
AN IN-DEPTH EXAMINATION OF THE CONTRADICTIONARY RULINGS MADE BY DIFFERENT HON'BLE HIGH COURTS REGARDING OBJECTIONS UNDER SECTION 47 OF THE CODE OF CIVIL PROCEDURE, 1908 IN EXECUTION PROCEEDINGS UNDER SECTION 36 OF THE ARBITRATION AND CONCILIATION ACT, 1996

Ayushi Dangre¹

ABSTRACT

The applicability of objections under Section 47 of the Code of Civil Procedure, 1908 (CPC) in enforcement proceedings for arbitral awards has been a subject of debate and conflicting interpretations among different Hon'ble High Courts. Section 47 of the CPC pertains to objections / disputes arising during the execution of decrees, but its scope in the context of arbitral awards has led to uncertainty and varying judicial opinions. This paper explores the divergent views of the Hon'ble High Court/s regarding the filing of objections under Section 47 of the CPC in enforcement proceedings for arbitral awards. While the Hon'ble Calcutta High Court has upheld the admissibility of objections under this section, the Hon'ble Karnataka High Court, Hon'ble Allahabad High Court, and Hon'ble Tripura High Court have taken contrary positions.

The paper highlights the implications of conflicting decisions on the enforcement of arbitral awards and underscores the need for clarity and uniformity in judicial interpretations. It suggests that the Hon'ble Supreme Court's suo moto powers may be invoked to resolve these discrepancies and provide definitive guidance on the applicability of Section 47 of the CPC in the context of arbitral award enforcement proceedings.

Keywords: Section 47 of the CPC, Section 36 of the A&C Act, 1996, Arbitral Awards, Enforcement Proceedings, Conflicting Decisions, Hon'ble High Courts, Judicial Interpretations, Supreme Court & Suo Moto.

¹ Advocate and, pursuing Ph.D. from MNLU, Nagpur.

I. INTRODUCTION

In India, the execution of decrees falls under the purview of the Code of Civil Procedure, 1908 (herein referred to as the 'CPC'), while arbitration awards' enforcement is overseen by the Arbitration and Conciliation Act, 1996 (herein referred to as the 'Arbitration Act'), in conjunction with provisions of the CPC. Both domestic and foreign awards, including their acknowledgement and execution, are treated as equivalent to a court decree under the Arbitration Act. This legal categorization also encompasses consent awards, which are granted subsequent to parties reaching a settlement. It's important to note that domestic awards, arising from arbitration proceedings conducted within India, are governed by Part I of the Arbitration Act. Conversely, foreign awards, stemming from arbitration proceedings, are regulated by Part II of the Arbitration Act.

In the case of domestic awards, there is a mandatory waiting period of three months following receipt of the award before the award-holder can seek its enforcement / execution. Within this timeframe, the award can be disputed under Section 34 of the Arbitration Act. If no challenge is raised against the arbitral award within this timeframe, which includes any extension period, the award attains finality and is legally enforceable. Afterwards, the award can be enforced similar to a court decree.

II. OBJECTIVE

The objective of this research paper is to examine the relevance of objections outlined in Section 47 of the CPC within the context of enforcement proceedings for arbitral awards, with a specific emphasis on the divergent judgments rendered by different Hon'ble High Court/s in India. The paper seeks to:

- i. **Examine divergent interpretations of Section 47 of the CPC:** Analyze how different Hon'ble High Court/s interpret Section 47 of the CPC concerning objections within the framework of executing / enforcing arbitral awards.
- ii. **Identify implications of conflicting decisions:** Explore the consequences of conflicting judgments on the process of executing / enforcing arbitral awards and on the parties involved, including legal uncertainties, and impacts on jurisdictional issues.

- iii. **Highlight the need for clarity and uniformity:** Emphasize the necessity for clear and consistent judicial interpretations of Section 47 of the CPC to ensure predictability and fairness in legal proceedings related to an enforcement of arbitral award.
- iv. **Explore the potential role of the Hon'ble Supreme Court's *suo moto* powers:** Investigate the potential for the Hon'ble Supreme Court to utilize its inherent powers to address disparities among Hon'ble High Court judgments and to offer authoritative guidance on the application of Section 47 of the CPC in arbitral award enforcement proceedings, thereby promoting coherence and stability in the legal landscape.

