

(2015) 03 DEL CK 0012

Delhi High Court

Case No: E.A. (OS) No. 169/2013 in Ex. P. No. 322/2012

Ssangyong
Engineering and
Construction Co. Ltd.

APPELLANT

Vs

Yograj Infrastructure
Ltd.

RESPONDENT

Date of Decision: March 27, 2015

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 47, 48, 48(2)(b)
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 11(2), Order 21 Rule 11(2)(j)(i), Order 21 Rule 3, Order 21 Rule 30, Order 21 Rule 31
- General Clauses Act, 1897 - Section 3(26), 3(36)
- Transfer of Property Act, 1882 - Section 3

Hon'ble Judges: Manmohan Singh, J.

Bench: Single Bench

Advocate: Navin Kumar and Rashmeet Kaur, for the Appellant; Dinesh Agnani, Sr. Adv., Siddharth Khattar and Faisal Zafar, Advs. for J.D. and V. Sudeer, Advocates for the Respondent

Final Decision: Disposed off

Judgement

Manmohan Singh, J.

The decree holder has filed the present execution petition under Section 47 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") for enforcement of the partial award dated 30th June, 2011 and the final award dated 24th August, 2012 against the judgment debtor passed by the Arbitral Tribunal duly appointed by the Singapore International Arbitration Centre (SIAC) as per terms agreed between the parties. As per the SIAC Rules, all partial awards and final awards are independently enforceable. The following reliefs are sought by the decree holder in the main execution.

"(a) By passing a decree in favour of the petitioner for a sum of Rs. 153,60,09,837/- alongwith interest at the rate of 12% on the said amount till realization of the decretal amount.

(b) By passing orders for warrants of attachment in relation to all movable and immovable assets of the respondent including office equipment, furniture, computers etc. inter alia at their address - B-63, Paschimi Marg, Vasant Vihar, New Delhi-110057.

(c) Pass an ex-parte order freezing/attachment of all bank accounts of the respondent, Yograj Infrastructure Ltd. including the bank account held with Syndicate Bank at New Delhi as stated in Annexure II serial No. 2 of this Execution Petition.

(d) Appoint a Bailiff/Receiver on such terms and conditions as this Hon"ble Court may deem fit to take possession of all assets including Bank accounts, PMEs, aggregates of the respondent and/or sell the same towards realization of the amount payable under the award/decreed.

(e) Direct the respondent to hand over to the petitioner all PMEs of the petitioner as listed out in Schedule A of the Partial Award dated 30.06.2011 and also the aggregates of 274,580 cu. m. in accordance with the Partial Award dated 30.06.2011 and/or appoint a Bailiff/Receiver in respect thereof.

(f) Restrain respondent from selling, alienating or parting with the possession of any movable or immovable property including aggregates (of 274,580 cu. m.) as per the Partial Award dated 30.06.2011 including claims or monies owed or payable to it by any means/source including by way of charge, hypothecation, pledge, mortgage or gift.

(g) The petitioner be given liberty to claim such further amounts as may be due towards costs and interest for payment(s) made subsequent to filing of the Execution Petition till the date of recovery of all amounts decreed.

(h) Direct the respondent to produce a list or file an affidavit disclosing details of all moveable and immovable assets including their situs.

(i) Direct the respondent to deposit security with this Hon"ble Court in the amount awarded by the Arbitral Tribunal."

2. By this order, I propose to decide the pending application being Ex. A. No. 169/2013 filed by the decree holder who is seeking a limited relief under the partial award dated 30th June, 2011 of Arbitral Tribunal (which has now become final) to take the possession of two equipments, namely the Hot Mix Plant and the Crusher Plant which are presently lying in possession of the judgment debtor.

3. As mentioned above, the decree holder has filed the present execution petition for enforcement of the Partial Award dated 30th June, 2011 against the judgment

debtor mainly on the reason that the judgment debtor is a company which is registered in Delhi who is carrying on business in Delhi. The nature of the relief sought by the decree holder is a direction against the judgment debtor company to deliver/handover the possession of two of the decree holder's movable properties lying in judgment debtor's possession as directed in the said Partial Award. It is admitted by the judgment debtor that judgment debtor company is carrying on business in Delhi and is also making gain within the jurisdiction of this Court.

