



2026:AHC:215669

Reserved On:30.09.2026
Delivered On:13.10.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 3398 of 2026

Bharat Heavy Electricals Limited

…..Petitioner(s)

Versus

Ms Kataria Carriers

…..Respondent(s)

Counsel for Petitioner(s) : Ashish Mishra
Counsel for Respondent(s) : Ashutosh Mishra, Kartikeya Saran

Along with:

1. **MATTERS UNDER ARTICLE 227 No. - 11999 of 2026**
Bharat Heavy Electricals Limited
Versus
M/S Kataria Carriers

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Ashish Mishra, learned counsel for the petitioner and Shri Shri Kartikeya Saran, learned counsel for the respondent.

2. Since the issues involved in these petitions are similar with different prayers, therefore, all the petitions are being decided by the common order with the consent of the learned counsel for the

parties. Matter U/A 227 No. 3398/2026 is taken as a leading case for deciding the controversy involved in these petitions.

3. The Matter U/A 227 No. 3398/2026 has been filed, inter alia, for the following reliefs:-

> *I. Set aside the impugned order dated 29.01.2026 passed by the Commercial Court, Kanpur Nagar, Kanpur, in Execution/Arbitration Case No. 6 of 2025 in the matter of Bharat Heavy Electricals Ltd. Vs. M/s Kataria Carriers;*
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> *II. Issue directions to the Commercial Court, Kanpur Nagar for commencement and time bound conclusion of the Execution proceedings initiated by the petitioner for execution of the Arbitral Award passed by the Sole Arbitrator Hon'ble Mr. Justice (Retd.) B.S. Verma at Dehradun, dated 16.02.2021 in the matter of Arbitration between BHEL Vs. M/s Kataria Carriers.*

4. The Matter U/A 227 No. 11999/2026 has been filed, inter alia, for the following reliefs:-

> *I. Issue a direction to the Commercial Court, Kanpur Nagar to proceed with the execution proceedings of Execution Case No. 6 of 2025 [Bharat Heavy Electricals Ltd. Vs. M/s Kataria Carriers];*
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> *II. Issue a direction to the Commercial Court, Kanpur Nagar for expeditious disposal of Execution Case No. 6 of 2025 [Bharat Heavy Electricals Ltd. Vs. M/s Kataria Carriers], within a stipulated time as fixed by this Hon'ble Court.*

Matter U/A 227 No. 3398/2026

5. The present petition has been filed assailing the order dated 29.01.2026 passed by the Commercial Court, Kanpur Nagar, in Execution/Arbitration Case No. 6 of 2025 and to proceed with the

execution of the Arbitral Award dated 16.02.2021 passed by the sole arbitrator.

6. The facts, in brief, are that Bharat Heavy Electrials Ltd. (petitioner) awarded a transportation contract dated 27.06.2011 to M/s Kataria Carriers (respondent). The consignment was a TG Stator, dispatched from BHEL's works on 29.06.2011 for the N-Chennai-1 site. On 28.09.2011, while the respondent's vehicle was crossing the bridge over river Kaula near Beenapur Village in Madhya Pradesh, the bridge collapsed. The consignment was damaged and could only be sold as scrap. BHEL alleged that the respondent had diverted from the agreed route without approval and, on that basis, raised a claim of Rs. 21,74,33,145/- and invoked the arbitration clause (Condition G-31) by notice dated 25.09.2014. The first arbitrator withdrew on 11.03.2016. By order dated 14.06.2019 in Arbitration Application No. 16 of 2016, the High Court of Uttarakhand appointed a Sole Arbitrator, Hon’ble Mr. Justice (Retd.) B.S. Verma. The respondent filed a counter-claim of Rs. 3,42,94,068/-. By award dated 16.03.2021, the Arbitrator allowed BHEL’s claim in part (Rs. 19,16,83,879/-), allowed the counter-claim in part (Rs. 3,29,08,068/-), and, on set-off, held BHEL entitled to Rs. 15,87,75,811/- with interest at 9% p.a. from 19.11.2015 till payment.

7. Further, the respondent challenged the award under Section 34 of the Act before the Commercial Court, Dehradun on 29.05.2021 (Arbitration Case No. 52 of 2021), which remains pending. It is common ground that no application for stay under Section 36(2)/(3) has been decided, and the award has not been stayed. BHEL filed the execution petition on 14.02.2025 before the Commercial Court, Kanpur Nagar, where the respondent’s assets are situated. On 26.11.2025 the respondent applied for a stay of execution alleging fraud by concealment. BHEL objected on 01.12.2025. The executing court passed the impugned order on

29.01.2026. This Court granted an interim order in favour of the petitioner on 18.03.2026.

8. The counsel for the petitioner submits that under Section 36(2) of the Act, merely filing a Section 34 application does not make an award unenforceable. The award can be stayed only by the court hearing the Section 34 application, on a separate application under Section 36(3), and by a reasoned order. The special power under the second proviso also belongs to the same court. He further submits that the respondent never moved any such application before Dehradun court, and thus, no stay order. The award is therefore, fully enforceable. He further submits that the executing court, by treating the respondent's application as under Section 36(3), took over a power that belongs to the Section 34 court. In its order the court framed the issue whether "the factum of fraud as alleged by the respondent judgment debtor appears or not", and held, without recording any evidence, that fraud "appears at this stage". In doing so, it decided a serious and disputed question which an executing court cannot decide.

