



2025:AHC-LKO:84193-DB

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 394 of 2025

Shri Colonizers and Developers Pvt. Ltd. Thru. Director and another

.....Appellant(s)

Versus

Abha Gupta

.....Respondent(s)

Counsel for Appellant(s) : Rajeev Sharan, Amal Rastogi, Devesh Bahadur Singh

Counsel for Respondent(s) : Anurag Tyagi,

Judgment Reserved on 13.11.2025
Judgment Delivered on 16.12.2025

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE RAJEEV BHARTI, J.**

(Per: Rajan Roy, J.)

1. Heard Shri Pritish Kumar, learned Senior Advocate assisted by Shri Rajeev Sharan, Advocate, Shri Amal Rastogi Advocate, Shri Devesh Bahadur Singh, Advocate, Shri Utkarsh Srivastava, Advocate for appellants and Shri Pankaj Kumar Singh, Advocate along with Shri Anurag Tyagi, learned counsel for respondents.

2. Counsel for parties have argued the matter finally at the stage of admission itself, therefore, we proceed to dispose of the appeal.

3. By means of this appeal filed under Chapter-VIII Rule 5 of the Allahabad High Court Rules, 1952 (hereinafter referred as 'Rules of the Court') judgment and order of the learned Single Judge of this Court functioning as Commercial Division under the Commercial Courts Act, 2015 (hereinafter referred as the 'Act 2015') dated 09.10.2025 passed in Execution Case No.1 of 2025 has been challenged.

4. The Parties counsel are *ad idem* that against such an order no further remedy is prescribed either under the Arbitration and Conciliation Act, 1996 (hereinafter referred as the 'Act 1996') or the Act 2015, therefore, this Special Appeal has been filed.

5. We have gone through Chapter VIII Rule 5 of the Rules of the Court which reads as under:-

"5. Special appeal.—An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction [or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award - (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.]"

6. An appeal under the said provision shall lie to the Court from a judgment of one Judge subject to the exclusionary clause

contained therein. We have gone through the exclusionary clause and as the learned Single Judge in this case has passed the order impugned in exercise of his original jurisdiction under the Act 2015 read with the Act 1996 and not under an appellate or revisional or supervisory jurisdiction, nor under Article 226 or 227 of Constitution of India, therefore, the said exclusion clause not being applicable, this appeal is found to be maintainable.

7. At the very outset, it needs to be mentioned that the appellant herein does not dispute the fact that the award in question is not a foreign award, but is a domestic award *albeit* in an international commercial arbitration. The fact that the arbitration in question is also an international commercial arbitration is not in dispute. It is also not in dispute that the seat of arbitration was within India.

8. Now, the question before us is as to whether such an award is to be enforced through the Commercial Courts established at the district level or the Commercial Division of the High Court.

9. In this context, we may refer to section 36 of the Act 1996 which contains the substantive law. It reads as under:-

"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).

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."

10. Section 36 does not specifically provide the Forum or Court for execution of an award including an award passed in the context of an international commercial arbitration. What it says is that it shall be enforced in accordance with provisions of the the Code of Civil Procedure, 1908, in the same manner as if it were a decree of Court. An award is not a decree of Court but it is to be

executed and enforced as a decree of Court. The provisions pertaining to execution of a decree of Court are contained in Section 36 read with order XXI C.P.C.

11. The parties are also not in dispute nor was it canvassed before us to the contrary that an award whether it be a domestic award or a foreign award is to be executed through the Court. The question is if it is a domestic award pertaining to an international commercial arbitration, which Court?

12. Learned counsel for the appellant laid great emphasis upon the provisions of Section 10 of the Act 2015 as also the explanation to Section 47 of the Act of 1996 to impress upon the Court that it is the District Commercial Court which would have jurisdiction to consider an application under Section 36 for enforcement of a domestic award even if rendered in an international commercial arbitration. His contention was; firstly, that in view of the language used in Section 36, as the award is to be executed as a decree of the court in terms of the Code of Civil Procedure and such execution is done before the District Court, therefore, in this case, application should have been filed before the District Commercial Court. Secondly, his submission was that Legislature in its wisdom consciously amended Section 47 by the Act No. 3 of 2016 to make it clear that such international commercial arbitration where the award is a foreign award would be enforced or executed before the High court. It being so, the

logical inference from that is that other awards pertaining to international commercial arbitration would be enforceable/executable by the District Commercial Courts, otherwise why would the Legislature make such an amendment in Section 47.

