

HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION No.2936 of 2024

Between:

M/s. Real Fab India Pvt.Ltd.,
Plot No.15, Daspalla Hills,
Visakhapatnam, rep.by its Managing
Director Koneru Karunakara Rao

..... PETITIONER

AND

M/s. Rashtriya Ispath Nigam Limited,
Visakhapatnam Steel Plant, Visakhapatnam,
Rep. by its General Manager, RMI-IP/Construction

.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: **21.03.2025**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

+ CIVIL REVISION PETITION No.2936 of 2024

% 21.03.2025

M/s. Real Fab India Pvt.Ltd.,
Plot No.15, Daspalla Hills,
Visakhapatnam, rep.by its Managing
Director Koneru Karunakara Rao

....Petitioner

Versus

\$ M/s. Rashtriya Ispath Nigam Limited,
Visakhapatnam Steel Plant, Visakhapatnam,
Rep. by its General Manager, RMI-IP/Construction

....Respondent

! Counsel for the Petitioner: Sri Gopal S. Hegde, Senior Counsel,
Assisted by Sri Koneru Prabhakara Rao
Representing Sri Y.N.Anjaneyacharyulu

^ Counsel for respondent : ---

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> Head Note:

? Cases Referred:

1. 1970 (1) SCC 670
2. (1969) 1 SCC 718
3. 2013 SCC OnLine Kar 125

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**CIVIL REVISION PETITION No. 2936 of 2024****JUDGMENT:**

Heard Sri Gopal S. Hegde, learned senior counsel, assisted by Sri Koneru Prabhakara Rao, learned counsel, representing Sri Y. N. Anjaneyacharyulu, learned counsel for the petitioner.

2. This civil revision petition under Article 227 of the Constitution of India has been filed by the petitioner-M/s.Real Fab India Private Limited, Plot No.15, Daspalla Hills, Visakhapatnam, represented by its Managing Director-Koneru Karunakara Rao, the claimant in Claim No.21C/IFC/2013/19266, being aggrieved from the Order dated 17.09.2024 passed in CEP GR Nos.1694 and 1772 of 2024, by the Judge, Special Court for trial and disposal of Commercial Disputes, Visakhapatnam (in short 'Special Court').

3. The prayer in the civil revision petition is to set aside the Order dated 17.09.2024 and to restore the petition on the file of the Special Court with effect from the date it was presented for enforcement and to proceed further in accordance with law in a time bound manner and pass such other order/orders as deemed fit and proper by this Court.

4. By Order dated 17.09.2024, under challenge, the learned Special Judge rejected the execution petition as not maintainable.

5. The petitioner herein is a Small Scale Industrial Undertaking holding registration No.01-20-03216-PMT-SSI, dated 24.03.1984. The petitioner was

the claimant in the Case No.21C/IFC/2013/19266. An Award dated 25.10.2018 was passed in its favour by Andhra Pradesh Micro and Small Enterprises Facilitation Council at Vijayawada (in short 'Council') established under Section 20 of the Micro, Small and Medium Enterprises Development Act, 2006 (in short 'MSMED Act'). The claimant made a claim of Rs.22,74,31,117/- against the respondent herein, M/s. Rashtriya Ispath Nigam Limited, Visakhapatnam Steel Plant, Visakhapatnam, represented by its General Manager in short 'RINL').

6. The operative part of the Award dated 25.10.2018 is as under:

“1. The reference petition No.21C/IFC/2013/19226 is allowed in terms of prayer.

2. The Judgment Debtor is required to pay to the claimant an amount of Rs.11,79,38,792/- (Rupees Eleven Crores Seventy-Nine Lakhs Thirty-Eight Thousand and Seven Hundred and Ninety Two Only) as principle and interest on 12,54,38,792/- (Rupees Twelve Crores Fifty Four Lakhs Thirty Eight Thousand Seven Hundred and Ninety Two only) as per the MSMED Act, 2006 from the appointed day i.e., 45 days from the Date of Termination i.e., 1.11.2010 to 21.09.2017 and interest on principle amount of Rs.11,79,38,792/- (Rupees Eleven Crores Seventy-Nine Lakhs Thirty-Eight Thousand and Seven Hundred and Ninety Two Only) from 22.09.2017 to till date as per the MSMED Act, 2006.

