

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10.09.2010

+ **EX.P. 74/2005**

J.N.UPPAL

..... Decree Holder

Through : Decree Holder in person.

versus

DR.H.UPPAL & ORS

..... Judgment Debtors

Through : Dr. Harish Uppal, JD No.1 in person.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to Reporter or not? | Yes. |
| 3. | Whether the judgment should be reported in the Digest? | Yes. |

MR. JUSTICE S.RAVINDRA BHAT, J

EX. APPL. 354/2009

1. The applicant was the original Decree Holder, who had moved the execution proceedings, being no. 12/2004 before the learned Addl. District Judge, Delhi. By the application, E.A. No. 354/2009 revival of execution proceeding is sought.

2. Briefly the facts necessary for the present order are that certain *inter se* disputes existed between the parties. They were subject matter of the suit, being Suit Nos. 146/1994 and 528/1994. Apparently, during the pendency of those proceedings, the parties referred the disputes, through a written letter/agreement dated 28.10.2001, to the arbitration of one Sh. A.P. Malik. The undisputed facts are that on 25.11.2001, the arbitrator published his award. The award was in two parts; one dealing with the subject matter of claims in Suit No. 146/1994 and other in respect of claims in Suit No.

528/1994. It is the latter portion of the award with which the Court is concerned, in the present application.

3. In the meanwhile, on 07.10.2001, the applicant (hereafter referred to as Sh. J.N. Uppal) had written a letter (Annexure-A to the execution proceeding), stating that after publication of the award, he should receive the necessary payment from the respondent/Judgment Debtor (hereafter referred to as “Dr. Harish Uppal”) within 17 days. Sh. J.N. Uppal also stated in that letter that he would inform this Court suitably to withdraw Suit No. 528/1994 and that on making the application to the Court, the arbitrator was to hand-over the amount/cash to him, i.e. Sh. J.N. Uppal. The arbitrator thereafter published the award, on 25.11.2001 whereby Sh. J.N. Uppal was held entitled to receive ₹ 14 lakhs. It is not in dispute that Dr. Harish Uppal deposited the said amount with the arbitrator on 03.12.2001. Apparently, the arbitrator wrote to Sh. J.N. Uppal about this and asked him to take necessary measures so that the amount could be handed-over. The suit filed by him, however, was not withdrawn.

4. Sh. J.N. Uppal argues that a clarification had been elicited from the arbitrator as to the deposit and whether and what did it satisfy. He contends that Sh. Harish Uppal stated that in an affidavit dated 12.12.2001 that the amount was deposited towards liability in the second part of the award but that he allegedly claimed to be owner of the properties.

5. Sh. J.N. Uppal had filed I.A. No. 11644/2001 for withdrawal of CS (OS) 528/1994. On 14.12.2001, however, he stated that since another application had been moved, as he wanted a decree from the Court for a sum of ₹ 14,00,000/-, he did not wish to withdraw the suit. The said application was registered as I.A. No. 2066/2002. In the earlier application, I.A. No. 11644/2001, Sh. J.N. Uppal had argued that the arbitrator’s determination was not an award and had attacked the decision. In the meanwhile, various other proceedings, being Ex. Pet. 102/2002 and Suit No. 146/1994 were pending. Sh. J.N. Uppal eventually filed Ex. Pet. 74/2005 for payment of ₹ 14,00,000/- along with interest @ 18% per annum in the year 2005. All these were considered by this Court and a detailed judgment was rendered on 02.05.2008. It would be useful to extract the relevant parts of that judgment as under:

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21. Strangely, when Mr. J.N. Uppal had initially taken steps in the aid of the said arbitration awards, Dr. Harish Uppal was raising objections insofar as payment of Rs.14 lakhs by him is concerned and with the passage of time, both Mr. J.N. Uppal and Dr. Harish Uppal have changed their positions. Today, Dr. Harish Uppal is supporting the award and Mr. J.N. Uppal objecting thereto. Had Dr. Harish Uppal accepted the plea of Mr. J.N. Uppal and paid the sum of Rs.14 lakhs when Mr. J.N. Uppal wanted a decree for the said amount in his suit, probably the position in which the parties have landed today would not have arisen. Be that as it may, better counsel had prevailed upon Dr. Harish Uppal. He has, in fact, deposited the amount of Rs.14 lakhs in this Court.