4. The brief facts are that the decree holder was awarded a contract by the NHAI for the construction and rehabilitation of the National Highway-26 from K.M. 297 to K.M. 351 on NH-26 in the State of Madhya Pradesh vide an agreement dated 12th April, 2006. It was alleged by the decree holder that the judgment debtor vide agreement dated 13th August, 2006. The finding arrived in the award that the judgment debtor has failed to perform the work as well as failed to fulfill its obligation as agreed under the contract, despite in the interest of the project, the decree holder funded a large amount to the judgment debtor for completion work under the contract who failed to show any improvements in the progress of the work and as a result, the work was delayed and the decree holder suffered huge losses because of the conduct of the judgment debtor. The decree holder thus terminated the contract with the judgment debtor and invoked arbitration proceedings under the SIAC Rules as per agreed terms for recovery of its dues and equipment from the judgment debtor.

5. The Arbitral Tribunal framed the Memorandum of Issues (MOI) consisting of 8 issues/disputes arising in the said proceedings. One of the issue was related to the title and ownership of the 23 items of PMEs listed in Schedule-A of the said MOI, which included the Hot Mix Plant and the Crusher Plant of the decree holder.

6. During the pendency of the arbitral proceedings, the Arbitral Tribunal gave a partial award dated 30th June, 2011 with respect to the title and ownership of the said PME's lying with the judgment debtor and the stockpile(s) of aggregate lying at the sites of the judgment debtor in Madhya Pradesh.

7. In the partial award dated 30th June, 2011 inter alia held that the decree holder has the exclusive title and ownership of each of the 23 items of PMEs listed in Schedule A of the MOI and directed the judgment debtor to handover possession of all the listed items to the decree holder. With respect to the 274,580 cu. m. of aggregate, the Arbitral Tribunal also held that the judgment debtor is the owner of the aggregate, but directed the judgment debtor to forthwith handover the possession of the aggregate to the decree holder so as to enable the decree holder to complete the work. The relevant portion of Partial Award dated 30th June, 2011 is reproduced as under :

"i) The Tribunal hereby determines, in answer to Issue 8.1, that SSY (the Decree Holder) has the exclusive title to and ownership of each of the 23 Items of PMEs

(Plant, Machinery, Equipments) listed in Schedule A of the MOI.

ii) The Tribunal hereby directs YIL (the Judgment Debtor) to forthwith hand over possession to SSY of any of the subject Item of PME's still held by YIL."

The above Award declares the DH as "exclusive owner" of the PME's, and directs the judgment debtor to forthwith handover possession of the PME's to the decree holder."

8. The judgment debtor has already handed over 21 items out of the total 23 items mentioned in Schedule A to the MOI of the partial award but has not handed over the Hot Mix Plant and Crusher Plant to the decree holder till date.

9. As per decree holder that the said Hot Mix Plant and the Crusher Plant are vital equipments needed for construction of roads and highways. The project in question is lying completely stalled as the decree holder is not able to use the Hot Mix Plant and the Crusher Plant to generate aggregate and laying material for construction of the highway.

10. The contention of the decree holder is that in order to avoid any further delay in completion of the highway construction, as the decision of the execution may take some time, therefore, limited prayer is sought in the present application to the extent to seek the possession of the two equipments which are lying at the judgment debtor's place at Chawarpatha Site in Madhya Pradesh.

11. The Arbitral Tribunal has expressly held in the partial award dated 30th June, 2011 that the decree holder has exclusive title to and ownership of each of the 23 items of PME's listed in Schedule A of the MOI (including the said Hot Mix Plant and the Crusher Plant), and has directed the judgment debtor to handover possession of the said PME's to the decree holder forthwith.