3. The Principle & Interest amount is to be paid by the Judgment Debtor to the Claimant within a period of one month from the date of receipt of this order.

4. No order as to cost.

5. The case is disposed of and closed.”

7. The respondent-RINL, filed petition-CAOP.No.16 of 2019 under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'Arbitration Act') to set aside the award dated 25.10.2018.

8. The Special Court in the light of the contentions raised before it, framed the following points for determination:

1. "Whether the award filed in the case attested by the Assistant Director/Registrar, APMSEFC, is sufficient compliance with Section 31 of the Arbitration Act and what is its effect?
2. Whether the Council has jurisdiction or not?
3. Whether the contract in question is a works contract and therefore the benefits under the MSMED Act are not applicable?
4. Whether the award suffers from any of the infirmities under Section 34 (2) of the Act?"

9. **On Point No.1**, the Special Court recorded that the signed copy of the award was not brought on record even by the claimant. No party seemed to have taken steps to ascertain whether the award was signed by all the Members and the Chairman of the Council and if so, to get a copy thereof. In the circumstances, the award as filed with the attestation of the Registrar was not an award to take effect and to be final. It was held that Section 34 of the Arbitration Act petition, could not be maintained for want of signed copy of the award. **On Point No.2**, the Special Court held that, regardless of the fact that the Contractor had been registered as SSI Unit on 24.03.1984, he was not entitled to the benefits under the MSMED Act, since he did not file the memorandum as on the date of the contract or before the execution of the contract. **On Point No.3**, the Special Court concluded that the contract in

question was a 'works contract' in respect of which benefits under the MSMED Act could not be extended. **On Point No.4**, the Special Court held in para-44 as under:

“44. In addition to the above, the award with the signatures of the Members and the Chairman of the Council is not filed and hence challenging the award under Section 34 of the Arbitration Act does not arise since there is no valid and complete award. Consequently, **although the award is liable to be set aside on the grounds that the Council had no jurisdiction to adjudicate the disputes since the claimant did not file the memorandum, that the contract in question is a works contract and therefore the benefits under the MSMED Act are not available, and that the award is not a reasoned one, the award cannot be set aside for the reason that the award as filed in the Court is not signed by the Members and the Chairman of the Council and thus it is not complete and valid.** When there is no complete and valid award, the question of setting aside the award does not arise. Hence, the petition has to be dismissed. Though the petition could have been dismissed on this sole ground, **all the points raised in the petition have been answered for the sake of completeness so that answers to all the points will be available on record.** Point No.4 is accordingly answered.”

10. In the result, the Special Judge held that though the petition could have been allowed and the award could have been set aside on the grounds, as in para-45 of the Order dated 27.12.2023, but the petition was dismissed for the reason that the award as filed in the Court was not signed by the Members and the Chairman of the Facilitation Council and was not a valid and complete award, and therefore, the question of setting aside such an award as filed in the Court did not arise. Para-45 of the Order reads as under:

“45. In the result, though the petition could have been allowed and the award could have been set aside on the grounds (a) that the Council had no jurisdiction to adjudicate the disputes since the claimant did not file the memorandum and comply the proviso to Section 8 (1) of the MSMED Act; (b) that the contract in question was a works contract and therefore the benefits under the MSMED Act are not available; and (c) that the award is not a reasoned one, the petition is dismissed for the reason that the award as filed is not a valid and complete award as it does not contain the signatures of the Members and the Chairman of the Facilitation Council and therefore the question of setting aside such an award as filed in the Court does not arise. In the facts and circumstances and since there is another petition between the same parties against the very same award, parties are left to bear their own costs.”

11. The petitioner-claimant had filed execution petition C.E.P.No.6 of 2019, under Order 21 Rules 11, 30 & 52 of the Code of Civil Procedure (in short 'CPC') and had prayed the following relief:

“To order attachment of the stock-in-trade lying in the stock yard of the JDR in Visakhapatnam Steel Plant premises to the extent of the EP amount under Order 21 Rule 43 CPC and sale of the same under Order 21 Rule 64 and 66 CPC for realization of the EP amount.”

12. The respondent/Rashtriya Ispat Nigam Limited, in CAOP No.16 of 2019 filed I.A.No.73 of 2019, which was allowed granting stay of the execution of the Award dated 25.10.2018, till disposal of the main CAOP.No.16 of 2019.

