



OD-4 & 5

**IN THE HIGH COURT AT CALCUTTA**  
**Civil Appellate Jurisdiction**  
**ORIGINAL SIDE**

**APO/220/2015**  
**IA No. GA/2/2017 (Old No. GA/488/2017)**

**PREM LAL JAIN**  
**-VS-**  
**SUJOY KUMAR DEY AND ORS.**  
**&**  
**APO/75/2019**

**SMT. INDIRA MULLICK & ANR.**  
**-VS-**  
**PREM LAL JAIN**

**BEFORE:**

**The Hon'ble JUSTICE DEBANGSU BASAK**

**-AND-**

**The Hon'ble JUSTICE MD. SHABBAR RASHIDI**

For the Appellant in APO/220/2015 : Mr. Suman Dutt, Sr. Adv.  
& Respondent in APO/75/2019 Ms. Nilanjana Adhya, Adv.  
Mr. Paritosh Sinha, Adv.  
Mr. K. K. Pandey, Adv.  
Ms. Sonia Nandy, Adv.  
Ms. Mallika Bothra, Adv.

For the Respondent No.2 : Mr. Sukrit Mukherjee, Adv.  
in APO/220/2015 Mr. Rishav Deb Barman, Adv.

For the Respondent Nos.9 & 12 : Mr. Sakya Sen, Sr. Adv.  
In APO/220/2015 Mr. Priyankar Saha, Adv.  
Mrs. Sormi Dutta, Adv.

HEARD ON : 17.06.2026

DELIVERED ON : 17.06.2026

**DEBANGSU BASAK, J.:-**

1. Two appeals are taken up for hearing analogously as they emanate out of the same impugned judgment and order dated December 24, 2014 passed in GA/404/2009, GA/1893/2009, EC/185/2008.
2. APO/220/2015 is at the behest of the Award holder which APO/75/2019 is at the behest of the award debtor. For the sake of convenience the award holder is referred to as the appellant while the award debtor is referred to as the respondent.
3. By the impugned judgment and order, learned Executing Court held that, the award dated July 29, 2005 put into execution, was a nullity and set aside the same.
4. Learned Senior Advocate appearing for the appellant submits that, an agreement for sale was entered into between the owner of an immovable property and the appellant on May 5, 2005. An arbitration agreement was entered into between the parties on July 2, 2005. By such arbitration agreement, disputes and differences arising between the parties with regard to the agreement for sale dated May 9, 2005, were agreed to be referred to a named arbitrator.
5. Learned Senior Advocate appearing for the appellant submits that, disputes and differences arose between the parties to the arbitration agreement dated July 2, 2005 concerning and relating to the agreement for sale dated May 9, 2005. Consequently, the appellant submitted a statement of claim dated July 5, 2005 with



the named arbitrator. The vendor filed a counter claim and statement of defence before the arbitrator. An award dated July 29, 2005 was passed by the learned arbitrator.

6. Learned Senior Advocate appearing for the appellant submits that, the owner of the immovable property did not file any proceeding under Section 34 of the Arbitration and Conciliation Act, 1996. Vendor expired on September 10, 2005 leaving her surviving eight daughters and one son.
7. Learned Senior Advocate appearing for the appellant submits that, amongst the heirs and legal representatives of the deceased vendor, there were various proceedings including two proceedings for grant of probate in respect of two separate Wills allegedly executed by the deceased vendor.
8. Learned Senior Advocate appearing for the appellant submits that, the impugned order proceeds on the basis that, the land stood vested with the State under the Urban Land (Ceiling and Regulation) Act, 1976. He submits that, the land in question is yet to be declared as vested under the Act of 1976. He contends that, proceeding under Section 8 of the Act of 1976 is yet to be commenced. No compensation was ever paid either to the vendor or to the appellant for the land in question to be validly vested with the State.
9. Learned Senior Advocate appearing for the appellant draws the attention of the Court to the order dated September 2, 2012 passed by the High Court in support of the contention that, the proceeding



under the Act of 1976 is yet to attain finality so as to establish that the land in question stood vested with the State. In support of such contention, he relies upon the order dated May 10, 2011 passed by the Division Bench, where competent authority was directed to proceed afresh in the matter from the stage of Section 8 of the Act of 1976.