22. In view of my aforesaid discussion, following orders are passed in various proceedings :-

(a) **EA No. 365/2002 in Ex.P. No. 102/2002**

These objections and other objections raised by other brothers are without any merit and are accordingly dismissed.

(b) **Suit No. 146/1994**

IA No. 3309/2001 for withdrawal of the suit is allowed and the suit is dismissed as withdrawn. All IAs pending in the suit also stand disposed of.

(c) **Ex.P. No. 74/2005**

Mr. J.N. Uppal has prayed for payment of Rs.14 lakhs along with interest @ 18% p.a. Insofar as amount of Rs.14 lakhs is concerned, the same was deposited by Dr. Harish Uppal in this Court and Mr. J.N. Uppal is permitted to withdraw the said amount in satisfaction of the decree.

Insofar as the question of payment of interest is concerned, in view of my discussion above, I am of the opinion that fault lies with both the parties and some equitable solution is to be found out. Dr. Harish Uppal had deposited this amount with Mr. A.P. Malik immediately after the award, i.e. on 3.12.2001. Had Mr. J.N. Uppal withdrawn his suit immediately, he would have got this amount from Mr. Malik. Therefore, Mr. J.N. Uppal would not be entitled to any interest for the period this money remained with Mr. Malik.

Dr. Harish Uppal, however, was given back this money by Mr. Malik

on 21.8.2002. Thereafter, this money remained with Dr. Harish Uppal till he deposited the same in the Court. Therefore, I am of the opinion that Dr. Harish Uppal should pay interest to Mr. J.N. Uppal for this period @ 6% p.a. Actual interest shall be calculated and paid to Mr. J.N. Uppal within two months from today. On payment of this amount, this execution shall stand fully satisfied.

This execution is, thus, disposed of with liberty to Mr. J.N. Uppal to seek revival in case the amount, as aforesaid, is not paid by Dr. Harish Uppal.

(d) **Ex.P. No. 102/2002**

In view of dismissal of the objections, the award is to be executed as decree. Though as per the award, properties are to be sold and shares distributed, it would be appropriate that in the first instance attempt is made for inter se biddings. For this purpose, the matter shall be listed before the Court on 15.07.2008, on which date it shall be listed before the Regular Bench.

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6. Pursuant to the above order, Sh. Harish Uppal paid the sum of ₹ 2,52,000/-, stating that the sum amounted to satisfaction of this Court's direction dated 02.05.2008. He justified this decision in the following directions:

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From: Registered with A/D

Dr. Harish Uppal
LL.M, Ph.D (law) (Delhi), Advocate.

20, Todarmal Road,
New Delhi-110 001
23 June 2008

To,

Shri J.N. Uppal,
20, Todarmal Road, New Delhi-110001.

Sir,

This letter and payment is without prejudice to all my rights and contentions.

2. With reference to the judgment of Hon'ble Mr. Justice A.K. Sikri dated 2-5-2008 in Ex. 102/02, Ex. 74/05 and CS (OS) 146/94, award dated

25.11.2001, the note/reference dated 7-10-2001 written by you in your own hand and letter dated December 4, 2001 of Mr. A.P. Malik.

3. Para 3 of terms of the reference dated 7-10-2001 written in your own hand, copy of which is annexed herein for ready reference as Annx. L 1; reads:

“After that J.N. Uppal shall inform the Delhi High Court suitably to withdraw the suit No.528 of 1994. On making this application to the court; Shri A.P. Malik shall hand-over the cash to J.N. Uppal.”