12. The judgment debtor has filed the objections to the execution as well as opposed the prayer in the application. Mr. Dinesh Agnani, learned senior counsel appearing on behalf of the judgment debtor, has made his submissions. His arguments are outlined as under:

"i. His first submission is that under the provision of Order XXI Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC), this Court has no jurisdiction to seek the possession by way of direction of personal obedience as the equipments are lying outside the jurisdiction of this Court. The decree in this regard cannot be executed under the provision of Order XXI Rule 3 CPC.

ii. He has also referred the provision of sub-section 4 of section 39 of the CPC which mandates to the executing Court to desist from proceeding against a property situated outside its jurisdiction. Thus, he says that there is no force in the submission of the decree holder that in order to execute the decree through personal obedience the territorial jurisdiction is a condition precedent for a Court to

execute the award.

iii. He further submits that the provision referred by the decree holder i.e. Order XXI Rule 11(2)(j)(i) of CPC read with Section 51A CPC does not help the case of the decree holder as the same does not pertain to territorial jurisdiction.

iv. It is also argued by Mr. Agnani that said equipments are immovable properties and at many places the decree holder has also admitted the same.

v. The award itself is not enforceable. The relief sought cannot be granted."

After making said submissions his prayer is that the decree holder is liable to approach the Court which has the jurisdiction rather the frivolous plea is taken by the decree holder before this Court.

13. During the course of the argument, no doubt, it was also alleged by the learned counsel for the decree holder that even the execution is filed in Madhya Pradesh, there the judgment debtor would raise its objection on reverse side. As the decree is enforced on the basis of personal obedience therefore, M.P. Court would not have a territorial jurisdiction. On this, Mr. Dinesh Agnani, learned Senior counsel appearing for judgment debtor made his submission that his client would not raise any objection about the territorial jurisdiction if the execution is filed in Madhya Pradesh. Even an affidavit by way of undertaking was filed, however, later on, learned counsel appearing on behalf of decree holder did not agree as his submission that once the execution is filed in the Court who has no jurisdiction in this regard ultimately may not pass an order having no jurisdiction and it is immaterial even no objection is raised by the judgement debtor. The consent between the parties has no consequence even otherwise, the court has no jurisdiction.

14. Let me now deal with the submissions of Mr. Dinesh Agnani as well as counsel appearing on behalf of bank. Both have also filed the objections. It is undisputed fact that the partial award dated 30th June, 2011 was challenged by the judgment debtor before the District Court, Madhya Pradesh who dismissed the objection. The High Court of Madhya Pradesh has also confirmed the said award so as the Supreme Court. The said award was also not challenged by judgment debtor has either in Singapore or under any other proceedings. Therefore, the Partial Award has become final and binding against the judgment debtor.

15. First objection of Mr. Agnani is that the equipments are immovable properties. No doubt the pleadings of the decree holder are contrary. However, in many places the decree holder has mentioned that it is a immovable property. The said aspect has been dealt with by the Supreme Court in the case of [Commissioner of Central Excise, Ahmedabad Vs. Solid and Correct Engineering Works and Others](#), . Paras 21 to 25 and 31 read as under:

"21. The expression "movable property" has been defined in Section 3(36) of the General Clauses Act, 1897 as under:

"3. (36) "movable property", shall mean property of every description, except immovable property;"

From the above it is manifest that the answer to the question whether the plants in question are movable property, would depend upon whether the same are immovable property. That is because anything that is not immovable property is by this very definition extracted above "movable" in nature.

22. Section 3 of the Transfer of Property Act, 1882 does not spell out an exhaustive definition of the expression "immovable property". It simply provides that unless there is something repugnant in the subject or context, "immovable property" under the Transfer of Property Act, 1882 does not include standing timber, growing crops or grass. Section 3(26) of the General Clauses Act, 1897 similarly, does not provide an exhaustive definition of the said expression. It reads:

"3. (26) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;"

23. It is not the case of the respondents that plants in question are per se immovable property. What is argued is that they become immovable as they are permanently imbedded in earth inasmuch as they are fixed to a foundation imbedded in earth no matter only 1 1/2 ft deep. That argument needs to be tested on the touchstone of the provisions referred to above.