13. It was also his contention that arbitral proceedings terminated on rendering of the award in view of Section 32 of the Act of 1996, therefore, for execution of the said award as it is deemed to be a decree, proceedings have to be initiated before the District Commercial Court. He relied upon the decision reported in ***AIR 2018 SC 965; Sundaram Finance Limited vs. Abdul Samad and another***. He also referred to Section 10 of the Act 2015 to contend that there is distinction between an international commercial arbitration which is place-centric and one which is party-centric. According to him, an international commercial arbitration where the award is place-centric, the execution would be under Section 47 before the High court, but, one which is party-centric, the execution will be before the District Commercial court.

14. On the other hand, learned counsel for the respondents submitted that the provisions contained in Section 36 read with Section 2(1)(e)(ii) of the Act 1996 are explicit and leave no doubt that the Court which is to enforce/execute the award even if a domestic award, but in the context of international commercial

arbitration, has to be the High Court irrespective of the fact that it has original civil jurisdiction or not. There is no such provision in the entire Act 1996 which bestows jurisdiction upon the district commercial court to entertain an application for enforcement/execution of such an award. He, in this context, invited our attention to several decisions such as **Paramjeet Singh Patheja vs. ICDS Ltc.; (2006) 13 SCC 322** and **Sundaran Finance Limited vs. Abdul Samad and another; AIR 2018 SC 965**. In addition to the decisions of Hon'ble the Supreme Court referred hereinabove, he also relied upon the decisions of the Division Bench of the Karnataka High Court (**ITI Limited vs. Alphion Corporation, United States of America and Another; 2022 SCC OnLine Kar 1631**), Gujarat High Court (**M/s. OCI Corporation vs. Kandla Export Corporation & 2; 2016 SCC OnLine Guj 5981**) and a Single Judge Bench decision of this High Court (**Lucknow Agencies Lko vs. U.P. Avas Vikas Parishad; AIR OnLine 2019 All 3138** and judgment dated 20.03.2024 passed in **Civil Misc. Arbitration Application No. 100 of 2023; M/s Deep Distributors Pvt. Ltd. Thru Director Ashok Kumar Jaiswal vs. Tigers Brewery Industries Pvt. Ltd. Thru M.D. Ishwari Khadka**) wherein, according to him, this very aspect was dealt with extensively especially in the Division Bench decision of the Karnataka High Court and it was expressly held that an application for execution/enforcement of an award under Section 36 of Act 1996 pertaining to international commercial

arbitration would lie only before the Commercial division of the High court. He also impressed upon us the provisions of Section 10(1) which has been considered in the said decisions.

15. It is not in dispute that so far as domestic award in a domestic arbitration is concerned, it is executed through the commercial courts at the district level. As regards, foreign awards rendered in the context of international commercial arbitration also there is no dispute that in view of the explanation to section 47, such awards are executable/enforceable through the High Court as referred in the said explanation.

16. The question here is, what if, though the arbitration is an international commercial arbitration, but the seat of arbitration is in India and the award is a domestic arbitration? Which Court shall execute it?

17. In this regard, the law is clear that the definition of international commercial arbitration as available in Section 2(1)(f) would apply in such a case. We may in this regard refer to the Constitution Bench decision of ***Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc.; (2012) 9 SCC 552 (BALCO Case)*** and the Three Judge bench of Hon'ble the Supreme Court in Case of ***PASL Wind Solutions Private Limited vs GE Power Conversion India Private Limited; (2021) 7 SCC 1.***

18. Section 2(1)(f) act of the 1996 reads as under:-

"(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country."

19. As already stated, it is not in dispute that the arbitration at hand is an international commercial arbitration within the meaning of Section 2(1)(f) of the Act 1996.

20. In view of the decision referred above, International Commercial Arbitration referred in Section 2 (2) does not apply in this case.

21. On facts, the respondents herein initially filed an application under Section 36 for enforcement of the award before the District commercial court but finding it as not maintainable, they withdrew it from the district commercial court and filed an application under Section 36, before the commercial division of the High Court at Lucknow.

22. It is not in dispute that an award though it has not been rendered by a Court, has to be enforced/executed through a Court under Section 36 in the same manner as if it were a decree of the Court, but Section 36 does not specify the Court which is to execute it, therefore, we have to take recourse to the definition of Court as contained in Section 2(1)(e) of the Act, 1996. Section 2(1)(e) of the Act 1996 reads as under:-

"2 (1) Definitions. (1) *In this Part, unless the context otherwise requires,—*

(a) *"arbitration" means any arbitration whether or not administered by permanent arbitral institution;*

(b) *"arbitration agreement" means an agreement referred to in section 7;*

(c) *"arbitral award" includes an interim award;*

(d) *"arbitral tribunal" means a sole arbitrator or a panel of arbitrators;*

(e) *"Court" means— (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original 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."