13. The C.E.P.No.6 of 2019 was closed due to stay order. After disposal of CAOP No.16 of 2019, the petitioner-Realfab India Private Limited, filed E.A.No.11 of 2024 to restore/list CEP No.6 of 2019.

14. E.A.No.11 of 2024 was dismissed by a detailed Order dated 05.08.2024.

15. A perusal of the Order in E.A.No.11 of 2024 shows that, in the said case, the learned Special Court framed the following point for consideration:

“Whether in view of the dismissal of CAOP No.16 of 2019, EP has to be restored to file or not?”

16. Considering the aforesaid point, the learned Special Judge in E.A.No.11 of 2024, observed that the EP was only closed in view of the stay of the execution of the award and EP was not terminated. The Real Fab also filed CAOP.No.15 of 2019, under Section 34 of the Arbitration Act, being dissatisfied with the rejection of a part of claim before the Council, and the respondent-RINL had filed CAOP.No.16 of 2019 under Section 34 of the Arbitration Act to set aside the award. In the CAOP it was recorded that the Council had no jurisdiction to adjudicate the disputes, since the claimants did not file the memorandum and failed to comply the proviso to Section 8 (1) of the MSMED Act and that the contract in question was a works contract and therefore, the benefits under MSMED Act were not available.

17. Learned Special Judge further observed in E.A.No.11 of 2024 that, CAOP.No.16 of 2019 filed by FINL, it was held that though the CAOP could have been allowed and the award could have been set aside on the two grounds, as noted in the order, and also for the reason that the award was not a reasoned one, the CAOP No.16 of 2019 was dismissed on the ground that the award as filed was not a valid and complete award as it did not contain the signatures of the Members and the Chairman of the Facilitation Council. Therefore, for the

said reason, the question of setting aside such an award as filed in the Court, did not arise.

18. The learned Special Judge further held that there was no award much less an executable one. In para-13 of the Order dated 05.08.2024 the learned Special Judge observed as under:

“13. The point is, even then is it necessary to restore or list the EP, simply because CAOP No.16/2019 was dismissed? The only answer could be in the negative. Restoring or listing the EP and then dismissing it reiterating the same grounds stated in CAOP.No.16/2019 would serve no purpose. Had the EP been not closed and had it been continuing to be listed, the result would be dismiss it for the reasons in CAOP No.16/2019. In either case, dismissal of CAOP No.16/2019 *per se* would not alter the result. Hence, the application has to be dismissed. Point is thus answered.”

19. Thus, it was held that restoring or listing of EP and then dismissing it on the same grounds, as were stated in CAOP.No.16 of 2019, would serve no purpose. Had the EP been not closed and had it been continuing to be listed, the result would have been to dismiss it for the reasons as in CAOP.No.16 of 2019. In either case, dismissal of CAOP No.16 of 2019 *per se* would not alter the result. The application E.A.No.11 of 2024 to revive the CEP was dismissed.

20. The petitioner M/s. Real Fab India Private Limited, then filed petition, CEP GR Nos.1694 and 1772 of 2024, in same Claim No.21C/IFC/2013/19266. The petition has been rejected as not maintainable by the learned Special Judge, vide Order dated 17.09.2024.

21. In the present civil revision petition, under challenge is the Order dated 17.09.2024. By the said Order, the learned Special Judge while rejecting

the petition as not maintainable, observed that in spite of clear finding that there was no executable award, the Real Fab, the present petitioner filed the execution petition mainly on the ground that the copy of the award, which fulfilled the requirements of Section 31 of the Arbitration Act, was available and hence the award was executable.

22. It is thus evident that the impugned Order dated 17.09.2024, is passed in view of the Order dated 05.08.2024 in E.A.No.11 of 2024 holding that there was inexecutable award and the execution petition (CEP GR of 2024) was not maintainable.

23. Learned counsel for the petitioner advanced the only submission that, the previous rejection in E.A.No.11 of 2024 was because the signed copy of the award was not filed. He submits that later on in the present CEP GR of 2024, signed copy of the award was filed and so the learned Special Judge erred in rejecting the same as not maintainable. He submitted that it was for the executing Court to enforce the Award/decreree, unless an objection was taken on maintainability. The original Arbitral Award filed before the Executing Court with the present CEP GR of 2024 was made on 25.10.2018, and delivered on 29.05.2024 in compliance with the provisions of Section 31 of the Arbitration Act, which award attained finality under Section 35 of the Arbitration Act, as the signed award was not challenged under Section 34 of the Arbitration Act, and the previous challenge was rejected. As such the award was executable under Section 36 of the Arbitration Act for which Execution Case should have been

registered and proceeded in accordance with law and the same could not have been rejected as not maintainable.