4. It is matter of record that you withdrew the suit only on 15 May 2004. Thus you were not entitled to receive the award money before 15 May 2004, as per the terms of reference dated October 07, 2001 referred above and obvious from the award dated 25.11.01 and letter dated 4-12-2001 of Mr. A.P. Malik annexed herein as Annx. L2 and L3. You became entitled to award money only on 15-5-2004. Accordingly the interest @ 6% p.a. is payable to you from 15-5-2004 to 10-5-2007 i.e. about three years.

5. That pay order no. 015309 of C.B.I. dated 10 May 2007 for Rs. 14,00,000=00 (Rs. fourteen lacs only) was deposited in the court. The photocopy of the said pay order is annexed as Annx. L 4.

6. Thus the interest on Rs. 14,00,000=00 for 3 years @ 6% per annum as awarded by the hon'ble court is payable and comes to:
$$\frac{14,00,000 \times 6}{100} = 84,00,000 \text{ for one year } \times 3 = 2,52,000=00$$

(Rs. two lacs fifty two thousand only)

7. Please find enclosed Banker's Cheque no. 016973 in your favor (Mr. J.N. Uppal) of Central Bank of India dated 23 June 2008 for Rs. 2,52,000=00 (Rs. two lacs fifty two thousand only) in full settlement of interest payable in terms of the award dated 25.11.01, judgment and the terms of reference dated 07-10-2001 read with letter dated 4-12-2001 of Mr. A.P. Malik. The decree already stands satisfied; and with this payment the execution stands fully satisfied.

8. This is with sincere hope that your **conscience** may respond positively to judgment in Ex.102/02 to give due share to Miss Indira Uppal, our unmarried sister with over 80% physical handicap, expeditiously, to bring the litigation to an end for healthy mutual co-existence. May God help!

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7. Sh. J.N. Uppal submits that this Court should revive the execution proceeding in the light of the final directions since the express liberty was granted for the purpose. It is argued that the payment of ₹ 2,52,000/- does not amount to compliance, much less satisfaction as the Judgment Debtor, Dr. Harish Uppal had to pay the interest on the sum of ₹ 14,00,000/- @ 6% per annum for the period 21.08.2002 to 02.05.2008. Dr. Harish Uppal opposes the application, contending that the Court has to consider the overall perspective of the case. He points to the fact that the Decree Holder applicant had carried the matter in appeal, being EFA (OS) 01/2009, which was rejected on 30.03.2009 by a Division Bench of this Court and that the matter was carried in further appeal by substantial relief, to the Supreme Court, being SLP 5510/2010, which was dismissed on 16.08.2010. Copies of the said two orders have been placed on the record. It is also submitted that Sh. J.N. Uppal’s application for clarification which virtually amounted to request for enhancement had also been rejected.

8. Dr. Harish Uppal argues that since he had complied with the orders of the arbitrator and deposited the amounts as directed within the time, i.e. 03.12.2001, the Court took that into consideration. He further submits that Sh. J.N. Uppal initially challenged the award and after some time sought its execution. It is emphasized that the order of 02.05.2008 in fact rejects the objections and notices that the directions to deposit the amount had been complied with despite which a further order to pay interest @ 6% from 2002 was made. Even this was complied with, having regard to the overall circumstances, at least with effect from the date the suit was withdrawn, which is 15.05.2004. It is, therefore, submitted that interest of justice require that the Execution Proceedings ought not to be revived.

9. In order to better understand the controversy, it would be relevant to, in the first instance, to reproduce the award, which is in the following terms:

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The award in respect of Suit No. 528/1994 is to the following effect

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AWARD

SUIT NO. 528 OF 1994 IN DELHI HIGH COURT

On the Joint request of the parties and their assurance that they shall abide by the decision of undersigned and specific consent of all that oral hearings be held, no minute of proceedings need to be made and no reasons are required to be given and the above suit pending in Delhi High Court shall be withdrawn. The undersigned held oral hearings at 20, Todarmal Road, New Delhi and all the parties were present. The main contending parties are only Shri J.N. Uppal and Shri H. Uppal. In reference note dt. 07.10.01 S/Shri G.K. Uppal, P.N. Uppal, Shri Harish Uppal and Miss Indira Uppal have agreed not to object to withdrawal of suit.

