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# Predicament of Jurisdiction in Enforcement of Domestic Arbitral Awards

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*It is part of my duty to expound the jurisdiction of the Court. It is no part of my duty to expand it.*

*-Kekeunch J.*

## ABSTRACT

*The paper seeks to highlight the legal conundrum of the jurisdiction issue in the enforcement of domestic arbitral awards. The enactment of Arbitration and Conciliation Act, has certainly resulted into speedy resolution of disputes between the litigants, however the litigant holding a favorable award passed by an arbitral tribunal is faced with a state of perplexity, when the litigant seeks the ultimate relief of the award qua enforcement. This paper attempts to clarify the legal scenario pertaining to jurisdiction of courts entertaining execution applications, by analyzing the enactment, procedural laws and judicial precedents which have developed conflicting opinions. Ultimately, attempts have been made by judicial forums to harmoniously construe and put the conflicting opinions to rest but the in view of the author the crucial question remains is whether the conflict persists or has opened a new set of challenges?*

## I. INTRODUCTION

Chapter VIII of Arbitration and Conciliation Act 1996, ('ACA') deals with Finality and enforcement of arbitral awards. Section 36 (1) of the said act states that where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of the sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908(5 of 1908).], in the same manner as if it were a decree of the court. Further, the provisio in the section itself states that while considering the application for stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]. At this juncture, it is pertinent to note Chapter V of the said act, dealing with Conduct of Arbitral proceedings, wherein section 19 states that (1) The arbitral

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tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

*Prima facie*, itself the act can put a prudent man into a state of perplexity that the enforcement mechanism of an award passed under the said act by the Arbitral Tribunal itself has a reliance upon the Code of Civil Procedure and has no paraphernalia of its own, however the conduct of arbitral proceedings, which gave birth to the very award refrains to be governed by the Code of Civil Procedure ('CPC').

Chapter II of the CPC pertains to execution, wherein Section 38 to Section 46 of the CPC deal with courts by which decrees may be executed. Section 39(4) makes it clear that competence of jurisdiction is clarified and that a Court cannot be authorized to execute a decree against a person or a property, outside the territorial jurisdiction of that Court.<sup>2</sup> A decree can also be sent for execution to another state<sup>3</sup> and even upon application of the decree-holder the court, if a particular property is to be attached is in the jurisdiction of another court a precept can be issued having a validity of two months<sup>4</sup>.

The crucial question which now arises is – Which competent court does the arbitral award holder approach to get remedy *qua* enforcement? The legislative intent clarifies that the Court executing has to interpret and apply the mechanism of the CPC, while enforcing an award passed under ACA.<sup>5</sup> ACA clarifies that the purpose of execution is satisfied and has selectively

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<sup>2</sup> Code of Civil Procedure, 1908 § 39 reads as, "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 4 [of competent jurisdiction],— 1. (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. 1 [(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.] 2 [(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.]".

<sup>3</sup> Code of Civil Procedure, 1908 § 40 reads as " Transfer of decree to Court in another State.—Where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State".

<sup>4</sup> Code of Civil Procedure, 1908 § 46 reads as ". 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".

<sup>5</sup> Arbitration and Conciliation Act, 1996. § 36(1) read as, "Enforcement.—(1) Where the time for making an

decided to rely upon the mechanism of the CPC for enforcement of decree and thereby the arbitral award holder need not be perplexed, when the time for execution of the said award has come.

This paper seeks and attempts to clarify- How does Section 36 of the ACA operate to settle on the jurisdiction of a court entertaining an execution application of an arbitral award holder? Whether a court can execute an arbitral award if the award debtor and/or its property is located outside the territorial jurisdiction of the court executing the arbitral award?

## II. OPERATION OF SECTION 36 DETERMINING JURISDICTION OF A COURT

Before analyzing how does Section 36 operate, one needs to understand as to what is a court, enforcement and jurisdiction as per ACA.

The definition of court is mentioned in Section 2(e)<sup>6</sup> of the ACA. Questions involving arbitration which has not formed a part of any suit are under the jurisdiction of the principal Civil Court having original jurisdiction in a district. *Ex-facie*, it becomes clear that any other court, i.e. Small Causes Court or Junior Division of any Subordinate Court to the District Judge, has jurisdiction over arbitral disputes. Therefore, the very act itself clears its way out of being subjected to litigation which would have otherwise commenced for any other ordinary suit at the grass-root court, for the mere reason as the proceedings are taken place before Arbitral Tribunal and not any Court *per se*.

The core issue revolves around the chief Section 36<sup>7</sup> of the ACA which concerns enforcement

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

<sup>6</sup> Arbitration and Conciliation Act, 1996. § Section 2(e) read as, “Court”— (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 the arbitration if the same had been 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;]”.

