

**IN THE COURT OF SENIOR CIVIL JUDGE- 1
AIZAWL DISTRICT: AIZAWL, MIZORAM**

EXECUTION CASE NO. 64 OF 2011
[IN ARB. REF NO. 933 OF 2009]

Decree Holder:

M/S IndusInd Bank Ltd.
Represented by Branch Manager
Ashok Leyland Finance Ltd.
Zarkawt, Aizawl

By Advocate's : Mr. F. Lalengliana

Versus

Judgment Debtors:

1. Mr. K. Lalbiakmawia
S/o K. Vanlallawma
Chanmari West, Aizawl

2. Smt. Lalthanmawii
Chanmari West, Aizawl

By Advocates : 1. Mr. B. Lalramenga
2. Mr. J.C. Lalnunsanga

Date of hearing : 17-04-2012

Date of Order : 17-04-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge-1
Aizawl District: Aizawl

ORDER

By virtue of Order XXI, R. 6 of the Code of Civil Procedure, 1908, the instant execution case is transferred to this court by the City Civil Court, Calcutta to realize the Arbitration Award Dt. 30/11/2009 amounting to Rs. 1,69,085/- (Rupees one lakh, sixty nine thousand and eighty five).

Mr. J.C. Lalnunsanga, learned counsel for the judgment debtors contended the proceedings on the inter alia main grounds that (i) court of senior civil judge is not competent to entertain the instant case as below Rs. 2 lakhs valued of the case by virtue of S. 14 of the Mizoram Civil Courts Act, 2005 (ii) City Civil Court, Calcutta is not competent to inter state transfer of execution case (iii) the award made by the Sole Arbitrator is not executable

as it was proceed and adjudicated without the interference and knowledge of the judgment debtors by not receiving any summons/notices for the same and thereby caused serious arbitrary award.

After hearing of learned counsels of both parties at length, the findings and decisions can be epitomized as under-

With respect to the court of senior civil judge is not competent to entertain the instant case as below Rs. 2 lakhs valued of the case by virtue of S. 14 of the Mizoram Civil Courts Act, 2005, as fairly admitted by learned counsel for the decree holder, it is undisputed that the instant case will go to the court of learned Civil Judge having territorial jurisdiction but which is curable under O. XXI, R. 8 of the CPC by transfer to the said court of Civil Judge.

In respect of City Civil Court, Calcutta is not competent to inter state transfer of execution case, even without more elucidation, it is clearly answered by O. XXI, R. 5 of the CPC, inter-state transfer can also be made.

In the context of allegations on the award made by the Sole Arbitrator is not executable as it was proceed and adjudicated without the interference and knowledge of the judgment debtors by not receiving any summons/notices for the same and thereby caused serious arbitrary award. The observations of Hon'ble Supreme Court in **Ramaswamy Aiyangar V. Kailasa Thevar**, AIR 1951 SC 189 is relevant saying that-

"The duty of an executing Court is to give effect to the terms of the decree. It has no power to go beyond its terms. Though it has power to interpret the decree, it cannot make a new decree for the parties under the guise of interpretation".

The decisions of Hon'ble Gujarat High Court in **Yusubhai Ismailbhai And Anr. Vs. Vakil Mohanial And Ors.** decided on 18th Sept., 1963 reported in AIR 1965 Guj 282 is also attracted wherein, it was concluded that-

"(4) As the executing Court cannot go beyond the decree and cannot question the validity or correctness of the decree, the appeal is dismissed. No order as to costs."

And in **Nagindas Ramdas Vs. Dalpatram Ichharam @ Brijram & Ors** decided on 30/11/1973 and reported in 1974 AIR 471, 1974 (2) SCR 544, 1974 (1) SCC 242, Hon'ble Apex Court has observed thus-

"the Executing Court may look to the original record of the trial court to ascertain whether there was any material furnishing a foundation for the trial court's jurisdiction to pass the decree it did. The moment it finds that prima facie such material existed, its task is complete. It is not necessary for it to go further and question the presumed or expressed finding, of the trial court on the basis of that material."

Being an executing court, this court not vested power to delve on merit of the case so as to divert/alter the decree, remedy rather lies under section 34 of the Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996) to the court of District Judge by making an application for grievances. Nothing can be adjudicated and enumerated further on that point in this court.

Thus, by virtue of under O. XXI, R. 8 of the CPC read with Sections 14 and 15 of the Mizoram Civil Courts, Act, 2005, the instant case is transferred to the court of Learned Civil Judge-3, Aizawl for proceedings and dispose of due to want of pecuniary jurisdiction in this court.

Let the case record be sent to Learned Civil Judge-3, Aizawl

Give this copy to both parties and all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 1
Aizawl District: Aizawl

Memo No. EC/65/2011, Sr. CJ (A)/

Dated Aizawl, the 17th April, 2012

Copy to:

1. M/S IndusInd Bank Ltd. Represented by Branch Manager, Ashok Leyland Finance Ltd., Zarkawt, Aizawl through Mr. F. Lalengliana, Adv.
2. Mr. K. Lalbiakmawia S/o K. Vanlallawma, Chanmari West, Aizawl through Mr. J.C. Lalnunsanga, Adv.
3. Smt. Lalthanmawii, Chanmari West, Aizawl through Mr. J.C. Lalnunsanga, Adv.
4. Pesker to Learned Civil Judge-3, Aizawl along with case record
5. P.A to Hon'ble District & Sessions Judge, Aizawl
6. Case record

PESKAR