By fulfilling these objectives, the paper aims to enhance comprehension of procedural challenges concerning the enforcement of arbitral awards and foster consistency in legal interpretations across various jurisdictions in India. This contribution can lead to a more robust and predictable legal framework for executing / enforcing arbitral awards, thereby promoting confidence in India's arbitration regime and facilitating smoother resolution of disputes.

III. METHODOLOGY

The current research study / paper is an effort of exploratory research, mostly based on secondary data obtained from publications such as newspapers, journals, magazines, articles, and media reports.

IV. THE UNCERTAINTY SURROUNDING THE APPLICABILITY OF OBJECTIONS U/S. 47 OF THE CPC

Section 47 of the CPC deals with disputes that emerge during the execution, discharge, or satisfaction of a decree among parties or their representatives. It sets forth a structured mechanism for resolving conflicts that arise within the framework of enforcement / execution of a decree.

When a party seeks to challenge the execution of a decree, it can initiate proceedings under Section 47 of the CPC. This provision applies when there's a disagreement between the decree-holder and the judgment-debtor or their representatives during the execution of a decree.

According to the law, the executing court typically cannot examine the merits or legality of a decree. However, there are exceptions to this rule. If the decree being enforced is considered null and void because the court lacked inherent jurisdiction, its invalidity can indeed be raised during execution proceedings. This exception also applies in cases where the party is deceased or the decree is ambiguous in nature.

The implementation of objections under Section 47 of the CPC relating to arbitral awards has led to ambiguity due to conflicting judgments among different Hon'ble High Court/s in India. Section 47 of the CPC deals with issues concerning the execution, discharge, or satisfaction of a decree, usually issued by a civil court in a lawsuit. However, its interpretation and extent have resulted in varying opinions and results across different Hon'ble High Court/s, adding to legal uncertainty and unpredictability.

V. WHETHER OBJECTION MAY BE FILED U/S. 47 OF THE C.P.C. AGAINST THE ENFORCEMENT OF ARBITRAL AWARD U/S. 36 OF THE ARBITRATION ACT?

The divergent opinions among various Hon'ble High Court/s on legal matters can profoundly impact the legal system and the administration of justice. When different Hon'ble High Court/s reach conflicting conclusions on the same legal issue, it can foster uncertainty, inconsistency, and challenges in uniformly applying the law nationwide.

These discrepancies among Hon'ble High Court/s often stem from differences in interpreting statutes, precedents, constitutional provisions, or other legal principles. The spectrum of legal viewpoints mirrors the intricate and evolving nature of the law, as well as the diverse backgrounds.

We'll delve into the judgments concerning the applicability of Section 47 of the CPC in execution proceedings for enforcing arbitral awards. Presently, the Hon'ble Calcutta High Court maintains that objections can be lodged under this section. However, the Hon'ble Karnataka High Court, Allahabad High Court, and Tripura High Court have adopted a contrary stance on this issue.

In *Sanjay Agarwal v. Rahul Agarwal and Ors.*², the primary issue before the Hon'ble

² 2024 SCC OnLine All 149.

Allahabad High Court was whether the validity of the award could be evaluated during the consideration of a revision petition u/s. 115 of the CPC. Essentially, the crux of the matter revolved around whether a family settlement facilitated through a family friend ('Ld. Arbitrator') could be categorized as an award under the Arbitration Act. In response to this query, the Hon'ble High Court ruled against the revisionist. The revisionist's argument centred on the absence of an arbitration agreement, contending that the award was therefore null and void. However, the Hon'ble Court noted that the existence of letters, which the revisionist did not contest, explicitly indicated that the dispute could be resolved through arbitration by the Ld. Arbitrator.

