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IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

CIVIL REVISION No. 1152 of 2026

CNR No.: MPHC020393022026

ASHOK KUMAR

Versus

BHUPENDRA KUMAR LUNKAD AND OTHERS

Appearance:

Shri Aditya Garg - Advocate for the petitioner.

Shri Veer Kumar Jain, learned Senior Advocate with Shri Nitin Phadke - Advocate for the respondents.

Reserved on : 13.10.2026

Pronounced on : 23.10.2026

ORDER

1. By way of this civil revision preferred under section 115 of the Code of Civil Procedure, the judgment debtor of an arbitration award has assailed the order dated 21.9.2026 passed by the Executing Court i.e. Civil Judge, Senior Division, Anjad, District Barwani in Execution Arbitration Case No. 05/2026, whereby the learned Executing Court has rejected the application filed by the petitioner under Order 7 Rule 11 of CPC for dismissal of the execution petition on various grounds *inter-alia* the execution petition is barred by limitation and the court is not having jurisdiction to enforce the award.

2. The short facts of the case are that the petitioner and respondents were parties to a Civil Suit No. 6A/1989 pending in the Court of Civil Judge, Class-1, Anjad, District Barwani, wherein the parties agreed to refer the

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dispute to the arbitrator and accordingly Shri Manoharlal Jain Advocate was appointed by the Court as sole arbitrator and the parties were referred to the arbitration, however the suit remained pending and further proceedings of the suit were stayed. Later on, the learned Sole Arbitrator passed the award on 10.1.2000 to deliver the possession of the subject land to the claimant / award holder. The arbitrator forwarded this award to the Civil Court and the Civil Court further proceeded in the suit to consider the correctness of the award upon the application preferred by the judgment debtor under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as Act, 1996) and by order dated 7.1.2002 rejected the objections raised by the judgment debtor and a decree was passed in the suit as per the terms of the award.

3. The decree passed by the Civil Court was assailed by the judgment debtor in First Appeal No. 36-A/2004 before the District Judge, Barwani, which was also dismissed on 24.10.2005 thereafter, the judgment debtor further assailed the decree passed by the Civil Court and upheld by First Appellate Court before this Court in Second Appeal No. 38/2006. The second appeal preferred by the judgment debtor was came up for hearing on 5.9.2019 and the learned Coordinate Bench by judgment dated 5.9.2019 passed in Second Appeal No. 38/2006, after considering the entire material available on record, held that the trial court could not have proceeded with the suit after referring the dispute for arbitration and once the dispute is referred for arbitration, the trial court becomes *functus officio*, therefore, after passing the award consideration of objection filed under Section 34 of

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the Act, 1996 and deciding the same by the trial court, was completely without jurisdiction and the civil suit was unnecessarily kept pending by the trial court.

4. It has been further held in S A no. 38/2006 that the trial court has committed error in deciding the objection under Section 34 of the Act, 1996, whereas the trial court ought to have returned the objections to the concerned party by giving liberty to file it before the competent court having jurisdiction. The objections under Section 34 of the Act, 1996 was required to be separately registered and decided by the competent court. Hence, the trial court has proceeded in contravention of the provisions of Section 34 of the Act, 1996, inasmuch as it had no jurisdiction to keep the proceedings in a civil suit pending after reference to the arbitrator and also it had no jurisdiction to entertain and decide the objections under Section 34 of the Act, 1996 in such pending proceedings. The trial court has directed for preparing the decree accordingly, whereas as per the terms of Section 36 of the Act, 1996, the award is to be enforced in the same manner, as it was a decree of the Court, as under the Act of 1996 the award is not required to be made rule of the court.

