

CASE NO.:
Appeal (civil) 4737 of 2007

PETITIONER:
N.R. Constructions Pvt. Ltd

RESPONDENT:
Sri Ram Badan Singh & Ors

DATE OF JUDGMENT: 09/10/2007

BENCH:
Tarun Chatterjee & P. Sathasivam

JUDGMENT:
JUDGMENT
(Arising out of SLP (C) No. 15858 OF 2006)
P. Sathasivam, J.

- 1) Leave granted.
- 2) This appeal is directed against the judgment dated 19.07.2006 passed by the High Court of Jharkhand at Ranchi in C.R. No.65 of 2006 whereby the learned single Judge dismissed the Civil Revision filed by the appellant herein against the order dated 28.06.2006 passed by the Subordinate Judge-I, Bokaro in Execution Case No. 2 of 2001 rejecting the appellant's prayer for adjustment of the cross-award under the provisions of Order XXI Rules 18 and 19 of the Code of Civil Procedure.
- 3) The only question, inter alia, arises in this appeal is whether the provisions of Order XXI Rules 18 and 19 of the C.P.C. are applicable in case of adjustment of the cross-award as claimed by the appellant herein?
- 4) The appellant entered into a partnership with the respondents and a partnership deed was executed on 14.04.1992. The purpose of the partnership was for completion of certain contract work which the appellant had obtained. One of the terms of the agreement provided for arbitration, i.e., - "that if there be any dispute among the partners, the same can be referred to the Arbitrator/Arbitrators as appointed by the partners who would decide the names in accordance with the provisions of the Indian Arbitration Act, if not otherwise settled by the partners with mutual consent."
- 5) As the disputes which arose in the year 1995 among the partners could not be settled by mutual agreement and the work could not be completed, the partners, by mutual consent, appointed four persons as Arbitrators. On 19.04.1997, the Arbitrators, after hearing both the parties, submitted their award. There is no specific reference whether the award is an interim award or a final award. According to the appellant, the award dated 19.04.1997 was acted upon by the parties and was never challenged by any of them. Thereafter, the Arbitrators passed various awards. It is not in dispute that none of those awards passed after 19.4.1997 was ever challenged by any of the parties. Finally on 25.11.2000, the Arbitrators passed an award. According to the appellant, in this award, it was not stated that whether the issues covered by the earlier awards and especially the award dated 19.4.1997 are to be merged in the final award.
- 6) The appellant herein, being aggrieved by the award dated 25.11.2000, filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"). The respondents filed Execution

Case No. 2 of 2001 for enforcement of the Award dated 25.11.2000. By order dated 27.6.2003, the application filed by the appellant under Section 34 of the Act was dismissed by the learned subordinate Judge. On 1.7.2003, the appellant herein filed Execution Case No. 5 of 2003 for enforcement of the award dated 19.4.1997. Against the dismissal of the application filed under Section 34 of the Act, on 26.8.2003, the appellant filed an Arbitration Appeal No. 6 of 2001 before the High Court of Jharkhand at Ranchi. By order dated 29.4.2004, the High Court dismissed the said appeal. The special leave petition against the said order was also dismissed by this Court on 10.1.2005 with a modification as to the rate of interest.

7) The respondents filed an objection under Section 47 of the C.P.C. in Execution Case No.5 of 2003. The said objection was numbered as Misc. Case No. 7 of 2005. The case of the respondents before the Executing Court was that the so-called award of 19.04.1997 was nothing but a provisional direction of the Arbitrators for successful completion of the job and it cannot be treated as an interim award and was not enforceable as an arbitral award. All the directions given in the award dated 19.04.1997 have merged in the award dated 25.11.2000. After hearing both the parties, the Executing Court by order dated 27.5.2005 dismissed Misc. Case No. 7 of 2005 holding that the interim award was not executable. Aggrieved by the same, respondent No.1 herein preferred C.R.No. 75 of 2005. Though the Civil Revision stands admitted but no stay of execution has been granted till date. Thereafter, the appellant filed an application under Order XXI Rules 18 and 19 of the C.P.C. read with Section 36 of the Act in Execution Case No. 2 of 2001 for adjustment of the amount and for recording of full satisfaction of the amount. By order dated 28.6.2006, the executing Court, after finding that the question of cross-decree under Order XXI Rules 18 and 19 is not maintainable, rejected the said application. Questioning the said order, the appellant preferred C.R.No. 65 of 2006 before the High Court of Jharkhand at Ranchi. By the impugned order dated 19.07.2006, the High Court dismissed the Revision. Hence, the present appeal by way of special leave has been filed before this Court.

8) We have heard Dr. R.G. Padia, learned senior counsel, appearing for the appellant and Mr. Bhaskar P. Gupta, learned senior counsel, appearing for the respondents.

9) Though the learned senior counsel appearing on either side, made elaborate submissions as to awards dated 19.4.1997 and 25.11.2000 and applicability of Order XXI Rules 18 and 19 of C.P.C., in the light of the order to be passed hereunder, we are of the view that there is no need to traverse the same. However, in order to understand the rival claim, it is useful to refer Order XXI Rules 18 and 19 which read as under:

\023Rule 18. Execution in case of cross-decrees- (1)
Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then \026

(a) if the two sums are equal, satisfaction shall be entered upon both decrees; and

(b) if the two sums are unequal execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for

the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

- (2) \005\005\005\005\005\005\005\005\005\005\005
- (3) \005\005\005\005\005\005\005\005\005\005\005..
- (4) \005\005\005\005\005\005\005\005\005\005\005..\024

\023Rule 19. Execution in case of cross-claims under same decree \026 Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then \026

- (a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and
- (b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.\024

Both the learned senior counsel fairly admitted that Rule 18 is not applicable to the case on hand. From a bare reading of the Rules, extracted supra, it is clear that Rule 18 is applicable in the case where the applications are made to the Court for execution of the cross-decrees in separate suits for payment of two sums of money passed between the same parties and Rule 19 is applicable in the case where the application is made to the Court for the execution of a decree under which two parties are entitled to recover sums of money. As rightly observed by the High Court, in the case on hand, neither the application has been made for execution of cross-decrees in separate suits for the payment of money in between the parties nor the application is for execution of a decree in which the parties are entitled to recover sums of money from each other. In our opinion, in the instant case, the particulars furnished clearly show that the applications were in respect of two awards in the same arbitration case and as such the provisions of Rules 18 and 19 of Order XXI of C.P.C. are not applicable. It is also relevant to mention that in the Objection Petition under Section 34 of the Act the issue regarding interim award and final award came up for consideration before the subordinate Court, Bokaro. The said objection petition was dismissed on 27.6.2003 and the appeal preferred also met the same result at the hands of the High Court of Jharkhand. This Court also confirmed the order of the High Court except in the rate of interest. In the light of these materials and earlier orders including this Court and various clauses in the awards dated 19.04.1997 and 25.11.2000, learned subordinate Judge rejected the petition filed by the appellant herein. The High Court by the impugned order accepted the said factual conclusion and dismissed the Revision.

10) In view of the conclusion based on the factual details furnished in both the execution cases while agreeing with the said conclusion of the Courts below, we are of the view that there is no need to refer various decisions relied on by both the parties. On the other hand, we are in agreement with the said conclusion.

11) In the light of the above discussion, the appeal fails and the same is dismissed. There shall be no order as to costs.