Services Ltd.(Supra), Matter Under Article 227 No. 2704 of 2023 (Bharat Petroleum Corporation Ltd. Mumbai Thru. Territory Manager, Retail Territory-Gonda Vs. Anoop Kumar Modi), Matter Under Article 227 No. 3384 of 2023 (Madhyanchal Vidyut Vitran Nigam Ltd. Thru. Managing Director Vs. M/S Shashi Cable Thru. Its Authorized Signatory*.

8. I have considered the submission so advanced by learned counsel for the parties and perused the record as well as judgments relied upon.

9. The facts of the case are undisputed and the only issue before the Court is, as to whether jurisdiction for filing execution case lies with the Judgship of Kanpur or Etawah, which is a pure legal question, therefore, with the consent of the counsel

for the parties, petition is being decided at the admission stage itself without calling for the counter.

10. Allahabad High Court in the matter of *Ge Money Financial Services Ltd.(Supra)* has taken the view that award can be executed by the court, in whose jurisdiction judgment debtor resides, carries on business or his property is situated. For execution of arbitral award, issue of jurisdiction has travelled before different High Courts and diverse views have been taken by the Courts. One view is that, transfer of decree is first to be obtained before filing of execution before the court, where the assets are located and another view is that execution for award can be filed before the court, where the assets of the judgment debtor are located and for that, no transfer decree is required. Ultimately, the matter went up to Hon'ble Supreme Court in the matter of *Sundaram Finance Limited (Supra)*. Relevant paragraph of the said judgment are being quoted hereinbelow:

*"1. The divergence of legal opinion of different High Courts on the Iquestion as to whether an award under the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'said Act') is required to be first filed in the court having jurisdiction over the arbitration proceedings for execution and then to obtain transfer of the decree or whether the award can be straightway filed and executed in the Court where the assets are located is required to be settled in the present appeal.*

***The Conflicting Views:***

***A. The transfer of decree should first be obtained before filing the execution petition before the Court where the assets are located:***

***B. An award is to be enforced in accordance with the provisions of the said Code in the same manner as if it were a decree of the Court as per Section 36 of the said Act does not imply that the award is a decree of a particular court and it is only a fiction. Thus, the award can be filed for execution before the court where the assets of the judgment debtor are located:***

***Our View:***

6. *In order to appreciate the controversy, we would first like to deal with the provisions of the said Code and the said Act.*

7. *Part II of the said Code deals with execution proceedings. Section 37 of the said Code defines the 'Court', which passed the decree. Section 38 of the said Code provides as to by which court the decree would be executed and reads as under:*

***"38. Court by which decree may be executed. – Adecree may be executed either by the Court which passed it, or by the Court to which it is sent for execution."***

8. *Section 39 of the said Code provides for transfer of decree and reads as under:*

***"39. Transfer of decree. – (1)The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court [of competent jurisdiction],-***

*(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or*

*(b) if such person has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has*

property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed the decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

[(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.]

[(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.]”

9. One of the relevant provisions, the effect of which has not been really discussed in any of the judgments referred to aforesaid is Section 46 of the said Code which defines Precepts as under:

“46. **Precepts.** – (1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

*Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.*

10. The relevance of the aforesaid provision is that the application of the decree holder is made to the Court which passed the decree, which issues the precepts to any other Court competent to execute the said decree. As noticed, the expression “the Court which passed the decree” is as per Section 37 of the said Code. We may note at this stage itself that in the case of an award there is no decree passed but the award itself is executed as a decree by fiction. The provisions of the said Act traverse a different path from the Arbitration Act, 1940, which required an award made to be filed in Court and a decree to be passed thereon whereupon it would be executable.

11. Now turning to the provisions of Order XXI of the said Code, which deals with execution of decrees and orders. In case a Court desires that its own decree is to be executed by another court, the manner for doing so is provided by Rule 6, which reads as under:

#### **“21 – Execution of Decrees and Orders**

xxxx xxxx xxxx xxxx xxxx

6. Procedure where court desires that its own decree shall be executed by another court.- The court sending a decree for execution shall send—

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been

obtained by execution within the jurisdiction of the court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

12. The manner of presentation of an application is contained in Rule 11(2) of Order XXI, which reads as under:

**“21- Execution of Decrees and Orders**

xxxx xxxx xxxx xxxx xxxx

**11. (2) Written application**—Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:—

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree; (
- d) whether any appeal has been preferred from the decree;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(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 detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.”