Decision

Mr. J.N. Uppal is entitled to get Rs. 14 lakhs in cash from Mr. Harish Uppal. Accordingly, Mr. Harish Uppal should pay the amount of Rs. 14 lakhs to Mr. J.N. Uppal as per the procedure laid down in the note dt. 7.10.2001 regarding payment to be made and withdrawal of the above-mentioned case.

**(A.P. MALIK)
Hosue No. 611,
Sector-14,
Gurgaon”**

25.11.2001

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10. It is not in dispute that the procedure referred to, i.e. reference noting dated 07.10.2001 concerning payment of the amount to Sh. J.N. Uppal envisioned deposit of the amount with the arbitrator within 17 days of publication of the award. The award was published on 25.11.2001; Dr. Harish Uppal did deposit the said amount with the arbitrator on 03.12.2001, as is evident from the arbitrator's letter of Sh. J.N. Uppal dated 04.12.2001. The letter of 07.10.2001 by Sh. J.N. Uppal outlined the procedure to be followed in the event he was held entitled to ₹ 14,00,000/-, in the following terms:

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After the announcement of the decision of Shri A.P. Malik in the above suit, Shri A.P. Malik shall receive the necessary payment in the form of Cash from Shri Harish Uppal within 17 (seventeen) days of the date of announcement of the results.

After that J.N. Uppal shall inform the Delhi High Court suitably to withdraw the suit No. 528 of 1994. On making this application to the court Shri A.P. Malik shall hand-over the cash to J.N. Uppal.

This paper shall be kept with Shri A.P. Malik only and cannot be used for any purpose other than to assure this meeting of the commitment and sincerity of this meeting by J.N. UPPAL.

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[The above letter was produced in the Exec. Pet. 74/2005 by Sh. J.N. Uppal as Annexure-A].

11. It is a matter of record that Sh. J.N. Uppal withdrew his suit, i.e. Suit No. 528/1994 on 15.05.2004. He pursued the objections to the award which were eventually dismissed on 02.05.2008. His objections were held to be groundless. In the meanwhile Dr. Harish Uppal withdrew the sum of ₹ 14,00,000/-, which was deposited with the arbitrator, stating that Sh. J.N. Uppal had not complied with the terms. The question as to whether the overall circumstances of the case warranted revival of the execution proceeding.

12. A reading of the order dated 02.05.2008 would reveal that even though the award has been quoted and duly noticed, the exact procedure agreed to by the parties for deposit and withdrawal of the sum of ₹ 14,00,000/- was not brought to the notice of the Court. Sh. J.N. Uppal does not deny that the award in respect of the Suit No. 528/1994 in fact refers to the procedure outlined by him on 07.10.2001. That procedure, however, escaped the notice of the Court even though the letter itself was produced as Annexure-A. It clearly mentions that the arbitrator was obliged to pay the amount to Sh. J.N. Uppal after he withdrew the Suit 528/1994. It is a matter of record that even though an application for its withdrawal was presented earlier, the same was not followed-up and in fact the jurisdiction and appointment of arbitrator itself was questioned. Later, Sh. J.N.

Uppal appears to have turned-around and sought execution of the award in 2005. In the meanwhile, on 15.05.2004, he withdrew the Suit No. 528/1994.

13. Having regard to these facts, this Court is of the opinion that even though the order dated 02.05.2008 directs payment of interest with effect from 21.08.2002 (i.e. the date when the amount was returned to Dr. Harish Uppal by the arbitrator), Sh. J.N. Uppal could not legitimately claim the sum, at least till from 15.05.2004. In these circumstances, there can be no further grievance with regard to payment of the amount or any interest as the calculations disclosed in the letter dated 23.06.2008 to Sh. J.N. Uppal by Dr. Harish Uppal are in compliance of the Court's directions. In the circumstances, the application, E.A. No. 354/2009 has no merits. It is accordingly rejected.

**S. RAVINDRA BHAT
(JUDGE)**

SEPTEMBER 10, 2010
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