5. The Coordinate Bench further held that the order passed by the trial court rejecting the objection filed under Section 34 of the Act and affirming the arbitral award was without jurisdiction and the objections field under Section 34 of the Act could have been considered by the competent court having jurisdiction as defined under Section 2(e) of the Act. The decree passed by the trial court and upheld by the first appellate court were in

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contravention of the provisions of law and consequently the Coordinate Bench has held that the decree is not sustainable and is set aside. It is also held that in terms of Section 36 of the Act, 1996 the award has the force of decree by the Court and no separate proceedings were required for this purpose as were earlier contemplated in the Act of 1940. The entire proceedings taken up by the trial court after the arbitral award were erroneous and non-est and consequently were set aside. The party aggrieved with the arbitral award had been given liberty to challenge it under Section 34 of the Act, 1996 before the competent court, in accordance with law.

6. Thereafter, the judgment debtor has preferred the application under Section 34 of the Arbitration and Conciliation Act for setting aside the award and the said application is still pending consideration. During this period, the award holder filed Execution Case No. 1/2024 for executing the award, which was declined by the court on the ground that the award is not delivered on sufficient stamp papers. After impounding and payment of deficit Stamp Duty, the second execution petition has been preferred by the award holder in the Court of Civil Judge, Senior Division, Anjad, District Barwani bearing Execution (Arbitration) No. 5/2026, wherein the applicant has moved an application under Order 7 Rule 11 of CPC for rejection of execution petition on various grounds *inter-alia* that the original award was passed by the arbitrator on 10.1.2000, whereas the execution was initially filed in the year 2024 and thereafter second execution has been filed in the year 2025, which is barred by limitation as the limitation provided under Article 136 of the Limitation Act for execution of the decree is 12 years from the date of

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decree/award becomes enforceable.

7. As per the judgment debtor, the award becomes enforceable after expiry of the period for filing the application for setting aside the award. He further submits that throughout the litigation, there was no stay in favour of the judgment debtor and, therefore, the award could have been executed by the award holder earlier and the present execution petition, which is filed after 24 years of passing of the award, cannot be treated as maintainable and the same has been liable to be dismissed as barred by limitation. The second ground raised by the judgment debtor is that the Civil Judge, Senior Division is not the competent court to execute the arbitral award, as per the provisions of Section 2(e) of the Act of 1996, which provides that only the Principal Civil Court of original jurisdiction in a District is competent to entertain the applications arising out of the arbitral proceedings and the expression has been understood in the light of the M.P. Civil Courts Act, under which the District Judge is the Principal Civil Court of the original jurisdiction, therefore, the executing court is not competent to execute the award. Some other grounds have also been raised by the judgment debtor, those are not relevant for deciding this civil revision petition.

8. The application is opposed by the respondent/decree holder and the Executing Court by order dated 21.9.2026 has dismissed the application on the ground that the court is competent to execute the award as the execution petition was returned by the Additional District Judge to the award holder to file before the Civil Judge, Senior Division, therefore, the court is having jurisdiction. Insofar as the limitation is concerned, the Executing court has

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held that the application filed under Section 34 of the Act, 1996 for setting aside the award is still pending, therefore, the execution is within limitation and the objections have been rejected by the Executing Court. Hence, this revision petition has been filed.

9. Mr. Aditya Garg, learned counsel appearing on behalf of the petitioner submits that the dispute was referred for arbitration with the consent of the parties of a pending civil suit and thereafter the arbitrator passed the award on 10.1.2000 and submitted the original award in the court in the pending suit. The petitioner filed the objections under Section 34 of the Act, 1996 in the said suit, which were dismissed by the trial court and a decree was passed in accordance with the decision of the award, which was challenged by the petitioner before the first appellate court unsuccessfully and thereafter before the Coordinate Bench of this court. It has already been held by the Coordinate Bench that all the proceedings of Civil Court and First Appellate Court after reference of the matter to the arbitration are illegal and non-est. The liberty was granted to the petitioner to file an application under Section 34 of the Act, 1996 for setting aside of the award separately, which has already been filed by the petitioner and the same is still pending.