9. He further submits that the same allegations are already pending before the Dehradun court and that court, by orders dated 25.02.2023 and 14.08.2023, rejected the respondent's amendment application and directed that the remaining claims be considered at final arguments, however, the respondent never challenged those orders. He also submits that the impugned order, also interferes with the pending Section 34 proceedings.

10. In support of his submission, he has placed reliance on ***Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*****, (1970) 1 SCC 670**, stating that an executing court cannot go behind the decree, and on ***Rahul S. Shah v. Jinendra Kumar Gandhi*****, (2021) 6 SCC 418**, concerning the misuse of objections at the execution stage. As the order is without jurisdiction and the petitioner has no other effective remedy, hence, this petition under Article 227 of COI.

11. *Per Contra*, learned counsel for the respondent submits that fraud vitiates all judicial acts, and an award procured by fraud is a nullity that can be challenged even in execution proceedings. In support, he relies on ***S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1**; ***A.V. Papayya Sastry v. Govt. of A.P.*, (2007) 4 SCC 221**; ***N. Khosla v. Rajlakshmi*, (2006) 3 SCC 605**.

12. He further submits that BHEL, in its letter dated 23.02.2016 and Claim Statement dated 10.03.2021 took a stand opposite to its case before the Arbitrator, and withheld these documents despite the respondent's discovery application dated 21.11.2020. They came to light only through an RTI reply dated 06.02.2025, and the Dehradun court took them on record on 05.04.2025. The concealment of material documents is fraud, and post-award facts having a nexus with the award are relevant to show it [***Venture Global Engineering LLC v. Tech Mahindra Ltd.*, (2010) 8 SCC 660**]. He further submitted that a plea of nullity can be raised under Section 47 CPC independently of Section 34 (***M/s Electrosteel Steel Ltd. v. Ispat Carrier Pvt. Ltd.*, (2025) 7 SCC 773**), and that the power to stay execution is a question relating to execution [***M. Desikachariar v. Ramachandra Reddiar*, AIR 1951 Mad 56**]. The executing court having found fraud *prima facie*, and hence, the stay order was within jurisdiction. He prays that the interim order be vacated and the petition be dismissed.

13. Replying to the submission on behalf of respondent, the counsel for the petitioner submits that the allegations of fraud, misrepresentation and concealment go to the validity of the award, which can only be seen by Dehradun court under Section 34, which is pending, but cannot be reopened by the executing court. He further submits that in the absence of any stay under Section 36(2)/(3), the award remained enforceable and the respondent could not circumvent the Dehradun court by raising the same grounds of objections before the executing court, which

has already been rejected. The executing court framed the issue of fraud and decided it on a *prima facie* assumption, without evidence and without the procedure prescribed for substantive questions, which amounts to a patent jurisdictional error, hence prays that the petitions deserve to be allowed.

14. After hearing learned counsel for the parties, the copurt has perused the record.

15. It is not in dispute that the respondent challenged the award under Section 34 on 29.05.2021, but never applied for a stay under Section 36(2)/(3), as such Dehradun court has passed no stay order. The plea of fraud by concealment is already pending before the Dehradun court. The court rejected the respondent's amendment application on 25.02.2023 and 14.08.2023 and left the remaining claims for final arguments. It also took the RTI documents on record on 05.04.2025, subject to objection. The respondent admits this in paragraph 58 of its Counter Affidavit. The impugned order framed the issue whether fraud "appears or not" and held that it "appears at this stage", without recording any evidence.

16. The question is whether the executing court, while hearing an application under Section 36 of the Arbitration and Conciliation Act, 1996, could itself stay the enforcement of an award on a *prima facie* finding of fraud, when the court seized of the Section 34 challenge has passed no stay order.

17. The section 36 itself answers this. Sub-section (2) uses the expression "the Court", and that expression refers to the Court in which the application under Section 34 has been filed. Sub-section (3) vests the power to grant a stay in that same Court, on a separate application. The two provisos to sub-section (3) are conditions on the exercise of that power. The first requires regard to the provisions for stay of a money decree under the CPC. The

second requires an unconditional stay where a *prima facie* case of fraud or corruption is made out. Both provisos regulate the power of the Court under Section 34. Neither confers any power on an executing court. The legislature has thus, placed two linked questions, the validity of the award and the stay of its operation, before one forum, so that the court which will finally decide the challenge also decides the interim protection.