24. Learned counsel for the petitioner filed a compilation of citations in the present revision petition, but during arguments, he placed reliance only on one judgment in ***V. D. Modi v. R. Abdul Rehman and Ors.***¹ to contend that a Court executing a decree cannot go behind the decree, and until the award dated 25.10.2018 was set aside by an appropriate proceeding, even if it be erroneous was still binding between the parties and executable.

25. No other judgment was placed reliance upon in support of the same contention and no other contention was raised.

26. I have considered the aforesaid submissions and perused the material on record.

27. The following point arises for consideration and determination:

Whether the Judgment & Order dated 17.09.2024 passed by the learned Special Judge rejecting the Execution Petition in CEP GR Nos.1694 and 1772 of 2024 as not maintainable is legally justified or it calls for interference?

28. It is evident from the aforesaid narration of facts that in CAOP.No.16 of 2019, in which the challenge was made to the Award under Section 34, was dismissed on the ground that the award as filed was not signed by the Members and the Chairman of the Facilitation Council, and so, not a valid and complete award, and consequently, the question of setting aside the said award

¹ 1970 (1) SCC 670

did not arise. The dismissal of the petition under Section 34, CAOP No.16 of 2019, was not on the ground that the case for setting aside the award was not made out. On the contrary, specifically it was held that, the grounds for setting aside the award were made out on which the award could have been set aside. A specific finding was recorded in those proceedings that the award could have been set aside on the grounds;

(a) that the Council had no jurisdiction to adjudicate the disputes since the claimant did not file the memorandum and comply the proviso to Section 8 (1) of MSMED Act;

(b) that the contract in question was a works contract and therefore the benefits under the MSMED Act were not available;

(c) that the award was not a reasoned one;

The award was not set aside only for the reason that the learned Special Judge found that, for want of signatures of the Members and the Chairman of the Facilitation Council on the award as filed, there was no valid and complete award, so there was no question or occasion to set aside the same.

29. Considering on the Order dated 27.12.2013 in CAOP No.16/2019, the learned Special Judge had rejected the petitioner's E.A.No.11 of 2024 to restore/list CEP No.6 of 2019 by Order dated 05.08.2024. The said Order dated 05.08.2024, it could not be shown to the Court was challenged. The said Order dated 05.08.2024 attained finality. CEP.No.6 of 2019 was filed for execution of the same award dated 25.10.2018. In view of the stay granted in CAOP.No.16

of 2019 in I.A.No.73/2019 filed therein, the proceedings of CEP.No.6 of 2019 were closed by the Court. After the Order passed in CAOP.No.16 of 2019, when E.A.No.11 of 2024 was filed in CEP No.6 of 2019, the same was rejected, on the ground of the Order passed in CAOP.No.16 of 2019, that the award was inexecutable. Consequently, CEP.No.6 of 2019 could not be restored. Once CEP.No.6 of 2019 was not restored for execution of the same award dated 25.10.2018, clearly observing that the Award was inexecutable and the Order dated 05.08.2024 is on merits, in the view of this Court, the rejection of the petitioner's petition in CEP GR of 2024 for execution of the same award, as not maintainable, by the Order under challenge, cannot be faulted or said to be suffering from any illegality.

30. The submission of the learned senior counsel is that the rejection of the E.A.No.11 of 2024 was on the ground that the award as filed was not signed by the Members and the Chairman of the Facilitation Council. So, after the signed copy of the award by the Members and the Chairman of the said Facilitation Council was filed for execution, the ground on which the previous execution petition was rejected, was no more available and therefore, the Executing Court, the learned Special Judge, ought to have registered the execution petition and proceeded to execute the award as per law.