13. A perusal of the aforesaid shows that what is sought to be disclosed is that the details like the number of suits, appeal against the decree, etc. find a place, which really does not have a relevance to the fiction of an award to be treated as a decree of the Court for purposes of execution.

14. We would now like to refer to the provisions of the said Act, more specifically Section 36(1), which deals with the enforcement of the award:

**“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 to 1908), in the same manner as if it were a decree of the court.”

The aforesaid provision would show that an award is to be enforced in accordance with the provisions of the said code in the same manner as if it were a decree. It is, thus, the enforcement

*mechanism, which is akin to the enforcement of a decree but the award itself is not a decree of the civil court as no decree whatsoever is passed by the civil court. It is the arbitral tribunal, which renders an award and the tribunal does not have the power of execution of a decree. For the purposes of execution of a decree the award is to be enforced in the same manner as if it was a decree under the said Code.*

15. Section 2(e) of the said Act defines 'Court' as under:

"2. Definitions.

..... xxxx xxxx xxxx xxxx xxxx

(e) "**court**" means –

(i) *in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;*

(ii) *in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]*"

16. *The line of reasoning supporting the award to be filed in a so-called court of competent jurisdiction and then to obtain a transfer of the decree is primarily based on the jurisdiction clause found in Section 42, which reads as under:*

"42. **Jurisdiction.** –

*Notwithstanding anything contained*

*elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."*

*The aforesaid provision, however, applies with respect to an application being filed in Court under Part I. The jurisdiction is over the arbitral proceedings. The subsequent application arising from that agreement and the arbitral proceedings are to be made in that court alone.*

17. However, what has been lost sight of is Section 32 of the said Act, which reads as under:

"32. **Termination of proceedings.**— (1) *The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).*

(2) *The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—*

(a) *the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,*

(b) *the parties agree on the termination of the proceedings, or*

(c) *the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.*

(3) *Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings."*

*The aforesaid provision provides for arbitral proceedings to be terminated by the final arbitral award. Thus, when an award is already made, of which execution is sought, the arbitral proceedings already stand terminated on the making of the final award. Thus, it is not appreciated how Section 42 of the said Act, which deals with the jurisdiction issue in respect of arbitral proceedings, would have any relevance. It does appear that the provisions of the said Code and the said Act have been mixed up.*

*18. It is in the aforesaid context that the view adopted by the Delhi High Court in Daelim Industrial Co. Ltd. v. Numaligarh Refinery Ltd.<sup>12</sup> records that Section 42 of the Act would not apply to an execution application, which is not an arbitral proceeding and that Section 38 of the Code would apply to a decree passed by the Court, while in the case of an award no court has passed the decree.*

*19. The Madras High Court in Kotak Mahindra Bank Ltd. v. Sivakama Sundari & Ors.<sup>13</sup> referred to Section 46 of the said Code, which spoke of precepts but stopped at that. In the context of the Code, thus, the view adopted is that the decree of a civil court is liable to be executed primarily by the Court, which passes the decree where an execution application has to be filed at the first instance. An award under Section 36 of the said Act, is equated to a decree of the Court for the purposes of execution and only for that purpose. Thus, it was rightly observed that while an award passed by the arbitral tribunal is deemed to be a decree under Section 36 of the said Act, there was no deeming fiction anywhere to hold that the Court within whose jurisdiction the arbitral award was passed should be taken to be the Court, which passed the decree. The said Act actually transcends all territorial barriers.*

### **Conclusion**

*20. We are, thus, unhesitatingly of the view that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceedings.*

11. While deciding the issue, the Court has also considered the scope of Section 36 of the Act, 1996 upon which, learned counsel for the petitioners has placed reliance. The Court has taken a specific view that while award passed by arbitral tribunal is deemed to be a decree under Section 36 of the Act, 1996 and there was no deeming fiction anywhere to hold that the court within whose jurisdiction the arbitral award was passed, should be taken to be the court which passed the decree. In fact the Act transcends all territorial barriers and lastly the Court has held that execution may be filed anywhere in the country, where the decree may be executed and there is no requirement for obtaining transfer of decree from the Court.