Above quoted provision draws a distinction between an International Commercial Arbitration and other Arbitration. The term 'Court' has different meaning for these two categories of Arbitration.

23. Section 2(1)(e)(i) applies to a case of arbitration 'other than an international commercial arbitration', therefore, the said provision is not applicable to the case at hand.

24. What is applicable is Section 2(1)(e)(ii). According to Section 2(1)(e)(ii), Court means 'in the case of international commercial arbitration, the High court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the question 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 the appeals from decrees of Courts subordinate to that High Court'.

25. Section 2(1)(e) (ii) itself can be split into two parts. As per the first part, the High Court having jurisdiction to decide the question forming subject matter of the arbitration if the same had been the subject matter of a suit, will be the Court in the case of international commercial arbitration. As per the second part - in other cases i.e. where the High Court does not have original jurisdiction as referred in part one, if it has jurisdiction to hear appeals from decrees of Courts subordinate to that High Court,

such High Court would be the Court in case of International Commercial Arbitration.

26. Now, based on the aforesaid definition, as regards Allahabad High Court, it does not have original civil jurisdiction to decide the questions forming the subject matter of the arbitral award which is to be enforced in this case, therefore, the first part of 2(1)(e)(ii) does not apply, but, it does have jurisdiction to hear appeals from decrees of Courts subordinate to it under the Code of Civil Procedure, etc., therefore, it is the second part which applies. This has not been disputed by Shri Pritish Kumar, learned Senior Counsel for the appellant.

27. We have therefore to be guided by the definition of Court as contained in Section 2 (1)(e)(ii) of the Act, 1996 in this regard, especially as, both Section 2(1)(e)(ii) and Section 36 fall in part I of the Act 1996.

28. On a bare reading of the aforesaid provision, the Court which has to execute/enforce the award under Section 36, which falls in part I of the Act of 1996 which is the part applicable in the case at hand on account of the fact that the seat of arbitration in this case was within India, is the High Court and, in this case, the Allahabad High Court. We may in this regard refer to Section 2(2) which says that this part i.e. part I shall apply where the arbitration is in India.

Of course, proviso thereto does not apply so far as the reference to international commercial arbitration is concerned as already dealt with in the case of **BALCO** (supra) and **PASL Wind Solutions Pvt. Limited** (supra).

29. As stated earlier, Section 36 does not specifically indicate the Court which has to execute/enforce the award; whether it be a domestic award pertaining to an international commercial arbitration or a domestic arbitration, it only provides the manner in which the award is to be enforced/executed. It has, therefore, to be read conjointly with Section 2(1)(e) to determine the Court which is competent to enforce it.

30. Merely because it has to be enforced in accordance with the provisions of Code of Civil Procedure in the same manner as if it were a decree of the Court cannot lead us to conclude that such enforcement is to be done through the Commercial Court at the District level because decrees of Courts are executable in U.P. by District Court as Allahabad High Court does not have original jurisdiction as suggested by Shri Pritish Kumar, as, we cannot ignore Section 2(1)(e)(ii) of the Act 1996 referred earlier.

31. The words '*in other case, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court*' occurring in second part of Section 2(1)(e)(ii) of the Act 1996 clinches the issue in the facts of this case.

32. We cannot read Section 36 of the Act 1996 in isolation. It has to be read with Section 2(1)(e)(i) and (ii) which defines 'Court'. High Courts which have original jurisdiction referred in part one of Section 2(i)(e)(ii) will be Courts for International Commercial Arbitration in the context of Part I of the Act 1996, whereas, 'in other cases' a High Court having jurisdiction to hear appeals against decrees of Courts subordinate to it, will be such Courts, for Part I of the Act 1996. Within Part I of the Act 1996, Section 2(1)(e) does not make any distinction between International Commercial Arbitration based on whether it is party-centric or place-centric. To put it differently, wherever Part I of Act 1996 applies, the definition of Court contained in Section 2(1)(e) will apply. It will not apply to Part II of the Act 1996.

33. As stated earlier, this court does not have original civil jurisdiction to decide questions forming the subject matter of the arbitration award at hand, but, it is a High Court having jurisdiction to hear appeals from decree of courts subordinate to it, therefore, and application for enforcement of an award governed by Part I such as the one at hand, Allahabad High Court is the Court for filing it.