10. Learned Senior Advocate appearing for the respondent submits that, 4 bighas of land lying and situate at Tollygunge was allegedly agreed to be sold by the vendor to the appellant. He submits that, the agreement for sale is unregistered and unstamped. The same was not entered into by the vendor herself. The alleged Power of Attorney holder of the vendor executed the agreement for sale.
11. Learned Senior Advocate appearing for the respondent submits that, the land stood vested with the State under the provisions of the Act of 1976. In support of such contention, he relies upon the order dated October 16, 2020 passed by the appellate authority under Section 33 of the Act of 1976. At least out of 12006.29 sq. mts. of land belonging to the vendor, since deceased, 8900.21 sq. mts was held to be vested by the appellate authority. Consequently, the award passed in respect of the land which stands vested with the State, is a nullity.
12. Learned Senior Advocate appearing for the respondent submits that, respondent is entitled to maintain a petition under Section 47 of the Code of Civil Procedure, 1908 in a proceeding for executing the award, notwithstanding not filing a petition under Section 34 of



the Act of 1996, challenging the award. In support of such contention, he relies upon **2025 INSC 1279 (MMTC Limited -Vs- Anglo American Metallurgical Coal Pvt. Limited)**.

13. Learned Senior Advocate appearing for the respondent submits that, the award is a nullity on least two counts. Award is a nullity since, the award is a result of fraud which was perpetuated at the time of obtaining of the award. Award was procured by fraud. The fact that the award stood vitiated by fraud is apparent on the face of the record.
14. Elaborating on his submission as to the fraud on the face of the award, learned Senior Advocate appearing for the respondent submits that, the arbitration agreement on the basis of which, the award was passed, was in respect of an unregistered and unstamped agreement for sale of 4 bighas of land in Tollygunge. He refers to the body of the award. He submits that, the learned Arbitrator allowed such unregistered and unstamped agreement for sale to be considered as a piece of evidence without following the rigours of the Stamp Act or the Registration Act.
15. Learned Senior Advocate appearing for the respondent submits that, the owner of the immovable property concerned did not execute any of the documents resulting in the purported award. He points out that, it was the Power of Attorney holder, who allegedly executed the agreement for sale as also the arbitration agreement. He submits that, the procured award came into being in a short span of time since the execution of the agreement for sale. He



refers to the sequence of events in this regard. He submits that, the agreement for sale is dated May 9, 2005. The arbitration agreement is dated July 2, 2005, letter of reference is dated July 5, 2005. Such letter of reference contains the statement of claim. Counter claim and defence of the appellant was filed with the learned Arbitrator on July 9, 2005 and the award was passed on July 29, 2005. He submits that, such sequence of events establishes hot haste and is a ground which establishes fraud vitiating the award.

16. Learned Senior Advocate appearing for the appellant submits that, the learned Arbitrator could not consider the alleged agreement for sale since, it was both unstamped and unregistered. He points out paragraph 11 of the award and submits that, learned Arbitrator did not consider the aspect of the Stamp Act or the Registration Act in respect of alleged agreement for sale.
17. Learned Senior Advocate appearing for the respondent submits, without prejudice to earlier contention that, the award is unimplementable. He submits that, the award requires performance of certain obligations of the appellant which the appellant is yet to discharge. Since reciprocal obligations in terms of the award are yet to be discharged, the award cannot be put into execution. In support of such contention, he relies upon **(1956) 1 SCC 75 (Jai Narain Ram Lundia -Vs- Kedar Nath Khetan And Others)**.
18. Learned Senior Advocate appearing for the respondent submits that, the final measurement of the immovable property concerned was not made. He contends that, the respondent was not aware of



the award till the execution petition. In the probate proceedings, the Power of Attorney holder was appearing. At no stage in the probate proceedings did the Power of Attorney holder inform the respondent or any of the parties to the probate proceedings that, there was the award. He submits that, on such ground alone, the executing Court should dismiss the execution petition.