<sup>7</sup>Arbitration and Conciliation Act, 1996. § Section 36 read as, 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 of 1908), in the same manner as if it were a decree of the court. (2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose. (3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing: Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

of arbitral awards. Every order and/or decree and/or judgment only attains finality, when the litigating party against whom the order is passed, does not desire challenge the said order within limitation. After, it is established that the time period is over for setting aside the arbitral award, then the judgment creditor can enforce the award as per the provisions of the CPC, interpreting the award as if it were a decree of the court. A due consideration has been given to the CPC for execution and stay of an award, all though the arbitral proceedings *per se* are itself not bound by the CPC.

Ultimately coming to the crucial provision of jurisdiction as mentioned in Section 42<sup>8</sup> of ACA, any application made in a Court with respect to the issue arising out of arbitration agreement, that Court alone will have the jurisdiction over arbitral proceedings and no other Court. The Section attempts to exclude jurisdiction of other courts, however such exclusion comes into play after the arbitral proceedings come to an end and not before. Such an explanation to Section 42 was made clear by three bench judgment delivered by Supreme Court in *State of West Bengal vs. Associated Contractors*.<sup>9</sup> Therefore, execution of an award being an act after the passing of an arbitral award and the arbitral proceedings coming to an act, would be subjected to Section 42 of the ACA.

### III. TRANSFER OF DECREE IS ESSENTIAL?

In *Srei Equipment Finance Private Limited and Ors. Vs. Khyoda Apik*<sup>10</sup> and Ors., the High Court of Calcutta held that there appears no legal provision which allows the execution of a decree beyond its local limits. If the holder of a decree passed by a Court applies to that particular Court for transferring the decree to a court which is assessed to possess the competent jurisdiction to execute the same, no rule of practice in this Court would permit this Court to insist that, notwithstanding the decree-holder's request and the identification of a competent court where the decree may be sent for execution, this Court would proceed to execute the decree against any person or property outside its territorial jurisdiction. The court further went to held that the court will have to wait for the decree holder to apply for a transfer of deemed decrees and thereby get remedy.

In *Eskay Engineers vs. Bharat Sanchar Nigam Limited, Raigad Telecom Division*<sup>11</sup>, reliance

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<sup>8</sup> Arbitration and Conciliation Act, 1996. § Section 42, reads as, "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".

<sup>9</sup> (2015) 1 SCC 32.

<sup>10</sup> 2011(5)CHN698.

<sup>11</sup> 2009(6)BomCR176.

was placed upon the principle laid down by the Hon'ble Karnatka High Court in *I.C.D.S Ltd. vs. Mangala Builders Pvt. Ltd. and Ors.*<sup>12</sup> and was of the view that under Section 34, the Court which can exercise powers to exercise powers alone has the jurisdiction to entertain arbitral awards. Reference was also made to Section 42 of the ACA and it was stated that the where an application has been made in Court, with reference to the arbitration agreement, that particular Court shall alone have the jurisdiction to entertain subsequent applications.

In *Computer Sciences Corporation India Pvt. Ltd. vs. Harishchandra Lodwal and Ors.*<sup>13</sup>, the award was passed at Indore and the judgment debtors resided in Delhi. The Madhya Pradesh High Court was of the view that only after the transfer of the decree to the Court of Delhi, the award can be executed. The court was of the view that transfer of decree is essential under Section 39 of the CPC and held that transfer of decree is a pre-requisite before filing execution petition before the Court where the assets of the judgment debtor are located.

In *Mahindra and Mahindra Finance Limited Vs. Surinder Panjta and Ors.*<sup>14</sup> the High Court of Himachal Pradesh held that both the parties to the litigation were aware that the arbitration proceedings were conducted in Mumbai and that the award was passed in Mumbai and therefore the executing court at Shimla had no jurisdiction. The court also referred to the jurisdiction clause in the loan agreement that conferred jurisdiction in Mumbai exclusively. Despite the fact that the judgment debtor had a subordinate office in Shimla, the Court eventually held that since the jurisdiction had been already decided and hence the award cannot be executed in Shimla. The court also considered the view of the landmark case of *A.B.C. Laminart Pvt. Ltd. vs. A.P. Agencies*<sup>15</sup> that wherein one or more courts have jurisdiction, agreement to submit to one jurisdiction and exclude jurisdiction of another court is valid.