10. The counsel submits that the execution petition should have been filed within 12 years from the date of award in accordance with the provisions of Article 136 of the Limitation Act, but the same was not filed within limitation and for the first time it was filed in the year 2024, which was dismissed due to the reason that the impugned award was not delivered on sufficient stamp papers and, therefore, later on once again the execution

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petition has been filed by the award holder after getting it impounded from the Collector, Stamps. He further submits that in accordance with section 2(e) the definition of 'Court' provides that the Principal Civil Court of original jurisdiction is the court for the purpose of provisions of Part-1 of the Arbitration and Conciliation Act, 1996 and the execution petition under Section 36 of the Act, 1996 can be filed only before the competent court as per Section 2(e) of the Act, whereas the same has been filed before the Civil Judge, Senior Division, Anjad, District Barwani, therefore, the said court is not having any jurisdiction to entertain the application.

11. The counsel relied on the judgment delivered by the Supreme Court in the matter of ***Jagdeep Chowgule Vs. Sheela Chowgule and others in Civil Appeal 2026 INSC 92***, wherein the Supreme Court after considering the various judgments, held that it is the settled principle of statutory interpretation that a defined term must ordinarily bear the meaning assigned to it, unless the context otherwise requires and as per the definition given in Section 2(1)(e) of 'Court' under Part-1 of the Act, an exhaustive definition marking out only the Principal Civil Court of Original Jurisdiction in a District or a High Court having original jurisdiction in the State and no other court as "court" for the purpose of Part-1 of the Arbitration Act, 1996. He submits that the execution preferred under Section 36 of the Act, 1996 cannot be filed in the Court of Civil Judge, Senior Division and, therefore, the execution petition is not maintainable before the Civil Court.

12. He further submits that in Article 136 of the Limitation Act, the limitation for filing the execution of a decree or award is 12 years, from teh

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date, when the decree has become enforceable. He submits that the award was never stayed by any court and, therefore, the award was executable after expiry of the limitation period prescribed in Section 34 of the Act, 1996 and the present execution filed after 24 years from the date of pronouncement of the award cannot be considered in limitation and, therefore, the trial court has committed an error in dismissing the application filed by the petitioner under Order 7 Rule 11 of CPC for rejection of the execution petition. For that purpose, the counsel relied upon the judgment delivered by the Supreme Court in the matter of ***Ratansingh Vs. Vijaysingh and others reported in 2001(1) SCC 469***, wherein the Supreme Court has held that mere filing of an appeal would not affect the enforceability of the decree, unless the appellate court stays its operation and if the appeal finally dismissed without any modification and direction of decree, the period of filing the execution would start from the date of passing of the decree. He prayed for allowing the civil revision and rejection of the execution petition, as barred by limitation and filed before incompetent court.

13. *Per contra*, Shri V. K. Jain, learned Senior Advocate appearing on behalf of the decree holder/respondents vehemently opposed the civil revision petition and submits that the court before which this execution petition has been filed is competent as per the work distribution memo issued by the District Judge. He further submits that earlier the execution petition was filed before the Additional District Judge, Anjad, who returned the execution for filing before the Civil Judge, Senior Division on the ground that the Civil Judge is having jurisdiction to decide the execution. He further

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submits that the definition of court provided in Section 2(1)(e) of the Act of 1996 is not applicable to the execution petition, as the execution petition has not to be filed under the provisions of the Act, 1996 and the same cannot be treated as the proceedings of the arbitration, therefore, the provisions of Section 42 of the Act of 1996 are also not applicable to the execution and the execution petition has to be filed under the provisions of the Code of Civil Procedure.