19. Learned Senior Advocate appearing for the respondent contends that, the learned Judge erred in not holding the award to be vitiated by fraud. The learned Judge erred in accepting only one portion of submission of the respondent with regard to the award.
20. Appellant put the award dated July 29, 2005 into execution by way of an execution petition being EC/185/2008. In such execution petition, the respondent filed a petition under Section 47 of the Code of Civil Procedure, 1908 which was registered as GA/404/2009.
21. Respondent before us is one of the daughters of Late Kamala Bala Paul. Kamala Bala Paul expired on September 10, 2005. Kamala Bala Paul, since deceased was the owner of several immovable properties. Kamala Bala Paul, since deceased executed a Power of Attorney in favour of her son-in-law. On the basis of such Power of Attorney, an agreement for sale of the immovable properties concerned, was entered into between Kamala Bala Paul, since deceased through the Power of Attorney holder and the appellant. An arbitration agreement dated July 2, 2005 was entered into between the appellant and Kamala Bala Paul, since deceased



through the Power of Attorney holder. Such arbitration agreement was for the purpose of referring the disputes and differences in respect of the agreement for sale to a named arbitrator.

22. Disputes and differences arose between Kamala Bala Paul, since deceased and the appellant relating to and concerning the agreement for sale dated May 5, 2005. Such disputes and differences were referred to the named arbitrator by a letter dated July 5, 2005 of the appellant. A statement of claim was enclosed with such letter of reference. Kamala Bala Paul, since deceased, who was the Power of Attorney holder, filed a statement of defence along with a counter claim in such arbitration proceedings. The learned Arbitrator passed an award on July 29, 2005.
23. None of the parties to the arbitration filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 assailing the award dated July 29, 2005.
24. As noted above, Kamala Bala Paul, since deceased, expired on September 10, 2005 leaving her surviving eight daughters and one son. Two Wills allegedly executed by Kamala Bala Paul, since deceased, were brought forth to Court through probate proceedings.
25. There is an issue under the Act of 1976 with regard to the immovable property concerned. Proceedings under the Act of 1976 were initiated in respect of the property concerned. Such proceedings received the consideration of the High Court. By an order dated September 2, 2012, the learned Single Judge, set aside



the order of the appellate authority affirming the order of the adjudicating authority under the Act of 1976. Appeal Case No. 56 of 1952 was remanded to the appellate authority for consideration afresh.

26. The appeal Court, by the order dated May 10, 2011 passed in MAT/628/2011 directed the competent authority under the Act of 1976 to proceed afresh from the stage of Section 8 of the Act of 1976.
27. Section 8 of the Act of 1976, relates to preparation of draft statements as regards the vacant land held in excess of the ceiling limit.
28. Records made available to Court do not establish that, proceedings under the Act of 1976 reached the stage of Section 9 of the Act of 1976 that is, a final statement being prepared or, a process under Section 10 thereof being undertaken that is, acquisition of the vacant land in excess of the ceiling limit as also payment of compensation under Section 11 of the Act of 1976.
29. On the basis of the records made available to Court, we are not in a position to return a conclusive finding that, the land in question stood vested with the State under the provisions of Act of 1976 since, records do not establish processes being undertaken subsequent to the stage of Section 8 of the Act of 1976.
30. As noted above, the award is dated July 29, 2005. Again as noted above, no petition under Section 34 of the Act of 1996 was filed challenging such award. Contention of the respondent is that, they



became aware of the award dated July 29, 2005 subsequent to the execution petition being served upon her.