34. So far as the 'foreign awards' in the context of international commercial arbitration are concerned, their enforcement has been dealt separately in part-II of the Act 1996, therefore, in view of Section 2(2) definition of the 'Court' as contained in Section 2(1)

(e) could not be read into or applied to Part II of the Act 1996 and Section 47 thereof. It applies only to part-I of the Act 1996 which includes Section 36 meant for enforcement of a domestic award including those rendered in the context of international commercial arbitration.

35. Section 47 is a separate provision contained in part-II of the Act 1996 for enforcement of Foreign award and it is in this provision that an explanation was added by Act No. 3 of 2016 according to which 'Court' was defined for the purposes of the said section and the sections which were to follow in that chapter i.e Chapter-1 of part-II as there was no definition of 'Court' in part-II separately, and such definition contained in Part I of the Act 1996 cannot be applied to it.

36. Merely because of amendment/addition of Explanation in Section 47 of Part II of the Act 1996 no inference can be drawn that for enforcement of a domestic award in an international commercial arbitration, the Commercial Court at the District level will be the competent forum as these two issues are separate and are governed by different parts/provisions of the Act 1996, especially in view of definition of 'Court' contained in Section 2(1) (e)(ii) which is in Part I of the Act 1996, just as Section 36 of the Act 1996. Section 2(1)(e)(ii) does not carve out any such exception.

37. As there was no definition of Court pertaining to Part-II, therefore, an explanation was added by Act No. 3 of 2016. There was already a definition of Court existing in Part-I which obviously was not applicable to part-II, hence this amendment was made in Section 47 of the Act 1996.

38. In this view of the matter, the contention of Shri Pritish Kumar, learned Senior Counsel that because of this amendment in Section 47 contained in Part II of the Act 1996, the inference logically to be drawn is that other awards, that is, other than foreign awards i.e. domestic awards, even if they relate to international commercial arbitration, would be enforceable and executable by the District Commercial Courts and this is the logical conclusion according to him, cannot be accepted by us.

39. Part-II of the Act 1996 is separate from part-I and there is no interplay of the provisions of the two parts of the Act 1996 in view of what has been dealt with in the Constitutional Bench Judgment in the case of **BALCO** (supra) and three-Judge Bench decision in the case of **PASL Wind Solutions Private Limited** (supra).

40. Having gone through the scheme of the Act 1996 and the Act 2015, we do not find any other provision which could persuade us to take any other view of the matter nor do we find anything there in the scheme of the two Acts or the intent as was canvassed by Shri Pritish Kumar that the Court in the context of

the case at hand should be the District Commercial Court and not the commercial division of the High Court.

41. We may in this very context refer to Section 10 of the Act 2015, which is primarily a procedural law, as already observed by Hon'ble the Supreme Court in **PASL Wind Solutions Private Limited** (supra). Section 10 of the Act of 2015 reads as under:-

"10. Jurisdiction in respect of arbitration matters.—
Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and—

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted"

42. Sub-Section 2 and Sub-section 3 of Section 10 of the Act 2015 relate to arbitration other than international commercial

arbitration, therefore, apparently, they are not applicable to the case at hand.

43. The provision which is applicable is Sub-section 1 of Section 10 of the Act 2015 which itself indicates that in matters of international commercial arbitration all applications or appeals arising out of such arbitration will lie before the High Court. This provision is in sync with Section 2(1)(e)(ii) and Explanation to Section 47 of the Act 1996. Act 2015 was amended subsequent to Act 1996 and the Legislature is presumed to know the earlier enactment especially definition of 'Court' contained in Section 2(1) (e) thereof and explanation to Section 47 contained therein.

44. Thus, in either eventuality, where it is the Act 1996 or the Act 2015, it is the High Court which is the 'Court' for filing an application under Section 36 of the Arbitration and Conciliation Act, 1996 for enforcement of a domestic award pertaining to an international commercial arbitration.

45. For all these reasons, none of the contentions on behalf of the appellant are tenable and we are of the opinion that the judgment of the learned Single Judge does not suffer from any error in so far as it rejects the objections of the appellants regarding maintainability of the application of the respondents under Section 36 of the Act 1996. None of the arguments on behalf of the appellants has any force nor does the decision in

Sundaram Finance Limited (supra) have any application to the facts and issues involved in this case.

46. We accordingly **dismiss** the special appeal.

(Rajeev Bharti, J.) (Rajan Roy, J.)

December 16, 2025

Arti/Santosh