18. The explanation to the second proviso makes it applicable to all court cases irrespective of when they commenced that only settles the temporal reach of the proviso and does not alter the forum.

19. It is well settled in law that a decree-holder may execute an award in any court in India having jurisdiction to execute it without transfer from the Section 34 court, as held in ***Sundaram Finance Ltd. v. Abdul Samad*****, (2018) 3 SCC 622**, but a court so executing is not the court seized of the challenge to the award, and the power to stay under Section 36(3) remains with the Section 34 court.

20. It is equally settled that an executing court cannot go behind the decree. In ***Vasudev Dhanjibhai Modi*** (supra), the hon'ble Supreme Court held that a court executing a decree must take it according to its terms and cannot entertain an objection that it is incorrect in law or on facts, and that until set aside in appeal or revision even an erroneous decree is binding between the parties.

21. Further, in ***Rahul S. Shah*** *(supra),* the Hon'ble Supreme Court, noting that execution proceedings were being used as tools to obstruct justice, held that Section 47 CPC contemplates adjudication of limited questions relating to execution, discharge or satisfaction of the decree, and directed expeditious disposal of execution proceedings.

22. A decree or award that is a nullity may be objected to in execution, but in ***Electrosteel Steel Ltd.*** (supra), on which the respondent relies, the apex Court held that such a plea under Section 47 CPC, though not contingent on a Section 34 petition, lies within a very narrow compass and is confined to an award that is void *ab initio* or suffers from inherent lack of jurisdiction, and not one that is merely erroneous in law or on facts.

23. Further, in ***Venture Global Engineering*** (supra), the Supreme Court held that concealment of relevant and material facts which should have been disclosed before the arbitrator is an act of fraud, and that facts surfacing after the award but causally linked to it are relevant in the setting-aside proceeding under Section 34, while the question whether the award will ultimately be set aside is for the appropriate court in that proceeding. Fraud is thus a statutory ground under Section 34(2)(b)(ii) read with Explanation 1, and the Act provides a specific interim mechanism for it in the second proviso to Section 36(3).

24. From the above discussion, the Court finds that the power to stay an award during the pendency of a Section 34 challenge has been deliberately vested by the Legislature in the court seized of that challenge, to be exercised on a separate application, by a reasoned order and subject to the provisos. The respondent has never invoked that power before the Dehradun court.

25. The executing court, without any such application of stay, recorded a *prima facie* finding of fraud and stayed execution until disposal of the Section 34 application, which is in substance the relief contemplated by the second proviso to Section 36(3). It is the substance of the power exercised, and not the label, that matters, so the respondent's argument that the order cannot be faulted merely because it refers to Section 36 does not help it.

26. The decision in *Desikachariar* concerns the general power of an executing court to stay a decree on a question relating to its execution. It does not deal with the statutory regime for arbitral awards, in which the Legislature has expressly allocated the stay power to the Section 34 court, and a general power cannot be used to bypass a special statutory scheme.

27. This court accepts that fraud vitiates all judicial acts or that a plea of nullity may be raised in execution, but those authorities do not hold that every allegation of fraud in the making of an award must be decided by the executing court. The respondent's plea that BHEL took inconsistent stands before the insurer and Arbitrator and withheld documents sought in discovery goes to how the award was procured.

28. The inquiry is fact-intensive and disputed, and is what section 34(2)(b)(ii) contemplates. ***Venture Global*** (supra0 itself treats such facts as relevant in setting-aside proceedings. This is not a case of a tribunal lacking inherent jurisdiction. Moreover, the same plea is pending before the Dehradun court, which has taken the documents on record and reserved their effect for final arguments. Allowing the executing court to record even a prima facie finding on the same question would mean two courts addressing one issue, risking conflicting findings and undermining the single forum.

29. Keeping in view the above discussions, this court is of the considered view that the Commercial Court, Kanpur Nagar, while acting as the executing court, had no jurisdiction to exercise the power under Section 36(3) of the Arbitration and Conciliation Act, 1996, or to record a finding of fraud, even *prima facie*, in order to stay execution of the arbitral award dated 16.03.2021 while the challenge under Section 34 is pending before the Commercial Court, Dehradun, and no stay has been granted by

that court. The impugned order dated 29.01.2026 is therefore, without jurisdiction and cannot be sustained.

30. The order dated 29.01.2026 passed by the Commercial Court, Kanpur Nagar, in Execution/Arbitration Case No. 6 of 2025 is **set aside**.

31. The Commercial Court, Kanpur Nagar, is directed to proceed with the execution of the award in accordance with law, and to conclude the proceedings expeditiously, preferably within three months from the date of production of a certified copy of this order.

32. Accordingly, both the petitions stand **allowed**.

(Piyush Agrawal,J.)

October 13, 2026
A.N. Mishra