14. He submits that the Supreme Court has already decided this issue in the celebrated judgment of ***Sundaram Finance Limited Vs. Abdul Samad and another reported in (2018) 3 SCC 622***, wherein the Supreme Court after considering the diversions of the legal opinion of different High Courts on the question as to whether an award under the Arbitration and Conciliation Act, 1996 is required to be first filed with the court having jurisdiction over the arbitral proceedings for execution and then to obtain transfer of the decree or whether the award can be straightaway filed and executed in the court, where the assets are located, has been settled by the Supreme Court. After considering the different views of the different high courts and considering the provisions of the Act, 1996 and the Code of Civil Procedure, the Supreme Court has held that the arbitral proceedings to be terminated by the final arbitral award. Thus, when an award is already laid, of which execution is sought, the arbitral proceedings already stand terminated on making of the final award and it is not appreciated how Section 42 of the said Act is applicable, which deals with the jurisdiction issue in respect of arbitration proceedings would have any relevance. It does appear that the

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provisions of the said Code and the said Act have been mixed up and once the award is passed for the purpose of filing the execution, the provisions of the Code of Civil Procedure will be applicable and when an award is passed by the arbitral tribunal, it is deemed to be a decree under Section 34 of the Act, 1996 and there was no deeming fiction anywhere to hold that in whose jurisdiction the arbitral award was passed, should be taken to the court, which passed the decree. The said Act actually transcends all territorial barriers.

15. The Supreme Court has further held that 'we are, thus, unhesitatingly of the view that the enforcement of an award through its execution can be filed anywhere in the country, where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceedings'. The learned Senior Advocate referring to the provisions of Section 38 and 39 of the CPC submits that the decree holder may seek execution of the decree in any court, which otherwise has jurisdiction. Relying on the said judgment the learned Senior Advocate argued that the definition of 'Court' provided under Section 2(1)(e) of the Act, 1996 is not applicable to the execution proceedings and similarly the provisions of Section 42 of the Act are also not applicable to the execution proceedings and the execution proceedings may be filed before the competent court as per the provisions of the Code of Civil Procedure.

16. Learned Senior Advocate further submits that the High Court of Delhi also decided the similar issue in the matter of ***Daelim Industrial Co.***

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Ltd. Vs. Numaligarh Refinery Ltd. reported in 2009(3) ARBLR 524 (Delhi), wherein the Delhi High Court has held that execution application is not arbitral proceedings and is not a subsequent application arising out of the agreement and arbitration proceedings and, therefore, arbitral proceedings come to an end, when time for making an application to set aside arbitral award expires and enforcement of award is proceeded on premise that the court of place, where award is passed is the court within the meaning of Section 2(1)(e) of the Act, which is not required and the court, which is competent to execute the decree, may entertain the execution petition.

17. He further submits that the Allahabad High court has also considered the judgment delivered by the Delhi High Court and has held that the expression "court" occurring in Section 36 is not meant to be the Court within the meaning of Section 2(1)(e) of the Act. The reason given by the Delhi High court in the said judgment is that the definition clause contained in Section 2 commences with the phrase "unless the context otherwise requires." It has thus been held by the Delhi High Court that the word "court" occurs in Section 36 only in the context of making an award executable as a decree of the court within the meaning of CPC. The word "court" occurring in Section 36 thus has been used in the context of describing the manner and enforcement of an arbitral award i.e. as a decree of court and not in the context of providing for the court, which will have territorial jurisdiction to execute or enforce the award. The Allahabad High court in the matter of ***Bharat Harmonium Works Vs. State of U.P. through Principal Secretary and others reported in 2016 SCC OnLine All 2793*** has held that the decree can be

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executed by any competent court.

18. The learned Senior Advocate further relied upon the judgment of Supreme Court delivered in the matter of ***Gajanan Vs. Prahlad in Civil Appeal No.3524/2026 on 18.3.2026***, whereby the Supreme Court considering the issue that when the limitation would start to put a decree for execution after disposal of the appeal, wherein no stay was operating. He pointed out that the Supreme Court has considered the earlier judgments and in the factual aspect has held that there was no stay on the operation of the decree of the trial court during the pendency of the appeal and the said decree remained enforceable, the dismissal of such appeal, albeit in default, reset the limitation clock for filing of the execution proceedings, as it had the effect of confirming the decree of the trial court. The Supreme Court has further held that once the decree is passed by the trial court and any appeal is preferred, the execution may be filed by counting the limitation from the date of dismissal of the appeal, even on default or any preliminary issue. The relevant paras of the judgment read as under:-

