

A M/S KOHINOOR TRANSPORTERS

v.

STATE OF UTTAR PRADESH

(Civil Appeal No. 8338 of 2018)

B AUGUST 21, 2018

[DIPAK MISRA, CJI AND DR. D.Y. CHANDRACHUD, J.]

Code of Civil Procedure, 1908:

C *s.47 – Money decree – Execution proceedings – Both the parties filed their respective statements of calculations in regard to the amount due under the decree of the Court – Executing Court rejected the objections filed by respondent – Revision by respondent – High Court directed the appointment of Chartered Accountant to consider the details of arrears – Held: High Court acted in manifest excess of its jurisdiction while directing the appointment of a*
D *Chartered Accountant for the purpose of determining as to whether the decretal debt is to be marked as satisfied – The execution proceeding is pending before the Civil Judge and various orders have been passed thereon from time to time – The issue as to whether the decree has been discharged or satisfied has to be determined*
E *by the Executing Court under s.47. CPC – The Executing Court must execute the decree as it stands, without adding anything to it – In the counter affidavit filed on behalf of the respondent, the contention of the appellant that there was an admission in regard to the balance of Rs 1.25 crores is sought to be controverted – All*
F *these are matters which must properly be addressed in the course of the execution proceedings – The High Court has acted in excess of jurisdiction by directing the appointment of a Chartered Accountant, particularly at this stage – The impugned order of the High Court is set aside – Having regard to the fact that the dispute between the parties arose out of a contract of 1980 and an award of 1984 which*
G *is still being executed, the High Court to dispose of the Civil Revision expeditiously.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8338 of 2018.

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M/S KOHINOOR TRANSPORTERS v. STATE OF
UTTAR PRADESH

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From the Judgment and Order dated 18.09.2017 of the High Court of Uttarakhand at Nainital in CLR No.147 of 2016. A

Abhay Kumar, Saurabh Mishra, Himanshu Pal Singh, Mukul Kumar, Advs. for the Appellant.

Mrs. Rachna Gupta, Charu Singhal, Vikas Chaudhary, Advs. for the Respondent. B

The Judgment of the Court was delivered by

DR. D. Y. CHANDRACHUD, J. 1. An arbitral proceeding took place between the appellant and the respondent under the Arbitration Act 1940. The disputes originated in a contract of 1980 for certain civil works and eventually resulted in an arbitral award dated 20 July 1984. The award was made a Rule of the Court on 30 August 1986 by the Civil Judge, Dehradun. The award has attained finality after the High Court of Uttaranchal dismissed an appeal filed by the State on 15 December 2006. The Civil Judge, it may be noted, reduced the rate of interest from 12 per cent to 6 per cent. C D

2. The appellant filed an application for execution before the Additional Civil Judge, Dehradun, being Execution Application 27/2010. During the course of the execution proceedings, the respondent-state deposited an amount of Rs 75,65,945 towards the decretal debt. In the course of the execution proceedings the appellant and the state filed their respective statements of calculation in regard to the amount due under the decree of the Court. On 6 April 2015, the Executing Court directed the respondent to deposit an amount of Rs 1,25,16,969.56 stating that it is 'admitted'. Notice was issued to the respondent under Order XXI Rule 41 CPC to which it filed its objections. On 16 August 2016, the Executing Court rejected the objections on the ground that the amount of Rs 1.25 crores was admitted, as evident from the earlier order dated 6 April 2015. A Civil Revision Application was filed by the respondent against the order of the Executing court. During the course of the execution proceedings an order was passed on 3 August 2017 directing the judgment debtor to comply with the earlier order of 6 April 2015, failing which, it was observed "they shall be deemed to be penheld". After this order of the Executing Court, a stay application was moved in the revisional proceedings before the High Court by the State. The High Court by its impugned order directed the appointment of a Chartered Accountant in the following terms: E F G H

A “..So, I think that notwithstanding the absence of any prayer regarding the appointment of competent persons in this regard, the only recourse which may be helpful to the Court is to appoint a Chartered Accountant in this matter who shall consider the details of the arrears, as have been claimed by the decree holder, and the details of accounts depicted in the departmental narrative submitted by the judgment debtor.

B Each party is directed to submit the names at least two chartered accountants within two weeks.”

C 3. It is this order of the High Court which is challenged in the present proceedings.

4. Notice was issued on 5 January 2018 and the interim order of the High Court was stayed.

D 5. On behalf of the appellant it has been submitted that the High Court was manifestly in error in directing the appointment of a Chartered Accountant for three reasons:

Firstly, the High Court acted in excess of jurisdiction by directing the appointment of a Chartered Accountant in a civil revision when under Section 47 of the CPC all questions in regard to the execution discharge or satisfaction of a decree have to be determined by the Executing Court;

E *Secondly*, there was no challenge to either the order dated 6 April 2015 or the order dated 3 August 2017 of the Executing Court requiring the respondent to deposit the ‘admitted’ dues of Rs 1.25 crores; and

F *Thirdly*, the interim order of the High Court virtually amounts to the grant of final relief while considering the stay application.

G 6. On the other hand, it has been submitted on behalf of the State that the appellant is seeking to aggrandize itself by revising its decretal claim. Whatever was due has been deposited and an amount of Rs.75,65,945 was deposited before the Executing Court as far back as on 7 December 2012. It was urged that it is not open to the Executing Court to go behind the decree.

H 7. Having heard the learned counsel, we are of the view that the High Court has acted in manifest excess of its jurisdiction while directing the appointment of a Chartered Accountant for the purpose of determining as to whether the decretal debt is to be marked as satisfied. The execution

proceeding is pending before the Additional Civil Judge, Dehradun and, as we have noticed, various orders have been passed thereon from time to time. The issue as to whether the decree has been discharged or satisfied has to be determined by the Executing Court under Section 47 of the CPC. The Executing Court must execute the decree as it stands without adding anything to it. In the counter affidavit which has been filed on behalf of the respondent, the contention of the appellant that there was an admission in regard to the balance of Rs 1.25 crores is sought to be controverted. But that is a matter which need not detain this Court. All these are matters which must properly be addressed in the course of the execution proceedings. The High Court, in our view, has acted in excess of jurisdiction by directing the appointment of a Chartered Accountant, particularly at this stage.

8. We, accordingly, allow the appeal and set aside the impugned order of the High Court dated 18 September 2017. Having regard to the fact that the dispute between the parties arises out of a contract of 1980 and an award of 1984 which is still being executed, we request the High Court to dispose of the Civil Revision 147/2016 expeditiously, but in any event within a period of three months from the date on which a certified copy of this order is placed on its record. The Civil Appeal is, accordingly, disposed of. There shall be no order as to costs.

Devika Gujral

Appeal disposed of.