24. Section 3(26) of the General Clauses Act includes within the definition of the term "immovable property" things attached to the earth or permanently fastened to anything attached to the earth. The term "attached to the earth" has not been defined in the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, however, gives the following meaning to the expression "attached to the earth":

"(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;"

25. It is evident from the above that the expression "attached to the earth" has three distinct dimensions viz. (a) rooted in the earth as in the case of trees and shrubs, (b) imbedded in the earth as in the case of walls or buildings, or (c) attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached. Attachment of the plant in question with the help of nuts and bolts to a foundation not more than 1 ft deep intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as

attached to the earth under any one of the three clauses extracted above. That is because attachment of the plant to the foundation is not comparable or synonymous to trees and shrubs rooted in earth. It is also not synonymous to imbedding in earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be detached without demolition. Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can be easily detached from the foundation. So also the attachment of the plant to the foundation at which it rests does not fall in the third category, for an attachment to fall in that category it must be for permanent beneficial enjoyment of that to which the plant is attached. It is nobody's case that the attachment of the plant to the foundation is meant for permanent beneficial enjoyment of either the foundation or the land in which the same is imbedded.

31. Applying the above tests to the case at hand, we have no difficulty in holding that the manufacture of the plants in question do not constitute annexation hence cannot be termed as immovable property for the following reasons:

(i) The plants in question are not per se immovable property.

(ii) Such plants cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.

(iii) The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.

(iv) The setting up of the plant itself is not intended to be permanent at a given place. The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed."

16. It is apparent in view of the settled law that the equipments are movable properties and there is no force in the submission of Mr. Dinesh Agnani that they are immovable properties. The said submission is accordingly rejected.

17. The second objection is that the equipments cannot be exclusive property of the decree holder. The objection is argued by the counsel appearing on behalf of the bank. The contention of the Objector Bank is that judgment debtor had taken huge loan amounts from the Bank to purchase various construction equipments, including Crusher Plant as well as Hot-mix Plant, which were purchased by the judgment debtor and hypothecated to the Objector Bank. It is stated that since the judgment debtor failed to repay the loan amount, the Objector Bank, the Bank has initiated recovery proceedings and has charge over the equipments of the judgment debtor, which in the Bank's erroneous opinion extends to the equipments of the decree holder as well.

18. In order establish its lien/charge over the decree holder's PMEs, the Objector-Bank has filed an Affidavit dated 21st February, 2014 and placed on record four (4) Hypothecation Agreements between the Bank and the judgment debtor (not related to the decree holder), along with some invoices and other documents to show the machineries and equipments (only Crusher Plant) were purchased by the judgment debtor in their name and are said to be hypothecated to the Bank. There is no document filed by the Objector-Bank (or even the judgment debtor) to show that any Hot-mix Plant was ever purchased by the judgment debtor on its own or with the loan taken from the Objector-Bank. Even otherwise the judgment debtor has not challenged the specific findings in the Partial Award regarding the decree Holder's title and ownership in respect of the Crusher Plant and Hot-mix Plant.

19. The decree holder had placed before the Arbitral Tribunal all documentary evidence, like Invoices, Bills of Lading and Payment Advices on the basis of which the Arbitrator has conclusively held that all the PMEs, including the Crusher Plant and the Hot-mix Plant were purchased by the decree holder with its own funds and in its own name. The judgment debtor had not filed any such document, nor claimed to have purchased the said PMEs before the Arbitral Tribunal. To the contrary, the judgment debtor only claimed "transfer of the ownership/title in the Crusher Plant and Hot-mix Plant by way of equitable set-off" on the basis that it had invested some amount in installation of the equipments at Site.

20. All the invoices and documents filed by the Bank (never filed on record by the judgment debtor at any stage) would show that-

"(a) the said Invoices are completely different in terms of their number, dates, type of equipment supplied, the name of the Buyer, the party paying for the consignment, the Consignee of the equipments, the value of the equipments, the terms of payment, the Bank through which the payments were made, etc. from the Invoices of the Decree Holder through which it had purchased the Crusher Plant and the Hot-mix Plant in question.

