

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

+ **CM(M) No.234/2009**

% **Date of decision: 9th February, 2010**

RAJENDER KISHAN GUPTA **.... Petitioner**
Through: Mr. Kamal Sawhney, Advocate

Versus

PREM CHAND GUPTA & ORS. **.... Respondents**
Through: Mr. B.S. Maan & Mr. H. Singh,
Advocates

AND

+ **CM(M) No.235/2009**

SUDHIR KISHAN GUPTA **..... Petitioner**
Through: Mr. Kamal Sawhney, Advocate.

versus

PREM CHAND GUPTA & ORS **..... Respondents**
Through: Mr. B.S. Maan & Mr. H. Singh,
Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. These two petitions under Article 227 of the Constitution of India, though preferred by different petitioners, are with respect to similar / identical orders of the same Additional District Judge on the similar objections preferred by each of the petitioners to the execution petition filed for execution of a decree pursuant to an arbitration award under the Arbitration Act, 1940, made rule of the Court. The counsel appearing for both the petitioners has addressed same arguments in both the matters. Whatsoever, the objections before the executing court may have been and which have been dismissed, the arguments before this court were confined only to the contention that the decree sought to be executed is a nullity, being in violation of Section 185 of the Delhi Land Reforms Act (hereinafter called the DLR Act).

2. The arbitration award dated 31st March, 1973 records that the parties to the arbitration were members of a joint Hindu family owning immovable and movable properties and carrying on businesses of brick kiln, nursery and florists; that lands and other immovable properties at various places were owned by the members of the aforesaid family either in the name of any of

the member or more members or even in the name of their relations, friends and other persons as benami; that disputes had arisen between the aforesaid members of the joint Hindu family and with a view to settle the same amicably they had entered into an arbitration agreement dated 13th April, 1971 and referred all their disputes and differences to the arbitration of Mr. L.R. Gupta, advocate and Dr. M.L. Sharma. The award, after recitals and listing the points for determination, divides the properties of the family amongst the five branches of the family.

3. Mr. L.R. Gupta, advocate being one of the arbitrators filed the award aforesaid in the Court for being made rule of the Court. It appears that objections to the award were preferred by only one branch of the family (not the petitioners herein). However, subsequently the parties arrived at a compromise, terms whereof were recorded in Ex.CA. As per the compromise, the award dated 31st March, 1975 was to be made rule of the Court, subject to amendments detailed in Ex.CA. This court recorded the statements of the parties in support of the compromise application and made the award as amended through Ex.CA, a rule of the court and passed the decree in terms thereof on 1st September, 1975.

4. Execution proceedings from which these petitions have arisen, was filed by one branch of the family i.e. who had preferred objections to the award. By way of execution, possession of several properties which were stated to have been awarded to the party applying for execution was sought. Though the execution was filed in or about August, 1987 but objections thereto were filed by the petitioners in or about the year 2003. It was *inter alia* stated in the said objections that the decree if implemented / executed will violate DLR Act.

5. The said objections have been dismissed vide the order impugned in these petitions. The counsel for the petitioners has besides addressing oral arguments also filed written submissions. It is his contention that the arbitration award supra forming the basis of the decree under execution resulted in partition of agricultural land; that the DLR Act which is a complete code in itself provides a detailed mechanism for partition of agricultural properties; Section 185 of the said Act prohibits the courts other than the court mentioned in Column 7 in schedule I of the said Act from taking cognizance of any suit, application or proceeding mentioned in Column 3 thereof; that a suit for partition is mentioned in column 3 of Schedule I. It is further his contention that the decree holder has admitted in

the pleadings that the award would result in partition of agricultural land. He contends that the exclusive jurisdiction for partitioning agricultural land being with the Revenue Court, the decree resulting from the award being made rule of the court is a nullity and un-enforceable.

6. The learned Additional District Judge has on this aspect, relying on ***Morgan Securities and Credits Pvt. Ltd. Vs. Morepen Laboratories Ltd.*** 132 (2006) DLT 588 held that the executing court cannot go behind the decree and cannot entertain any objections that the decree is incorrect in law or facts; it has further been held that the objections, if any, with respect to the arbitral award, under Section 34 of the 1996 Act are required to be preferred within the time mentioned therein; that the petitioners/objectors having not preferred any objections to the award, the executing court cannot entertain such objections as it would amount to setting at naught the limitation provided in Section 34(3) of the 1996 Act for objecting to the award. It was further held that since the executing court was not dealing with a suit for partition of agricultural land, the bar provided in Section 185 of the DLR Act did not come into play.

