

# FIRM RAJASTHAN UDYOG LTD V/S HINDUSTAN ENGINEERS INDUSTRIES LTD

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Category: [Arbitration](#)



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**Citation:** (2020) 6 SCC 660.

**Date of Decision:** 24th April, 2020

**Bench:** Uday Lalit and Vineet Saran

**Link:** [View](#)

**Issue in question:**

- Whether an Arbitral award, which only determined the price of the land, be executed as a suit for specific performance of the Arbitration agreement when an Arbitrator was referred (as per the agreement) only for fixation of the price of land/Compensation to be given by the purchaser and the award was only with regard to the same?

**Background of the case:**

- There was a long-standing legal duel between the parties dating back to 1974 when the land owned by the Appellant firm was by way of Notification under a State Act was transferred to the Respondent Industry. The said Acquisition was challenged in several writ petitions by both Appellant and Respondent over several years.
- Finally, the state government intervened and convinced the Appellant to parcel away nearly half of the land to the Respondent and the subsequent compensation were to be decided through an Arbitration Agreement. Thus, the subject matter of the Arbitration Agreement was the fixation of the price of land that was to be sold to the Respondent.
- The matter was to be decided by a sole Arbitrator namely, Chandra Bhan Bhargav (Retired), J. The Amount decided was Rs, 12,18,700. The Arbitral award was filed before the Additional District Judge. After several legal bouts between the parties with respect to the correctness of the award, the Rajasthan High court finally gave finality to the Award dated 9-6-1985.
- The respondent, therein, filed an application for execution of sale deed under the award which the district court allowed and directed the Appellants to execute and register the sale deed, thereby handing over the possession of the land. The appellants filed an application in Rajasthan HC for the quashing of the said order. In the meanwhile, the respondents also filed an application for specific performance of the Arbitration Agreement between the parties but later withdrew it unconditionally.
- The HC instead held in favor of the Respondent observing that the withdrawal of the

application of the Respondent does not amount to abandonment of the claim of enforcement of the said Arbitral Award by the Respondent. The said order is the subject of challenge in the current petition.

## Judgment of the Court

- The Appellants argued that the Agreement did not provide for the enforcement rights to the respondent on conclusion of the Arbitration proceedings. Obligation of the parties were to arise only after the passing of the Arbitral Award and not with it. The court observed that the reference to the Arbitrator was only with regard to the determination of the price of the land/ compensation to be paid to the Appellant by Respondent and nothing more. The terms of the Award did not contemplate transfer of land to the Respondent.
- The respondents argued that the powers of the executing court are wide enough to do complete and substantial justice which includes interpreting the award, the agreement on which it is based and the pleadings of the parties. They relied on Bhavan Vaja And Ors. vs Solanki Hanuji Khodaji Mansang.

*"It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree, it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree."*

The court rejected the respondent's argument and concluded that the effect of withdrawing of the application calling for specific performance of the Agreement was that it resulted in the abandonment of the legal claim over the enforcement of the Award.

After the passing of the Award, the Respondent did have an opportunity of falling back on the agreement to execute the sale deed by filing a application of specific performance which it did, however, they later withdrew it, thereby intentionally exhausting their claim.

- The court referred to State of MP vs Mangilal Sharma to better interpret the role of an executing court.

*"A declaratory decree, in my opinion, cannot be executed as it only declares the rights of the decree-holder qua the judgment-debtor and does not in terms, direct the judgment- debtor to do or to refrain from doing any particular act or thing."*

- The appellants contended that any right or title created as a result of decree or award in any immovable property worth more than 100 rupees had to be compulsorily registered under the Registration Act, 1908 and since, no such registration was made, execution of any sale deed would be void ab-initio. As per the agreement, the respondent upon the conclusion of proceedings had to decide whether to accept or decline the award. If it is accepted, the same

had to be communicated to the Appellant within 45 days after which the latter had to execute the sale deed within 15 days of delivery of stamp paper for transfer purchased by the Respondent. After that, the sale deed was to be executed and registered before the sub-registrar and the compensation be paid simultaneously.

On making an enquiry, the court found that the Respondent never deposited any sum or paid earnest money to the Appellant. The only condition they fulfilled under the Agreement was purchasing the stamp paper and that too at the time of filing of the application for execution of the award. In addition to that, even though the award did not vest any right or title in parties, if it were to be executed, the High Court should have considered the impact of a non-registered award. The court, further clarified the position of non-registration of Arbitral awards in Ramesh Kumar vs Furu Ram

*"Thus, the awards are clearly documents which purport or operate to create and declare a right, title or interest in an immoveable property of the value of more than Rs.100 which was not the subject of the dispute or reference to arbitration. Therefore, the awards were compulsorily registrable. If they were not registered, they could not be acted upon under [section 49](#) of the Registration Act, 1908 nor could a decree be passed in terms of such unregistered awards terms of such unregistered awards"*

- In light of the aforesaid findings and observations, the court allowed the appeal, thereby quashing the order of Rajasthan High court directing the execution of the Arbitral award.

### **Analysis:**

- The case by its very nature is a classic reminder of the ill-thought consequences of unsound legal advice rendered by legal professionals of the Respondents. The Respondent had made stark admission in the court that they agreed to withdraw the application for specific performance of the Arbitration Agreement.
- They believed that the execution of the sale deed would occur immediately after the conclusion of the passing of the award. As per the agreement, the execution of sale deed would only take place after the acceptance of the award by the Respondent for which 45 days was given. This also shows that the Respondent party never thoroughly perused the agreement and thus, did not act with due diligence.