(b) in all the Invoices filed by the Bank in support of its claim it shows that in fact the JD itself was the "Buyer" and the "Consignee" and the payments have been routed through the Objector-Bank. The Invoices filed by the Bank do not show any relationship of the Decree Holder with the said equipments purchased by the JD. The Arbitrator that the Crusher Plant and the Hot-mix Plant in question were purchased by the Decree Holder in its own name through the loan taken from the Arab Bank P.I.C. In the Invoices of the DH, the "Buyer" as well as the "Consignee" is the DH only. Even the dates of the DH's Invoices are different from the Invoices through which the JD is stated to have purchased its equipments. The DH had filed the Invoices before the Ld. Arbitrator and also filed in these proceedings."

21. The following details of Invoices of the decree holder as against the Invoices of judgment debtor filed by the Objector-Bank would clearly establish that the

equipment purportedly purchased by the judgment debtor with the loan amount of the Bank are completely different and distinct and the Objector-Bank cannot claim any lien over the Crusher Plant and Hot-mix Plant purchased by the decree holder with its own funds and as held in the Partial Award -

22. Even after examining the evidence, the Arbitrator has held that the decree holder had purchased the Crusher Plant and Hot-mix Plant with all their supporting parts with its own funds and in their own name, and that it is rightly considered by the decree holder that the said equipments were neither purchased by the judgment debtor, nor the title thereof was at any time transferred to the judgment debtor. The said award is attained finality, thus, there is no force in the submission of judgment debtor and objectors i.e. Bank's Claim on the PMEs is also misconceived as neither the Objector-Bank, nor the judgment debtor has filed any document on record to establish as to how, when and in what manner were the Crusher Plant and the Hot-mix Plant of the decree holder hypothecated by the judgment debtor in favour of the Objector-Bank.

23. In view of the above facts and reasons, the contention of the judgment debtor as well as the objector bank is totally misconceived. Prima facie it appears to the Court that the decree holder is the exclusive owner of the equipments which is also held in the Partial Award in question which has attained finality.

24. Third objection of the judgement debtor is that the execution itself is not maintainable and such order prayed for cannot be passed has also prima facie no force as the findings in the Partial Award have become final and binding against the judgment debtor and the judgment debtor has not challenged the said Partial Award become any court of competent jurisdiction. At this stage, only prima facie view is to be taken in view of objection taken as the main execution is still pending.

The plea of the judgment debtor that the Partial Award is opposed to public policy of India is prima facie not sustainable for dismissal of execution petition in view of the judgment of the Supreme Court in the case of [Shri Lal Mahal Ltd. Vs. Progetto Grano Spa](#). The following extracts of the aforesaid judgment is relevant on the above submissions -

"22..... A clear and fine distinction was drawn by this court while applying the rule of public policy between a matter governed by domestic laws and a matter involving conflict of laws. It has been held in unambiguous terms that the application of the doctrine of "public policy" in the field of conflict of laws is more limited than that in the domestic law and the courts are slower to invoke public policy in cases involving a foreign element than when purely municipal legal issues are involved.

25..... The Application of (Public Policy of India" doctrine for the purposes of Section 48(2)(b) (of Arb. and Con. Act, 1996) is more limited than the application of the same expression in respect of the domestic arbitral award.

43. Moreover, Section 48 of the 1996 Act does not give an opportunity to have a "second look" at the foreign award in the award-enforcement stage. The scope of enquiry under Section 48 does not permit review of the foreign award on merits. Procedural defects (like taking into consideration inadmissible evidence or ignoring/rejecting the evidence which may be of binding nature} in the course of foreign arbitration do not lead necessarily to excuse an award from enforcement on the ground of public policy.

45. While considering the enforceability of foreign awards the court does not exercise appellate jurisdiction over the foreign award nor does it enquire as to whether while rendering foreign award, some error has been committed. Under Section 48(2)(b) the enforcement of a foreign award can be refused only if such enforcement is found to be contrary to (1) fundamental policy of Indian Law; or (2) the interests of India; or (3) justice or morality...."