It has also reiterated, the judgment of the co-ordinate bench in *Larsen and Toubro Limited v. Maharaji Educational Trust*³, where it was held that challenges can only be raised at the stage of Section 34 proceedings and not thereafter during the execution proceedings. Additionally, the judgment emphasized that an award issued in arbitration proceedings does not qualify as a decree under the definition provided in Section 2(2) of the CPC. Therefore, the provisions outlined in Section 47 of the CPC would not serve as a hindrance to executing the award. However, it's worth noting that there exists an established principle that jurisdictional errors can be raised at any stage of proceedings. Sometimes, litigants have been observed raising jurisdictional errors even at the stage of the highest court.

In *M/s. Bellary Nirmithi Kendra v. M/s Capital Metal Industries*⁴, the issue before the Hon'ble Karnataka High Court revolved around whether the petitioner had the right to submit an application under Section 47 of the CPC, contesting the inherent lack of subject matter jurisdiction concerning the award being sought for enforcement by the executing court. The court answered this question in the negative, indicating that the petitioner could not raise objections under Section 47 of the CPC regarding the award being enforced by the executing court.

In *State of Tripura v. Ashesh Deb*⁵, wherein the judgment of the Hon'ble Tripura High Court determined that Section 47 of the CPC does not apply to the enforcement of an arbitration award under the Arbitration Act.

³ 2010 SCC OnLine All 1866

⁴ C.R.P. No. 100067 of 2022.

⁵ 2022 SCC OnLine Tri 760.

The Hon'ble High Court observed that Section 5 of the Arbitration Act, which contains a non-obstante clause, explicitly restricts any objections other than those addressed under Section 34 of the Arbitration Act. Furthermore, the court noted that since the petitioner did not challenge the award under Section 34 of the Arbitration Act, they are not permitted to raise objections under Section 47 of the CPC.

In *Cholamandalam Investment and Finance Ltd. v. Amrapali Enterprises and Another*⁶, the Hon'ble Calcutta High Court dismissed the application for executing an arbitral award, emphasizing that the award itself was invalid due to being issued by a unilaterally appointed arbitrator lacking inherent jurisdiction to adjudicate the disputes between the parties. The Hon'ble High Court underscored that an arbitral award rendered by such an unilaterally appointed arbitrator holds no validity in the eyes of the law and must be considered null and void. Furthermore, the Hon'ble High Court reiterated that an arbitrator lacks inherent jurisdiction to resolve disputes between parties if appointed unilaterally by one party alone, thereby rendering both the arbitral proceedings and the resulting award invalid. Consequently, the Hon'ble High Court dismissed the execution application / petition and granted the parties the liberty to reassert their claims or counterclaims through properly constituted arbitration proceedings.

VI. THE IMPORTANCE OF ALLOWING OBJECTIONS IN EXECUTION PROCEEDINGS TO PREVENT INJUSTICE DUE TO TECHNICALITIES

In the realm of legal practice, the enforcement of an arbitral award signifies the culmination of a judicial process, where the decisions rendered by the Ld. Arbitral Tribunal/s are transformed into tangible results. Nevertheless, amidst the execution proceeding, there exists a risk of injustice, frequently attributable to technicalities that could hinder the equitable implementation of the rule of law. In order to safeguard against such injustices, it is imperative to allow for objections during execution proceedings.

It is crucial to recognize that execution proceedings aren't merely mechanical procedures but involve the exercise of discretion by judicial authorities to ensure fair outcomes. Allowing objections in this context provides a platform for parties to raise valid concerns about the execution proceedings. These objections may relate to jurisdiction, ambiguous awards, or cases

⁶ 2023 SCC OnLine Cal 605.

involving deceased judgment-debtor. The technicalities within legal frameworks, such as rendering an award as not being a decree by adherence to some statutory provisions, can sometimes overshadow substantive justice. By permitting objections, the Hon'ble Court/s can exercise discretion to consider the broader principles of justice and fairness, thereby preventing injustices that may arise from excessive reliance on technicalities.