31. Even on the date when, the respondent gained knowledge of the award dated July 29, 2005, the respondent did not take any steps to challenge such award under Section 34 of the Act of 1996.
32. Without assailing the award under Section 34 of the Act of 1996, the respondent raised objections on the executability of the award under Section 47 of the Code of Civil Procedure, 1908 which was allowed as noted above.
33. **MMTC Limited (supra)** is of the view that, notwithstanding no challenge under Section 34 of the Act of 1996 being thrown, the execution of such award can nonetheless be assailed on the grounds available under Section 47 of the Code of Civil Procedure, 1908. In the facts of **MMTC Limited (supra)**, execution of the award was challenged under Section 47 of the Code of Civil Procedure, 1908 on the ground of fraud vitiating the award. It was alleged that officers of MMTC Limited were hand in glove with the tenderer while accepting the rate in respect of the goods under the tender. In such matter, however, Supreme Court held that, the scope of Section 47 of the Code of Civil Procedure, 1908 in such a scenario is in a narrow compass. Supreme Court noted that, there was a steady rise of proceedings akin to a retrial which causes failure of realisation of the fruits of a decree. It held that, unless prima facie grounds are made out entertaining objections under Section 47, the same would be an abuse of the process.



34. In the present case, two grounds are canvassed to contend that, the award stands vitiated by fraud. Conduct in the arbitration as also its expeditious disposal is one part of the allegation of the award being vitiated by fraud. The other is that, the land stood vested with the State and therefore, the award is not executable.
35. On the second ground of vesting with the State, we return a finding that, the land as on date cannot be said to be vested with the State under the provisions of the Act of 1976. Therefore the award cannot be said to be unforceable on such the ground of vesting.
36. So far as the conduct in the arbitration as also the expeditious disposal thereof, we find that, there was an agreement for sale dated May 9, 2005 which was unregistered and not appropriately stamped. It was stamped on a Rs.10, Non-judicial stamp paper. The agreement for sale did not contain any arbitration agreement.
37. Arbitration agreement was subsequently entered into on July 2, 2005. Statement of claim was filed on July 5, 2005. Kamala Bala Paul, since deceased, through her Power of Attorney submitted a statement of counter claim and defence. Award was passed on July 29, 2005.
38. There is nothing on record before us to arrive at a finding that Kamala Bala Paul, since deceased, did not appoint the Power of Attorney to deal with her affairs in the manner as done Power of Attorney of Kamala Bala Paul, since deceased is her son in law. In absence of such material, we are not in a position to hold that, Kamala Bala Paul, since deceased, during her lifetime did not act



through her Power of Attorney so appointed as done in entering into the agreement for sale, entering into the arbitration agreement and submitting the statement of claim.

39. There is no material on record to establish that, the Power of Attorney of Kamala Bala Paul, since deceased, or Kamala Bala Paul, since deceased was not aware of the award dated July 29, 2005. Respondent before us is one of the heirs and legal representatives of Kamala Bala Paul, since deceased. Other heirs and legal representatives of Kamala Bala Paul, since deceased, accepted money subsequent to the award in respect of the immovable property concerned by a writing of February, 2006. Respondent did not execute such letter.
40. Simplicitor on the ground that, the arbitration proceeding was disposed of expeditiously, without any other attending circumstances support fraud being perpetrated we are not in a position to return a finding that, the award stood vitiated by fraud. The contention that the arbitrator considered an unregistered and unstamped document, is also not available to the respondent under Section 47 of the Code of Civil Procedure, 1908 since, the respondent chose not to avail of her remedies under Section 34 of the Act of 1996. The fact that, the respondent chose not to avail of her remedy under Section 34 of the Act of 1996 limits her challenge to the award under Section 47 of the Code of Civil Procedure, 1908 as noted in **MMTC Limited (supra)**.



41. In the facts and circumstances of the present case, since the respondent failed to establish fraud in passing of the award dated July 29, 2005, which was put into execution, we are constrained to set aside the impugned judgment and order.
42. The impugned judgment and order dated December 24, 2014 is set aside.
43. So far as whether or not the Executing Court will grant relief to the appellant, in the manner as prayed for in the tabular statement or not, is kept open to be decided by the Executing Court. Such issue was not entered into by the learned Executing Court in the impugned judgment and order.
44. APO/220/2015 and APO/75/2019 along with all pending applications are disposed of, without any order as to costs.

**(DEBANGSU BASAK, J.)**

45. I agree

**(MD. SHABBAR RASHIDI, J.)**