12. This issue again came up before Full Bench of Apex Court for consideration in the matter of **Cheran Properties Limited(Supra)** and the Apex Court has affirmed the view taken in the matter of **Sundaram Finance Limited(Supra)**. Relevant paragraphs of the said judgment are being quoted hereinbelow:

*“39. The reliance which has been sought to be placed on the provisions of Section 42 of the 1996 Act is inapposite. Dr Singhvi relied on the decision in State of West Bengal v Associated Contractors<sup>20</sup>. The principle which was enunciated in the judgment of this Court was as follows:*

*“24. If an application were to be preferred to a court which is not a Principal Civil Court of original jurisdiction in a district or a High Court exercising original jurisdiction to decide questions forming the subject matter of an arbitration if the same had been the subject matter of a suit, then obviously such application would be outside the four corners of Section 42. If, for example, an application were to be filed in a court inferior to a Principal Civil Court, or to a High Court which has no original jurisdiction, or if an application were to be made to a court which has no subject-matter jurisdiction, such application would be outside Section 42 and would not debar subsequent applications from being filed in a court other than such court.”*

*The conclusion of the Court is in the following terms:*

*“25...(a) Section 2(1)(e) contains an exhaustive definition marking out only the Principal Civil Court of Original Jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as “court” for the purpose of Part I of the Arbitration Act, 1996.*

*(b) The expression “with respect to an arbitration agreement” makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an award is pronounced under Part I of the 1996 Act.*

*(c) However, Section 42 only applies to applications made under Part I if they are made to a court as defined. Since applications made under Section 8 are made to judicial authorities and since applications under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined,*

*such applications would be outside Section 42.*

*(d) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.*

*(e) In no circumstances can the Supreme Court be “court” for the purposes of Section 2(1)(e), and whether the Supreme Court does or does not retain seisin after appointing an arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil Court having original jurisdiction in the district, as the case may be.*

*(f) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part I.*

*(g) If a first application is made to a court which is neither a Principal Court of Original Jurisdiction in a district or a High Court exercising original jurisdiction in a State, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject-matter jurisdiction would be outside Section 42.*

*40. More recently in Sundaram Finance Limited v Abdul Samad<sup>21</sup>, this Court considered the divergence of legal opinion in the High Courts on the question as to whether an award under the 1996 Act is required to be first filed in the Court having jurisdiction over the arbitral proceedings for execution, to be followed by a transfer of the decree or whether the award could be filed and executed straight-away in the Court where the assets are located. Dealing with the provisions of Section 36, Justice Sanjay Kishan Kaul observed thus:”*

“14. The aforesaid provision would show that an award is to be enforced in accordance with the provisions of the said code in the same manner as if it were a decree. It is, thus, the enforcement mechanism, which is akin to the enforcement of a decree but the award itself is not a decree of the civil court as no decree whatsoever is passed by the civil court. It is the arbitral tribunal, which renders an award and the tribunal does not have the power of execution of a decree. For the purposes of execution of a decree the award is to be enforced in the same manner as if it was a decree under the said Code.”

“16. The aforesaid provision, however, applies with respect to an application being filed in Court under Part I. The jurisdiction is over the arbitral proceedings. The subsequent application arising from that agreement and the arbitral proceedings are to be made in that court alone.

17. However, what has been lost sight of is Section 32 of the said Act, which reads as under:

**“32. Termination of proceedings.—** (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of CIVIL APPEAL No.1650 of 2018 Page 17 of 21 the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or (c) the arbitral tribunal finds that the continuation

of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.”

The aforesaid provision provides for arbitral proceedings to be terminated by the final arbitral award. Thus, when an award is already made, of which execution is sought, the arbitral proceedings already stand terminated on the making of the final award. Thus, it is not appreciated how Section 42 of the said Act, which deals with the jurisdiction issue in respect of arbitral proceedings, would have any relevance..”