The Calcutta High Court, Bombay High Court, Karnataka High Court and the Madhya Pradesh High Court consistently were of the view that a decree is to be transferred. The very legislative enactment of ACA was aimed at speedy disposal of disputes, however when the matter reached the executing courts in such jurisdictions, their Hon'ble High Courts already clarified that a transfer of the decree indeed has to be first obtained. It maybe said that the beauty of a birth of landmark case is the clarification of consisting views and conflicting views, which thereby have remained consistent in certain other jurisdictions and finally calls for intervention and ultimate settlement.

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<sup>12</sup> AIR 2001 Kar 364.

<sup>13</sup> AIR 2006 MP 34.

<sup>14</sup> FAO No. 268 of 2014 .

<sup>15</sup> (1989) 2 SCC 163.

#### IV. UNDERSTANDING THE SPIRIT OF LEGISLATIVE INTENT AND RELAXATION OF RIGID INTERPRETATION

The early views of executing courts which were bounded by judicial precedents, were often of the view that the transfer of decree is indeed essential, however certain courts also interpreted the spirit of the legislative intent and relaxed the notion of a rigid interpretation of Section 36, that the provisions of CPC apply and therefore a transfer of decree is a pre-requisite.

In *Dilipsinh Kanubha Gohil vs. Kotak Mahindra Bank Ltd.*<sup>16</sup> the arbitral proceedings took place at Tamil Nadu, Chennai and the award was passed in Chennai, however the execution proceedings were executed at Bhavnagar, Gujarat before the Principle Civil Judge, (S.D.) at Bhavnagar and the judgment debtor ordinarily resided within the local limits of jurisdiction of the Court at Bhavnagar. The Gujarat High Court went on to have a contrary view and it was clarified that the ACA is an act which aims at speedy resolution and obtaining a transfer from the concerned Court wherein the award has been passed, defeats the very purpose of the enactment. Therefore, transfer is not essential as there as the award holder is not bound by any provision which obligates the award holder to follow such a procedure and held that the Court at Bhavnagar was well within its jurisdiction.

In *C. Suresh vs. India Cements Capital and Finance Limited and Ors.*<sup>17</sup>, the Kerala High Court did not agree with the view laid down by the Karnataka High Court in *I.C.D.S Ltd. vs. Mangala Builders Ltd.*<sup>18</sup> and the position clarified by the Madhya Pradesh High Court in *Computer Sciences Corporation India Ltd. vs. Harishchandra Lodwal*<sup>19</sup> and held that Section 42 does not apply to execution proceedings and arbitral proceedings come to an end after final award is passed. Section 39 of the CPC itself does not apply in the case of execution proceedings under ACA and there is no requirement of transfer of decree. The court further clarified that the reasoning behind Section 39 of the CPC for decrees passed by Civil Courts, explains that the records of a case are only available with the court and hence only a court which passes a decree can execute it, whereas Arbitral proceedings is a private affair and transfer of award is redundant.

In *Veerapathiran vs. Rajavel*,<sup>20</sup> the arbitration award was passed at Chennai and the decree holder approached the District Judge, Villupurum for enforcement of arbitral awards by manner

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<sup>16</sup> (2014) 2 GLR 1675.

<sup>17</sup> 2015 (5) KHC 909.

<sup>18</sup> AIR 2001 Kar 364.

<sup>19</sup> AIR 2006 MP 34.

<sup>20</sup> C.R.P. (PD) No. 1894 of 2015 and M.P. No.1 of 2015.

of seeking attachment of properties of the judgment debtor. The Madras High Court was of the view that Arbitral Tribunal itself is not a Civil Court and it is not the Court which passed the decree but a Tribunal and therefore when an award is sought to be executed it is not necessary to transfer a decree to the place where the award was passed. The Hon'ble Court also interpreted the substantial question of law, faced by the executing court that if as per Section 36 of ACA, the award of the arbitrator is to be enforced as if it were a decree of a court, then whether the award can be executed at any place without transmitting the award itself to executing court. The Hon'ble Court also concluded that there is absence of any such provision in ACA, which creates any fiction or transition from an arbitral tribunal to a court which passed the decree.

The Gujarat High Court, Madras High Court, Kerala High Court held that a transfer of a decree is not essential and it can be said that the legislative intent of the purpose behind the enactment of ACA was itself appreciated as if a litigant has already won a battle and now seeks the ultimate justice to his/her dispute, *qua* of enforcement of the award in their favor, then why again go through the phase of awaiting relief? The spirit of the enactment was looked into and in a way interpretations found more profound reasoning and at the same time conflicted from consistent judicial interpretations.