Allowing objections is essential for several reasons. Firstly, if execution is pursued against a deceased individual (judgment-debtor), it's crucial to ensure that the legal process respects their rights and the interests of their estate. Similarly, if an award is perceived to have been unfairly obtained due to bias or lack of proper appointment of arbitrators, objections provide an avenue to challenge its enforcement and seek redressal. Secondly, the pendency of Section 34 proceedings, which allow for challenging the validity of the award, can create ambiguity regarding the enforceability of the award. Indeed, it's not uncommon for the award holder to deliberately prolong Section 34 proceedings while actively pursuing execution proceedings to expedite the enforcement of the award. This strategy aims to secure the execution of the award before any challenge or objection can attain finality under Section 34, thereby potentially circumventing legal hurdles and achieving a favourable outcome swiftly under the execution proceeding. Thus, allowing objections during execution proceedings enables parties to address such uncertainties and prevent potential injustices that may arise from premature execution.

Furthermore, executing an ambiguous award, one that lacks clarity or proper findings, raises concerns about the mechanical proceedings of the judicial process. Objecting to the execution of such awards is essential to ensure that the Hon'ble Court/s does not enforce decisions that fail to adequately address the underlying dispute/s or protect the rights of the parties involved.

Indeed, while allowing objections is crucial for upholding fairness and addressing legitimate concerns, it's equally important to maintain the efficiency and effectiveness of the judicial process. A frivolous or dilatory objections that aim to needlessly delay or obstruct the execution proceedings should be carefully examined and discouraged. Hon'ble Court/s must exercise prudent discretion in assessing objections, considering the interests of all parties involved, and safeguarding the very principle of equity and the rule of law. By striking a balance between accommodating genuine objections and preventing abuse of the process, the Hon'ble Court/s can ensure that justice is served promptly and fairly. This approach not only upholds the rights of the parties but also maintains public trust and confidence in the judiciary.

VII. THE AUTHORITY OF THE HON'BLE SUPREME COURT TO TAKE SUO MOTO ACTION ARISES IN CASES INVOLVING CONFLICTING DECISIONS AMONG THE HON'BLE HIGH COURTS

The Hon'ble Supreme Court possesses the authority to take *suo moto* cognizance, which means "on its own motion," of legal matters where there exists a conflict of opinion among various Hon'ble High Court/s on a particular legal issue or point of law. This power is derived from Article 142 of the Constitution of India, which grants the Hon'ble Supreme Court wide-ranging powers to ensure complete justice in matters brought before it.

Under Article 142 of the Constitution of India, the Hon'ble Supreme Court retains the discretion to issue any order or decree necessary for achieving complete justice in any cause or matter under its consideration. This includes the authority to address conflicts or disparities in legal interpretations across different Hon'ble High Courts by proactively taking up such matters.

By exercising this authority, the Hon'ble Supreme Court plays a pivotal role in harmonizing legal interpretations, resolving inconsistencies, and promoting uniformity in the application of law throughout the country. This contributes to the maintenance of judicial integrity and the enhancement of legal certainty across diverse jurisdictions.

When the Hon'ble Supreme Court exercises *suo moto* cognizance of conflicting opinions, it typically invites arguments from all pertinent parties involved. Subsequently, the Hon'ble Court renders a decision that establishes a uniform legal stance on the particular issue at hand, effectively resolving the discord among the Hon'ble High Court/s. This process aids in guaranteeing consistency and coherence in the application of law throughout the nation.

VIII. CONCLUSION

In summary, permitting objections during execution proceedings is vital to safeguard against injustices resulting from various circumstances, including execution against the deceased judgment-debtor, biased arbitration proceedings, pending Section 34 proceedings, and ambiguous awards. These objections serve as a mechanism to uphold fairness, due process, and the integrity of the legal system.

The existence of conflicting views among different Hon'ble High Court/s presents substantial challenges to India's legal system. These disparities give rise to uncertainty, inequality, and

impediments to legal uniformity. Resolving such conflicts necessitates concerted efforts through judicial cooperation, intervention by the Supreme Court, and legislative clarity to foster consistency and coherence in the application of the law. Effectively addressing conflicting views is essential for the country to reinforce the rule of law and bolster public trust in the justice system.