> *"21. The upshot of this discussion is that an appeal is intrinsically a continuation of the suit and thus, even if an appeal against an order or decree of the Trial Court is dismissed on any preliminary or technical ground, such as limitation or non-prosecution, rather than the merits of the case, it still gives rise to a fresh starting point for the limitation period for execution of such order or decree. The original decree of the Trial Court cannot be deemed as "final" as long as the appeal against the same remains pending. Thus, the order of dismissal of the appeal finally disposes of the matter and confirms the decree of the Trial Court, even if such dismissal is for reason of nonprosecution.*
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> *22. The order dated 25.11.2004, which dismissed the appeal in default, was thus a "final order" as it finally confirmed the decree*

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of the Trial Court and disposed of the appeal. Therefore, the limitation period for execution of the decree dated 03.12.1999 accrued on the date of dismissal of the appeal i.e. 25.11.2004 and the execution application filed on 04.12.2015 was within time, if we compute the period of 12 years from 25.11.2004.

23. Courts should avoid adopting a hypertechnical approach in matters of limitation. A layperson, unfamiliar with the letter of law, may mistakenly believe that execution proceedings can only commence once an appeal against the decree has been finally disposed of. Even lawyers under a bonafide belief, may advise their clients to initiate execution proceedings only after final disposal of all appellate proceedings. In such circumstances, courts are expected to adopt a more liberal and pragmatic stance, ensuring that substantive rights are not defeated by rigid adherence to procedural rules, thereby striking a fair balance between justice and procedure.

24. It also becomes imperative to note that no party can take advantage of its own wrong. The appeal was dismissed in default only due to the constant absence of the Judgment Debtor and thus, he cannot be allowed to gain benefit out of such dismissal."

19. The learned Senior Advocate on the strength of the above judgment of Supreme Court submits that the execution has been filed within limitation.

20. The learned Senior Advocate further relied upon the judgment delivered by the Supreme Court in the matter of ***Chandi Prasad and others Vs. Jagdish Prasad and others reported in (2004) 8 SCC 724***, wherein the Supreme Court has held that in terms of Article 136 of the Limitation Act, 1963, a decree can be executed, when it becomes enforceable. The decree is defined in Section 2(2) of CPC to mean the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. A decree

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within the meaning of Section 2(2) of CPC would be enforceable irrespective of the fact, whether it is passed by the trial court, the first appellate court or the second appellate court. Once a decree is sought to be enforced for the purpose of execution thereof, irrespective of being original or appellate, the date of the decree or any subsequent order directing any payment of money or delivery of any property at a certain date would be considered to be the starting period of limitation. It is axiomatic true that when a judgment is pronounced by a High Court in exercise of its appellate power upon entertaining the appeal and a full hearing in presence of both parties, the same would replace the judgment of the lower court and only the judgment of the High Court would be treated as final.

21. It is further held that the doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point of time. When an Appellate Court passes a decree, the decree of the trial court merges with the decree of the Appellate Court and subject to any modification that may be made in the appellate decree, the decree of the Appellate Court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the Appellate Court affirms, modifies or reverses the decree passed by the trial court. The learned Senior Advocate submits that as in the case in hand the matter went up to the High Court and High Court by final order passed in Second Appeal No. 38/2006 on 5.9.2019 ultimately decided

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that the decree passed by the arbitrator itself was executable, therefore, the Civil Court had no jurisdiction to entertain the application filed for rejection of execution and the limitation for filing the execution would start from the date of deciding the second appeal. He submits that the execution has been filed within limitation and the executing court has not committed any error in dismissing the application filed by the petitioner.