## **V. SHOULD THE RESIDENCE OF JUDGMENT DEBTOR ORDINARILY HAVING PLACE OF BUSINESS BE CONSIDERED?**

In *GE Money Financial Services Ltd. vs. Mohd. Azaz and Ors.*<sup>21</sup> the Allahabad High Court laid down a *Ratio Decidendi* that the executing court cannot refuse an application for execution of arbitral award and direct the decree holder to obtain a transfer to court of competent jurisdiction. The Hon'ble Court further went on to held that it is irrespective where the award has been passed but while executing the award, it has to be seen that the court in which the execution proceedings is filed has properties in the jurisdiction of such court or where the judgment debtor ordinarily resides.

In *Daelim Industrial Co. Ltd. vs. Numaligarh Refinery Ltd.*,<sup>22</sup> the Delhi High Court observed a logical analogy that Section 39 of CPC has relevance as the legislative intent did not want to give authority to any court which can execute a decree against a person who resides outside the territorial limits of the executing court and was also of the opinion that obtaining a transfer would defeat the very expedition process of award passed under ACA and held that Section 38

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<sup>21</sup> 2013 (100) ALR 766.

<sup>22</sup> 2009 (3) ARBLR 524 (Delhi).

of the CPC does not apply for the mere reason is that court is executing an arbitral award and not a decree passed by another civil court.

In *Gemini Bay Transcription Private Ltd. and Ors. vs. Integrated Sales Service Ltd. and Ors.*<sup>23</sup> the Bombay High Court (Nagpur Bench), held that considering the definition of “Court” as defined in Section 2(1) (e) (i) of the ACA, an award passed under the provisions of ACA, can not only be executed by the court under Section 2(1)(e)(i) but also can be enforced by the court receiving such an application for execution under Section 38, 39 of the CPC.

In *Indusind Bank Ltd. vs. Bhullar Transport Company and Ors.*,<sup>24</sup> the arbitral award was passed at Chennai and the execution proceedings were filed in Amritsar, where the judgment debtor held properties within the territorial jurisdiction of the executing court. The Punjab and Haryana High Court, while considering the analogy under Section 20 of CPC, held that executing court has jurisdiction to enforce the arbitral award and there is no transmission of decree required from Court of Chennai as the judgment debtors are holding property and are residing in Amritsar itself.

Interestingly, what can be interpreted is that if indeed a transfer of decree is not required or essential, then a compulsion to file execution proceedings where the judgment debtor resides is itself evident of the proposition that the compelling idea of a jurisdiction remains and therefore if one gets away with the burden of obtaining a transfer certificate then one has to still take the trouble of approaching the court where the judgment debtor resides. Therefore, proposing a hypothetical situation for the sake of brevity, if an award is passed at Mumbai and if the judgment debtor has no property for attachment in Mumbai, then even though the award holder needs no transfer as per certain judicial precedents, the award holder is still put into a position that the award holder would have to approach a court which has territorial jurisdiction over the properties of the judgment debtor. Therefore, the jurisdiction conundrum remains.

## VI. SUPREME COURT TO THE RESCUE?

In *Sundram Finance Limited vs. Abdul Samad and Anr.*<sup>25</sup>, the Supreme Court was faced with the question of divergent views of various High Courts and pondered upon the confusion as to whether the award holder has to obtain a transfer certificate for execution or has to file the execution proceedings where the assets of the judgment debtor are located. The Apex Court clarified that only for the purpose of execution of an award, the award is to be executed in same

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<sup>23</sup> AIR 2018 Bom 89.

<sup>24</sup> (2013) 169PLR300.

<sup>25</sup> (2018) 3 SCC 622.

manner as if it were a decree under the CPC, however the award itself was not a decree of a civil court and arbitral awards are passed by arbitral tribunals. It was also observed that as per Section 32<sup>26</sup> of ACA, the arbitral proceedings are terminated and therefore Section 42 of the ACA, does not hold relevance. The matter was put to rest and it was concluded by the Apex Court that the enforcement of an award can be filed anywhere in the country, where such a decree can be executed and a transfer certificate is not necessary from the court having a jurisdiction over the arbitral proceedings. Hence, ACA transcends all territorial barriers.

The aforesaid two-bench judgment of the Supreme Court, came as a relief to many judgment debtors as without obtaining a transfer decree, the award can be executed anywhere in the court as the act is not circumvented by territorial jurisdiction of other courts. It may seem that the issue was put to rest, however, the Apex Court was silent on the clarification as if the execution application can be filed anywhere, can it also be filed somewhere where neither the judgment debtor resides or have any assets in the local jurisdiction of a court? Can a Court entertain an execution application and attach the properties which are beyond the territorial limits of its jurisdiction? Section 39(4)<sup>27</sup> of the CPC although clarifies the situation, that the Courts cannot execute a decree against a property, which is outside the territorial limits of its jurisdiction. The Supreme Court is silent on the crucial question that if ACA transcends all territorial barriers, is the bar under Section 39(4) of the CPC applicable?