31. The aforesaid submission, in the view of this Court, deserves rejection. The simple reason is that, the previous rejection of E.A.No.11 of 2024 refusing to restore the CEP.No.6 of 2019 was not only on the ground that the award for execution was not signed, but also by recording specific findings,

considering the findings recorded in CAOP.No.16 of 2019 that the award was liable to be set aside under Section 34 though not set aside in the absence of signatures of the Members and the Chairman, as the award was found not a valid and complete award, that the award was inexecutable for the reasons already recorded in CAOP No.16 of 2019, and to reiterate the same grounds in EA No.11 of 2019 would in fact be an exercise in futility. It cannot be said that rejection of EA No.11 of 2019 was only because the signed award was not filed. Even after the award contained the signatures and filed for execution, I am of the view that, so far as the award suffering from illegalities, based on which, it could be set aside under Section 34, as recorded by the learned Special Judge in CAOP.No.16 of 2019, could not be ignored by the Execution Court. Consequently, this Court does not find any force in the submission of the learned counsel for the petitioner that the previous rejection was because the award was unsigned, and as now it is signed copy of the award, therefore, the execution Court should proceed.

32. In **V. D. Modi** (supra), upon which, the learned counsel for the petitioner placed reliance, the Hon'ble Apex Court has held that a Court executing the decree cannot go behind the decree; between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or in facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

33. There is no dispute on the aforesaid proposition of law.

34. In ***V. D. Modi*** (supra), the Hon'ble Apex Court observed that when a decree which is nullity, is sought to be executed, an objection in that behalf may be raised in a proceeding for execution. The Hon'ble Apex Court observed that when the decree was made by a Court which had no inherent jurisdiction to make, objection as to its validity may be raised in an execution proceeding if the objection appeared on the face of the record. It was further observed that where the objection as to the jurisdiction of the Court to pass the decree did not appear on the face of the record and required examination of the questions raised and decided at the trial or which could have been but had not been raised, the Executing Court would have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.

35. In the present case, the Special Court in CAOP.No.16 of 2019 clearly recorded that the Council had no jurisdiction to adjudicate the disputes and that the contract in question was a works contract and therefore, the benefits under the MSMED Act were not available. In view of those findings it was on the face of the award, that the award was held without jurisdiction. So was held in the previous execution proceedings vide Order dated 05.08.2024. The Executing Court, in the present proceedings could not ignore that the award was without jurisdiction, not capable of execution by the Executing Court nor the Order dated 05.08.2024.

36. In the present case, there are specific findings recorded with respect to the award that, it suffered from those illegalities on the grounds on which it was liable to be set aside under Section 34. Those findings could not be

ignored. E.A.No.11 of 2024, vide Order dated 05.08.2024, was rejected to restore the previous execution case for execution of the same award. That Order was passed after hearing both the sides. That Order became final. There is no challenge to the Order dated 05.08.2024 in the present revision petition. So, the legality or otherwise of the Order dated 05.08.2024 is not open to be seen in this petition. The Court has to proceed keeping in view the finality attached to the Order dated 05.08.2024.

37. At this stage, the Court may refer the case of ***Shivashankar Prasad Shah v. Baikunth Nath Singh***². The Hon'ble Apex Court held that, an execution petition which has been dismissed for the default of the decree holder, though by the time the petition came to be dismissed, the judgment debtor had resisted the execution on one or more grounds, did not bar the further execution of the decree in pursuance of fresh execution petitions filed in accordance with law. Paras 5 and 6 of ***Shivashankar Prasad Shah*** (supra) are as under:

“5. From this decision it is clear that the Judicial Committee opined that before a plea can be held to be barred by res judicata that plea must have been heard and determined by the court. Only a decision by a court could be res judicata, whether it be statutory under Section 11 of the Civil Procedure Code or constructive as a matter of public policy on which the entire doctrine rests. Before an earlier decision can be considered as res judicata the same must have been heard and finally decided — see *Pulvarthi Venkata Subba Rao v. Valluri Jagannadha Rao* [1963 SCC OnLine SC 144 : (1964) 2 SCR 310] .