In view of the above judgment of the Supreme Court, prima facie the present execution petition is maintainable which falls within the scope of Section 48 of Act and is not liable to be rejected by this Court.

25. Even otherwise, the decree holder in order to enforce the said Foreign Award/Decree under Section 47 of the Act, the decree holder at this stage has only sought implementation of the aforesaid specific "direction" in the Partial Award against the JD to hand over I deliver the DH's equipments.

26. Now I shall deal with the objection of the judgment debtor with regard to the territorial jurisdiction. It is relevant hereto refer the relevant provisions of CPC referred by the judgment debtor:

"Order XXI Rule 3.- Lands situate in more than one jurisdiction.-Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure."

XXXXXX

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 not 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 a 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.]"

27. The relevant provisions of CPC referred by the decree holder are:

"Section 51(a) of CPC states:

"Powers of Court to enforce execution-- Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-

(a) by delivery of any property specifically decreed;"

XXXXXX

"Order 21 Rule 11(2) 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 with the facts of the case, and shall contain in a tabular form the following particulars, namely-

j) the mode in which the assistance of the Court is required whether--

(i) by the delivery of any property specifically decreed;,"

XXXXXX

Section 16. - Suits to be instituted where subject-matter situate:

Subject to the pecuniary or other limitations prescribed by any law, suits-

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) for the determination of any, other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain."

28. From the finding as well as the direction issued by the Arbitral Tribunal which has attained finality coupled with the above said provisions referred by the decree holder, it is clear that the decree holder has sought a direction against the judgment debtor to deliver/hand over two movable equipments of the decree holder by way of delivery and personal obedience by the judgment debtor, which is strictly in accordance with the provisions of Section 51(a) C.P.C. read with Order 21, Rule 11(2)(j)(i) of C.P.C., which prescribe the powers of the Court to order execution of a decree inter alia "by delivery of any property specifically decreed". The prayer sought by the decree holder is against the judgment debtor company and not against any property of the judgment debtor. The other modes prescribed therein for attachment and sale of any property are only means of executing a money decree against a judgment debtor, the said position is attracted in the present case as the decree holder has not sought any attachment or sale of any of the properties of the judgment debtor. To the contrary, the present execution is for personal obedience of the judgment debtor by way of delivery of movable properties owned by the decree holder.

The Supreme Court in the case of [Shyam Singh Vs. Collector, District Hamirpur, U.P. and Others](#), . In paras 10 and 11 of the same the provision of Section 51 of CPC and the issue at hand has been discussed which read as under:--

"10. From the time to time this question has been examined in connection with Section 51 of the Code of Civil Procedure (hereinafter referred to as "the Code"). Section 51 of the Code provides that, subject to such conditions and limitations as may be prescribed, on application of the decree-holder the Court may order execution of the decree by different modes mentioned in the said Section including -

"(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by sale without attachment of any property; and

(c) by arrest and detention in prison for such period not exceeding the period specified in Section 58, where arrest and detention is permissible under that Section;"

11. It has been said the difficulties of a litigant "begin when he has obtained a decree". It is a matter of common knowledge that far too many obstacles are placed in the way of a decree-holder who seeks to execute his decree against the property of the judgment-debtor. Perhaps because of that there is no statutory provision against a number of execution proceedings continuing concurrently. Section 51 of the Code gives an option to the creditor of enforcing the decree either against the person or the property of the debtor; and nowhere it has been laid down that execution against the person of the debtor shall not be allowed unless and until the decree-holder has exhausted his remedy against the property. Order 21, Rule 30 of the Code provides that "every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both"

29. Under Order XXI Rule 31 CPC, it is provided that if the decree is for any specific movable property adjudged in favour of the decree holder, then it may be executed by the seizure, if required, and by delivery thereof to the person to whom it has been adjudged. The use of "may" in section 39 does not mean that the court which passed the decree can execute the decrees irrespective of territorial limitations. The word "may" is meant for cases where there are circumstances in which execution as such is considered illegal. Any other view would totally upset the entire scheme of the code as to jurisdiction. By inserting an Explanation below section 39 to provide that nothing in the section shall be construed as authorising the court to execute a decree against a person or property outside the legal limits of its jurisdiction.