The interpretation of the *Sundram Finance Limited* judgment is a vacuum, which remains unanswered and considering a proposition that Section 39(4) indeed acts as a bar to the execution proceedings, then the idea of speedy disposal may still remain tragic in practice as the Courts would certainly in the end require local assistance by the Courts, within whose properties of the judgment debtor are situated.

The aspect of jurisdiction as per Section 42 of ACA, with respect to execution proceedings is also unclear as the judgment of the two-bench is also in direct conflict with the view laid down by the three-bench judgment in *State of West Bengal vs. Associated Contractors*<sup>28</sup> which was

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<sup>26</sup>Arbitration and Conciliation Act, 1996 § 32(1) read as, “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”.

<sup>27</sup> Code of Civil Procedure, 1908 § 40 reads as “(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.]”.

<sup>28</sup> (2015) 1 SCC 32.

not referred in the two judgment of *Sundram Finance Limited*. The two-bench judgment held that Section 42 of ACA does not apply to execution proceedings, which was contrary to the view of the three-bench judgment. Therefore, the predicament remains as to how the vacuum of applicability of Section 42 of ACA is to be perceived in execution proceedings, which are subsequent of arbitral proceedings.

Post the judgment of *Sundram Finance Limited*, the Bombay High Court in *Global Asia Venture Company vs. Arup Parimal Deb and Ors.*<sup>29</sup> was faced with the dicta of ‘ACA transcending all territorial barriers’ laid down in *Sundram Finance Limited*, and held that Court exercising jurisdiction, where the arbitral proceedings are conducted will continue to have jurisdiction over the subsequent act of enforcement of award passed by the arbitral tribunal. Therefore the bar of Section 39(4) is not to be considered as the Court will have jurisdiction, once an application of execution is preferred and Section 2(1)(e) does not oust the jurisdiction of such court. The matter has reached Supreme Court and is at present sub-judice and by order dated October 18, 2019, the Apex Court has stayed the execution proceedings in respect of assets situated outside Mumbai.<sup>30</sup> It would be certainly engrossing as to what the Supreme Court holds in this case.

Divergent views will be still be adopted by various High Courts as although it may seem that Supreme Court has clarified the scenario, by concurring with the view of the Delhi High Court in *Daelim Industrial Co. Ltd.*, however the said case justifies the analogy behind Section 39(4) and is in fact of the view that an attachment of properties by a Court can only be granted over the properties of the judgment debtor, if the Court exercising such powers has territorial jurisdiction, over the properties which are situated within the local limits.

## VII. CONCLUSION

The lacuna is required to be put to rest by the Apex Court, however the legislative intent of speedy disposal is not to be undermined and rigidity of strict interpretation of the enactments can hamper the very scope and ambit of the ACA. The judgment rendered in *Sundram Finance Limited*, certainly did serve as a relief that the issue of obtaining transfer certificate from the Court, wherein the arbitral proceedings took place is not required, however remained silent on profound issues that whether Section 39(4) of the CPC ultimately acts as a bar or not. The dicta of ACA transcending all territorial boundaries, certainly stirred up another state of perplexity, while closing one issue of non-requirement of transfer certificate. The jurisdiction predicament

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<sup>29</sup> 2018 SCC OnLine Bom 13061.

<sup>30</sup> Special Leave to Appeal (C) No. 24144/2019.

now remains, as whether the execution proceedings can now be filed anywhere or not. Clarity is also required on the applicability of Section 42 of ACA and as to how far CPC is actually applicable to arbitral proceedings. *Sundram Finance Limited.* puts up another question as post arbitral proceeding applications such as interim relief and setting aside arbitral award is to be preferred before only one Court exercising jurisdiction as per Section 42 of the ACA, then the same would be a curtailment of a subsequent application of execution before any other court besides the court having jurisdiction under Section 42 of ACA. Therefore, it can be said that if an execution proceeding can be filed anywhere, then the issue of multiplicity of proceedings may also go against the legislative intention of the ACA and thereby defeat the purpose of speedy disposal. It would be fascinating if the Apex Court in the future comes to the conclusion that the execution application, can also be filed where the properties of judgment debtors are not present and thereby empower executing courts to allow an attachment order of properties of judgment debtor which are beyond its local limits. Such an order may or may not open a new set of challenges for litigants, however it is hoped that whatever maybe the outcome of solving this state of bewilderment in the future, the fruits shall be ultimately borne by the litigants after all.

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