6. The courts in India have generally taken the view that an execution petition which has been dismissed for the default of the decree-holder though

² (1969) 1 SCC 718

by the time that petition came to be dismissed, the judgment-debtor had resisted the execution on one or more grounds, does not bar the further execution of the decree in pursuance of fresh execution petitions filed in accordance with law — see *Lakshmibai Anant Kondkar v. Rayji Bhikaji Kondkar* [31 BLR 400] . Even the dismissal for default of objections raised under Section 47 of the Civil Procedure Code does not operate as res judicata when the same objections are raised again in the course of the execution—see *Bahir Das Pal v. Girish Chandra Pal* [1922 SCC OnLine Cal 328 : AIR 1923 Cal 287] ; *Bhagwati Prasad Sah v. Radha Kishan Sah* [1950 SCC OnLine Pat 23 : AIR 1950 Pat 354] ; *Jethmal v. Sakina* [1960 SCC OnLine Raj 70 : AIR 1961 Raj 59] ; *Biswavannath Kundu v. Subala Dassi* [1961 SCC OnLine Cal 51 : AIR 1962 Cal 272] . We do not think that the decision in *Ramnarain v. Basudeo* [1946 SCC OnLine Pat 263 : ILR (1946) 25 Pat 595] , on which the learned counsel for the appellant placed great deal of reliance is correctly decided. Hence, we agree with the High Court that the plea of res judicata advanced by the appellant is unsustainable.”

38. So, if the first execution petition is dismissed in default, the second execution petition would be maintainable, if it is filed within the period of limitation and in accordance with law. In the present case, the dismissal of the E.A.No.11 of 2019, in the previously instituted execution case on 05.08.2024 was not for default. Such dismissal was on the merits observing that, the award was not executable. We have referred to the aforesaid judgment in ***Shivashankar Prasad Shah*** (supra) to state the legal position that it is in case of dismissal of execution case in default that the second Execution Petition may be maintainable, but not where the Order is on merits.

39. In ***Parikshitraj Kulkarni vs. The Assistant Director Women and Child Development Department***³, the first execution petition was dismissed on the ground that it was not maintainable. That Order attained finality. The petitioner therein filed another execution petition to execute the very same decree, contending that the second petition was filed within the period of limitation of 12 years. The execution court dismissed the second execution petition as not maintainable in view of the previous order of rejection. The learned single Judge of the Karnataka High Court, held that the previous order attained finality. The same was binding on the petitioner as well as on the Court. Therefore, the second execution petition to execute the very same decree, which was held to be not executable by the very same court would operate as res-judicata. The order passed by the execution court was held to be valid and legal and suffering from no infirmity. Paras 5 and 6 of **Parikshitraj Kulkarni** (supra) may be referred which read as under:

“5. The second petition for execution is not dismissed on the ground of limitation. If the first petition was dismissed for non-prosecution or for default, certainly the second petition could have been filed for the same relief subject to the condition that the said petition was well within 12 years from the date of passing of the decree. That is not the position, when the first execution petition was filed, it was contended that executing Court has no jurisdiction to execute the decree, as the order sought to be executed do not fall within the definition of decree as defined in S. 2(2) of Code of Civil Procedure, 1908.

6. The executing Court after considering the rival contentions, taking note of the various decisions on which the reliance is placed held that the decree is not executable. That order has attained finality. That order binds the petitioner as

³ 2013 SCC OnLine Kar 125

well as the Court. Therefore, the second execution petition to execute the very same decree, which was held to be not executable by the very same Court would operate as *res judicata* insofar as second execution petition is concerned. The order passed by the executing Court is valid, legal and does not suffer from any infirmity, which call for interference. Accordingly, the writ petition is *dismissed*.”

40. Consequently, in view of the Order dated 05.08.2024 in E.A.No.11 of 2024, the second application for execution of the same award was not maintainable.

41. If the application for setting aside the award filed under Section 34, the Special Judge had not found any of the illegalities in making the award liable to be set aside under Section 34 and had rejected those grounds, the contention of the petitioner’s counsel could have some force that after signed copy of the award was placed for execution, it was liable to be executed, as previously no ground was found to set aside the award under Section 34. Similarly, if there was no previous rejection of EA No.11 of 2019 on 05.08.2024, the contention of the petitioner’s counsel could have some force.

42. The submission of the learned counsel for the petitioner that the Execution Court should have registered the execution case, again, and if the objection was raised by the other side, should have proceeded to decide the same, does not appeal to this Court. The Court can of its own, consider the maintainability of the execution petition and need not wait for an objection to be raised as regards its maintainability, where it is apparent that the execution petition is not maintainable, as is the present case.

43. In the view of this Court, no illegality has been committed in rejecting the present CEP GR as not maintainable.

44. Thus, considered. I do not find any illegality in the impugned order. The civil revision petition deserves to be dismissed and is accordingly, dismissed.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 21.03.2025
Dsr

Note:
LR copy to be marked
B/o
Dsr