

Objection as to a domestic award cannot be taken in the execution proceedings if no set-aside application was filed; CPC provisions which are inconsistent with ACA do not apply in execution under Section 36 ACA; Section 47 CPC is not attracted (Orissa High Court)

Update by Editor

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Birat Chandra Dagara v. Orissa Manganese & Minerals Ltd.

Court: Orissa High Court | **Case Number:** CMP No. 1062 of 2019 | **Citation:** 2020 SCC OnLine Ori 5 | **Bench:** Biswanath Rath J | **Date:** 07 January 2020

A single-judge bench of the High Court of Orissa has held that an objection as to the execution of an award cannot be raised in execution proceedings and Section 47 of the Code of Civil Procedure, 1908 (“CPC”)¹ (“questions to be determined by the Court executing decree”) does not apply in a proceeding for execution of an award under Section 36 of the Arbitration and Conciliation Act, 1996 (“ACA”).

The court reasoned as follows: –

- (a) Section 34 ACA and Section 47 CPC are somewhat similar. But Section 47 CPC is very wide and includes every dispute between the parties, whereas Section 34 ACA sets out restricted grounds.
- (b) Once a petition under Section 34 ACA challenging the award is dismissed or the limitation to file the set-aside petition expires, the award becomes final under Section 35 ACA. The award can then be enforced under Section 36 ACA “in accordance with the provisions of the CPC in the same manner as if it were a decree of the court.”
- (c) But the reference to CPC in Section 36 ACA does not mean that execution of an award (under Order XXI, CPC) would attract (other provisions of CPC, for example) Section 47 CPC because of the language of Section 36 ACA. Section 36 cannot be read out of context and independent of the scheme of the ACA. Reference to another statute does not attract such other statute to the referring statute unless expressly provided for. Any such reference, if made, has to be interpreted in the context in which it is made and consistent with the provisions of the referring statute itself. Any inconsistency is to be avoided.
- (d) If Section 47 CPC is to be attracted, the restrictions under Section 34 ACA will become redundant.
- (e) That apart, finality of a decree under CPC is reached after decision under Section 47 CPC (if raised). But under ACA, scope similar to Section 47 CPC is incorporated in Section 34 ACA

¹ Section 47: (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit ...

to bring finality before the decree becomes executable. The same procedure cannot be expected to be incorporated in a statute twice over. Legislature never intends repetition.

- (f) The object of the ACA is speedy disposal and to avoid long drawn procedure based on technicalities.

- (g) Having regard to Sections 4, 5, 12, 13, 16, 34 and 35 of the ACA, Section 36 ACA cannot be interpreted in a manner inconsistent with any of those provisions to attract CPC in its entirety.

Then the court referred to a few judgements for the proposition that no other mode apart from Section 34 ACA is permissible for setting aside an award.² The court then finally concluded that scope of executing court is very limited, and it cannot go behind the award.

² The court also relied on a Gauhati High Court judgment, *Subhas Projects and Marketing Ltd. v. Assam Urban Water Supply and Sewerage Board*, AIR 2003 Gau. 158 (HKK Singh and **Ranjan Gogoi** JJ), which is for the proposition that the grounds under Section 34 ACA cannot be agitated at the time of execution.