22. Having heard the counsel for the parties at length and after considering the controversy involved in the case, the following legal questions emerge in the case in hand:-

(a) Whether, an arbitral award merge in any order passed by the court under the Arbitration and Conciliation Act and doctrine of merger is applicable to the arbitral awards also ?

(b) Which would be the starting point of limitation, if the objections to the award has been dismissed by the Court ?

(c) Whether, the Court defined under Section 2(1)(e) of the Arbitration and Conciliation Act, i.e. the principal Civil Court of original jurisdiction in a district is competent to execute the domestic arbitral award or any other court having territorial jurisdiction may entertain the execution ?

23. Before starting the discussion, it will be profitable to refer the provisions of Section 2(1)(e), 36 and 42 of Act of 1996, which read as under:-

> *"2. **Definitions.**—(1) In this Part, unless the context otherwise requires,—*
>
> ***(e) "Court" means—***
>
> *(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original*

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jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;

***36. Enforcement.**—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.*

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

***42. Jurisdiction.**—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent*

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applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."

24. Insofar as the question No. (a) and (b) are concerned, first it is required to understand that whether the arbitral award merges in any order of civil court, and for that purpose it will be profitable to examine the judgment delivered by the Supreme Court in the matter of ***Government of India Vs. Vedanta Limited reported in 2020(10) SCC 1***, wherein the Supreme Court has held that insofar the domestic award is concerned, the limitation is prescribed under Article 136 of the Limitation Act, 1963 and the same is 12 years. The arbitral tribunal cannot be considered to be a court and the arbitral proceedings are not court proceedings. The intention of the legislature is to confine Article 136 to the decrees of a civil court in India is made applicable to the domestic awards, those are executable as decree of the court under Section 36 of the Act, 1996 and thus, the limitation prescribed under Article 136 of the Limitation Act are applicable to the domestic awards. However, the same is not applicable to the foreign award. For execution of the foreign award, first it is essential to decide its enforceability as per Section 47 and 48 of the Act. Considering the issue of execution of the foreign award, the Supreme Court has considered the limitation in respect of the domestic award also and held that the arbitral proceeding cannot be treated as the court proceedings and the limitation prescribed for domestic award is 12 years under Article 136. The relevant paragraph of the judgment reads as under:-

"69. Section 36 of the Arbitration Act, 1996 creates a statutory fiction for the limited purpose of enforcement of a 'domestic award' as a decree of the court, even though it is otherwise an award in an arbitral proceeding. By this deeming fiction, a domestic award is deemed to be a decree of the court20, even

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though it is as such not a decree passed by a civil court. The arbitral tribunal cannot be considered to be a 'court,' and the arbitral proceedings are not civil proceedings. The deeming fiction is restricted to treat the award as a decree of the court for the purposes of execution, even though it is, as a matter of fact, only an award in an arbitral proceeding. In Param Singh Patheja v ICDS Ltd., this Court in the context of a domestic award, held that the fiction is not intended to make an award a decree for all purposes, or under all statutes, whether state or central. It is a legal fiction which must be limited to the purpose for which it was created. Paragraphs 39 and 42 of the judgment in Param Singh Patheja read as :

> *"39. Section 15 of the Arbitration Act, 1899 provides for "enforcing" the award as if it were a decree. Thus a final award, without actually being followed by a decree (as was later provided by Section 17 of the Arbitration Act of 1940), could be enforced i.e. executed in the same manner as a decree. For this limited purpose of enforcement, the provisions of CPC were made available for realizing the money awarded. However, the award remained an award and did not become a decree either as defined in CPC and much less so far the purposes of an entirely different statute such as the Insolvency Act are concerned.*
>
> *42. The words "as if" demonstrate that award and decree or order are two different things. The legal fiction created is for the limited purpose of enforcement as a decree. The fiction is not intended to make it a decree for all purposes under all statutes, whether State or Central."*
>
> *(emphasis supplied) "*