In the present case, as regards the two equipments in question the decree holder has been specifically adjudged as the exclusive owner, it is not the property of the judgment debtor and it has been specifically directed by the Arbitral Tribunal to handover possession thereof to the decree holder. Accordingly, the decree holder has sought a direction from this Court against the judgment debtor (person) to handover/deliver of the said equipment to the decree holder in compliance of the Partial Award/Decree.

30. As the execution is sought against the judgment debtor (person) in respect of movable property adjudged to the decree holder and the judgment debtor is situated within the local limits of jurisdiction of this Court, the said fact has not been denied by the judgment debtor that its company is registered in Delhi. They are working for gain in Delhi so are carrying on business. This Court alone has the territorial jurisdiction to execute the said decree against the judgment debtor in the present nature of the matter. No other Court would have jurisdiction to execute the present decree by delivery or personal obedience by the judgment debtor, who is

located in Delhi. The execution is not directed against any property of the judgment debtor. Thus, the arguments of Mr. Dinesh Agnani are not sustainable and are rejected. None of the provisions referred by him is applicable to the facts of the present case as the decree holder is seeking delivery/possession of its own movable property from the judgment debtor in terms of the Partial Award.

31. In [Mohit Bhargava Vs. Bharat Bhushan Bhargava and Others](#), a clear distinction has been drawn between "execution of decree against Person" and "execution of decree against Property". It has been held that-

"7..... A decree could be executed by the court which passed the decree so long as it is confined to the assets within its own jurisdiction or as authorised by Order 21 Rule 3 or Order 21 Rule 48 of the Code or the judgment-debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment-debtor..."

32. Under these circumstances, the Proviso to Section 16, C.P.C. provides that even a Suit for relief respecting "immovable property" (while the equipments in question are movable property) held by the defendant may, where the relief sought can be obtained entirely through his "personal obedience", be instituted in a court where either the property is situated or in the Court where the Defendant voluntarily resides or carries on business. It is emerged from the circumstances and facts of the present case that the Partial Award/decreed is directed against the judgment debtor (person) for delivery of specific property as per Section 51, CPC which is being enforced against the judgment debtor (person) for delivery of movable properties of the decree holder as per Order 21, Rule 11(2)(j)(i) CPC, and is not being enforced against any property of the judgment debtor outside the jurisdiction of this Court as the decree pertains to a movable property adjudged to the decree holder as Owners and can be executed by delivery by the judgment debtor to the decree holder in terms of Order 21 Rule 31, CPC.

33. The said decree can be enforced through personal obedience of the judgment debtor which is a Company registered in Delhi and is within the jurisdiction of this Court and Court has the territorial jurisdiction to execute the Partial Award/decreed against the judgment debtor in respect of the two equipments in question, which are movable properties.

34. In view of aforesaid reasons and finding arrived, the prayer made in the application is allowed. The judgment debtor is directed to forthwith handover possession of the Hot Mix Plant and the Crusher Plant listed in the Schedule A of the MOI lying at judgment debtor's Chawarpatha site to the decree holder within four weeks to enable the decree holder to complete the road construction project.

35. Ms. Jasbir Kaur, Advocate (Mobile No. 9811014972) is appointed as a Local Commissioner who shall accompany with the representative with the decree holder and visit at the site at the time of handing over the said equipments in order to avoid any objection. After handing over the possession of the same, she may file her

report. Therefore, the decree holder would be entitled to complete other formalities of removal of equipments in due course, the presence of Local Commissioner is not necessary at that stage. The judgment debtor is directed to provide full cooperation to the Local Commissioner for the purpose of compliance of order. The fee of the Local Commissioner is fixed at Rs. 80,000/- per visit which shall be paid by the decree holder apart from other expenses. The local commissioner is authorized to take police protection if necessary. Local police shall provide full support to the local commissioner in implementing the orders of this Court.

The application is disposed of accordingly.

Ex.P. No. 322/2012

List before roster Bench on 14th July, 2015.

Dasti under the signatures of the Private Secretary.