Consequently, in the view of the Court, the enforcement of an award through its execution can be initiated anywhere in the country where the decree can be executed and there is no requirement of obtaining a transfer of the decree from the Court which would have jurisdiction over the arbitral proceedings.

13. Following the judgments of Hon’ble Apex Court, similar view has also been taken by the Allahabad High Court in the matter of **Madhyanchal Vidyut Vitran Nigam Ltd.(Supra)**. Relevant paragraph of the said judgment is being quoted hereinbelow:

“12. From the judgments delivered by the Counsel for the parties and referred above, the Executing Court having jurisdiction to execute the award can be any court anywhere in the Country, where the decree can be executed and thus in view of the law expounded in the case of **Cheran Properties Limited (Supra)**, I have no hesitation in holding that the objection of the petitioner that the Court at Lucknow had no jurisdiction loses its relevance and is worthy of rejection. Thus, on the ground

*of jurisdiction, the argument of the Counsel for the petitioner cannot be sustained as there is no error or infirmity in the order impugned dated 10.03.2023 passed by the Commercial Court, Lucknow and the same is upheld.”*

14. In the matter of ***Bharat Petroleum Corporation Ltd.(Supra)*** Allahabad High Court has taken the very same view.

15. Now coming to the present case. It is undisputed that the dispute is arising out of acquirement of land of petitioners at District Etawah, meaning thereby, property and assets of the petitioners is situated at there, therefore, even if the office of petitioners is at Kanpur or arbitration award was pronounced at Kanpur, that would make no difference in filing of execution proceeding at Etawah in light of interpretation made by the Hon’ble Apex Court and the provision of CPC as well as Act, 1996 occupying the field. Therefore, this Court is of the firm view that impugned order is very well in conformity of the law laid down by the Hon’ble Apex Court.

16. Now coming to the another argument of the learned counsel for the petitioners about the acquiescing the right to raise objection about the jurisdiction. Undisputedly against an award given at Kanpur, petitioners themselves have preferred appeal under Section 34 of the of the Act, 1996 before District Judge, Etawah, therefore, petitioners acquiesce their right and their objection is certainly barred by Section 4 of the Act, 1996. He cannot raise these objections at this stage.

17. Therefore, on both counts, I found no illegality or infirmity in the impugned order dated dated 05.08.2024.

18. Petition lacks merit and is hereby **dismissed.**

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**(2024) 11 ILRA 140**  
**APPELLATE JURISDICTION**  
**CRIMINAL SIDE**  
**DATED: ALLAHABAD 05.11.2024**

**BEFORE**

**THE HON’BLE SIDDHARTHA VARMA, J.**  
**THE HON’BLE VINOD DIWAKAR, J.**

Criminal Appeal No. 748 of 1983

**Ram Krishna** **...Appellant**  
**State of U.P.** **...Respondent**  
**Versus**

**Counsel for the Appellant:**  
N.K. Saxena, Ashok Kumar Dwivedi, Ram Kishore Gupta

**Counsel for the Respondent:**  
K.P. Shukla, A.G.A.

**(A) Criminal Law - Criminal Procedure Code, 1973 - Sections-161, 207 & 313 - Indian Penal Code,1860 - Section 302 - Arms Act,1959 - Sections – 25, 25(1)(a) & 25(1)(b) - Appeal – against conviction & sentence – offence of murder – FIR – allegation that, when the accused called the deceased son of informant from his house and when he reached at door he shot at and died on spot - investigation – trial by session judge – conviction & sentence – benefit of doubt - Evaluation of evidence - court finds that, in the light of finding of trial court its becomes imperative to examine the witness on two aspects – firstly motive & secondly the act performed by the accused in commission of crime - the motive behind the commission of murder according to PW-1 (informant, father of deceased) that despite reprimand the deceased kept working with Bhagwan Singh with whom he had animosity – convention is based solely on the testimony of PW-1 and PW-3 – PW -1 in stated that the incident was witnessed/seen by Murlidhar, Ram Ratan, Ram Asrey, Chaman, Rafiq, but filed to justify except Ram Asrey (PW-**