70. *A Constitution Bench of this Court in Bengal Immunity v State of Bihar, held that legal fictions are created only for some definite purpose. A legal fiction is to be limited to the purpose for which it was created, and it would not be legitimate to travel beyond the scope of that purpose, and read into the provision, any other purpose how so attractive it may be. In State of Karnataka v State of Tamil Nadu,23 this Court held that :*

> *"74. The Report of the Commission as the language would suggest, was to make the final decision of the Tribunal binding on both the States and once it is treated as a decree of this Court, then it has the binding effect. It was suggested to make the award effectively enforceable. The language employed in Section 6(2) suggests that the decision of the Tribunal shall have the same force as the order or decree of this Court. There is a distinction between having the same force as an order*

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> *or decree of this Court and passing of a decree by this Court after due adjudication. Parliament has intentionally used the words from which it can be construed that a legal fiction is meant to serve the purpose for which the fiction has been created and not intended to travel beyond it. The purpose is to have the binding effect of the Tribunal's award and the effectiveness of enforceability. Thus, it has to be narrowly construed regard being had to the purpose it is meant to serve." (emphasis supplied)*

> *71. In Bank of Baroda v Kotak Mahindra Bank, this Court took the view that Article 136 of the Limitation Act deals only with decrees passed by Indian courts. The Limitation Act was framed keeping in view the suits, appeals and applications to be filed in Indian courts. Wherever the need was felt to deal with an application / petition filed outside India, the Limitation Act specifically provided a time period for that situation. The legislature has omitted reference to "foreign decrees" under Article 136 of the Limitation Act. The intention of the legislature was to confine Article 136 to the decrees of a civil court in India. The application for execution of a foreign decree would be an application not covered under any other Article of the Limitation Act, and would be covered by Article 137 of the Limitation Act."*

25. From the above ratio decided by the Supreme Court in the matter of ***Vedanta*** (supra), it is clear that by mere using a fiction that the arbitral award is executable as decree of civil court, the award would not become the decree of civil court for all purposes and the arbitral proceedings would not become the court proceedings. If we examine the scheme of the Arbitration and Conciliation Act, once the award is passed by the arbitral tribunal, an application is required to be filed under the provisions of Section 34 of the Act of 1996 for the purpose of setting aside the arbitral award on the grounds enumerated under Section 34 and not on any other ground and prior to the amendment of 2015, it was stipulated that if the limitation for filing the application is over or the application has been dismissed, the award will

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become executable as decree of the court and after amendment the award is executable, where the time for making an application to set aside the arbitral award under section 34 has expired, and no stay order is in force passed by Competent Court, in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner, as if it was a decree of the civil court.

26. No appeal is provided against arbitral award, and therefore, no question of merger of arbitral award into any order passed by the civil court is made out. It cannot be accepted that the award merged into the order passed by civil court. These are two different forums. Arbitral proceedings are different and court proceedings are different, therefore, by no stretch of imagination it can be accepted that the award would merge in the order passed by the civil court under Section 34 or 37, meaning thereby the doctrine of merger is not applicable to the arbitral awards. Hence, the judgment delivered by the Supreme Court in the matter of ***Gajanan*** (supra) and heavily relied by senior counsel for the respondents, is not applicable to the case in hand. In that case the issue was merger of decree passed by the civil court in the order of appeal and under those circumstances, the Supreme Court has held that the decree passed by the trial court merges with the order passed by appellate court irrespective to the fact that the decree has been modified, reversed or maintained. In all circumstances the original decree of the trial court merges in the decree passed by the appellate court and only thereafter the decree becomes executable, but as the arbitral proceedings are not the proceedings of the court and no appeal is provided against the arbitral award, the doctrine of merger is not applicable and therefore, it cannot be

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accepted that the arbitral award would merge in the court's order.

27. Consequently, the limitation for filing the execution of arbitral award would start from the date, when it becomes enforceable. In the matter of ***Shanti Vs. T. D. Vishwanathan and another reported in 2019(11) SCC 419*** the Supreme Court has held that in terms of Article 136 of the Limitation Act, 1963, a decree can be executed, when it becomes enforceable. A decree within the meaning of Section 2(2) CPC would be enforceable irrespective of whether it is passed by the trial court, the first appellate court or the second appellate court. When an appeal is prescribed under statute and the appellate forum is invoked and entertained, for all intents and purposes, the suit continues. When a higher forum entertains an appeal and passes an order on merit, the doctrine of merger would apply. The doctrine of merger is based on the principles of propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point of time. The Supreme Court after relying upon the judgment delivered in the matter of ***Chandi Prasad*** (supra) has held that as the decree passed by the trial court is appealable and the forum of appellate court is invoked and entertained, then the decree passed by the trial court would merge in the appellate court and the doctrine of merger will be applicable.

28. No appeal is provided in law against the arbitral awards and even after passing the order under Section 34 and 37 only the arbitral award is

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executable and the orders passed under Section 34 or 37 would not become executable, therefore, the doctrine of merger would not be applicable to the arbitration award and thus, the limitation for filing execution would start from the date when the award becomes enforceable. As per the amended provisions of Section 36 of the Act, the mere filing of an application to set aside the arbitral award is not sufficient and by filing itself, that award shall not render unenforceable and the same will be enforceable after expiry of the period prescribed under Section 34 of the Act for filing an application to set aside the arbitral award. Until and unless the court grants an order for staying the operation of the said arbitral award in accordance with the provisions of sub-section (2) and (3) of Section 36, the award would be enforceable after expiry of the limitation period provided for filing the application under Section 34 of the Act. Before amendment, 2015 the award was executable in case, the application under Section 34 of the Arbitration and Conciliation Act is not filed within limitation or if the application is filed and the same has been dismissed, meaning thereby there was an automatic stay or impediment to the execution of award, if the application has been filed within the limitation prescribed under the provisions of Section 34 of the Act.

29. The amended and unamended provisions of Section 36 read as under:-

> *"Unamended - **S. 36. Enforcement**.-Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court.*
>
> *Amended - **S. 36. Enforcement**.-(1) Where the time for making an application to set aside the arbitral award under section 34 has*

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expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.

[Provided further that where the Court is satisfied that a prima facie case is made out that,-

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation. - For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016).]

30. Insofar the case in hand is concerned, the award was passed on 10.1.2000. Application for setting aside the award under Section 34 of the Act was filed, which was rejected by the trial Court by order dated 7.1.2002, meaning thereby as per the unamended provisions of Section 36, which were applicable at that time, the award had become enforceable after dismissal of the application filed under Section 34 of the Act on 7.1.2002 and, thus, the limitation for filing the execution had been started from 7.1.2002. Thereafter, the first appeal was preferred, but the execution was not stayed. Second

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appeal was preferred, but the execution of award was not stayed. As we have already considered that the doctrine of merger is not applicable to the arbitral awards and, therefore, the decree holders could have preferred the execution of the award within 12 years as per Article 136 of the Limitation Act from the date, when the award has become enforceable i.e. 7.1.2002 in the case in hand. The execution could have been filed before 6.1.2014, whereas the same has been filed in the year 2024 for the first time and, therefore, the same cannot be considered to be filed within limitation. The impugned order passed by the executing court cannot be given seal of approval. The objection raised by the petitioner in respect of the limitation are sustainable and consequently the objection to the extent that the execution petition was barred by limitation, are hereby accepted. The question (a) and (b) are answered accordingly.

31. There is no need to answer the question (c) and the same is left open.

32. Consequently, the civil revision petition is allowed. Impugned order passed by the Executing Court on 21.9.2026 is hereby set aside. The Execution Arbitration Case No. 05/2026 is rejected as barred by limitation. No order as to cost.

33. Copy of this order be forwarded to the concerned court.

(VINAY SARAF)
JUDGE

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