7. The counsel for the petitioners has urged that the learned Additional District Judge has erred in holding that the objections to a decree consequent to the award being made rule of the court cannot be preferred. Reliance in this regard is placed on *Union of India Vs. Jagat Ram Trehan* 61 (1996) DLT 779 (DB) where it was held that Section 47 of the CPC applies to execution proceedings taken pursuant to a decree making the award a rule of the Court; it is open to the executing court under Section 47 to declare that the award was without jurisdiction and therefore the decree passed there upon is also null and void and not executable. The counsel for the petitioner also distinguishes the judgment in *Morgan Securities* (supra) by contending that in that case, the counsel for the petitioner had conceded that he would not raise any question regarding inherent lack of jurisdiction. It is contended that in the present case, there was inherent lack of jurisdiction in the arbitrator partitioning properties governed by the provisions of the DLR Act.

8. This Court is of the opinion that first it has to be determined whether there is any bar on the arbitrator from exercising powers in respect of matters of which jurisdiction of the “court” is barred under Section 185 of the DLR Act. Only if such bar is found, would the next question arise i.e. whether such objections could have been taken only at the stage of objecting

to the award or could they also be taken in the execution of the ensuing decree.

9. Section 185 of the DLR Act is as under:-

“185. Cognizance of suits, etc., under this Act. – (1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.

(2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid.

(3) An appeal shall lie from the final order passed by a court mentioned in column 3 to the court or authority mentioned in column 8 thereof.

(4) A second appeal shall lie from the final order passed in an appeal under sub-section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid.”

Serial 11 in Schedule 1 to the DLR Act prescribes that a suit for partition of holding of a Bhumidhar shall lie before the court of the Revenue Assistant with First Appeal there-against before the court of the Deputy Commissioner and Second Appeal there-against before the court of the Chief Commissioner.

10. Thus, if the suit is for partition of holding by a Bhumidhar of land governed by the provisions of the DLR Act, Section 185 bars the jurisdiction of any other “court” with respect to such a suit. The question which thus arises is whether the arbitrator is a “court”.

11. The aforesaid question was posed to the counsel for the petitioner also at the very outset. He had then not cited any judgment on this aspect. Subsequently, however, he sought another opportunity of hearing and placed reliance on *Indian Trade Promotions Organization Vs. International Amusement Ltd* 142(2007) DLT 342. His argument is that the DLR Act, which is like the Public Premises (Eviction of Unauthorized Occupants) Act (hereinafter called the PP Act) in consideration in the said judgment, is a complete code in itself. On this aspect reliance is placed on *Hatti Vs. Sunder Singh* AIR 1971 SC 2320 and *Gaon Sabha Vs. Nathi* (2004) 12 SCC 555. He also seeks to place reliance on *Jai Singh Vs. Mangtoo* AIR 1962 HP 10 where the Judicial Commissioner held that where the subject matter of a private award was exclusively within the jurisdiction of a revenue court, the award cannot be filed in a civil court and it cannot also be filed in a revenue court, it being not a civil court within the meaning of the Arbitration Act.

12. The bar in Section 185 of the DLR Act is only to the jurisdiction of a “Court”. The bar is not to the jurisdiction of the arbitrator. The Arbitration Act, 1940 was in existence since prior to the coming into force of the DLR Act, 1954. The legislature still did not deem it appropriate to bar the jurisdiction of the arbitrator. The Supreme Court in *Manohar Lal Vs. Vinesh Anand* AIR 2001 SC 1820 after noticing that as far back as in *Thawardas Pherumal Vs. Union of India* MANU/SC/0070/1955 it had been held that the arbitrator is not a Court within the meaning of CPC, but in view of the sea change since then i.e. the repeal of the 1940 Act and the introduction of the 1996 Act, reconsidered the question whether the arbitrator could be said to be a Court and again held that an arbitrator is not a court, though the examination in that case was vis-à-vis Section 195 of the Cr.P.C.

13. The Supreme Court in *Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan* AIR 1999 SC 2102 was faced with the question whether specific performance, jurisdiction whereof under the Specific Relief Act has been conferred on the civil court only, can be arbitrable. There was a difference of opinion among the High Courts in that regard. It was held by the Supreme Court that there being no prohibition in the Specific Relief Act

that issues relating to specific performance of contract relating to immovable property cannot be referred to arbitration and there being also no prohibition in the Arbitration Act in this regard, no such prohibition could be carved out by the Court. Reliance was placed on Halsburys' Laws of England stating that disputes or differences which the parties to an arbitration agreement agree to refer must consist of a justiciable issue triable civilly. A fair test of this is whether the differences can be compromised lawfully by way of accord and satisfaction.

14. Applying the aforesaid dicta, I am of the opinion that there being no bar neither in the DLR Act nor in the Arbitration Act to arbitration of disputes qua partitioning of property even if governed by the provisions of the DLR Act, the arbitration award or the decree in terms thereof cannot be set aside on this ground.

15. That brings me to the judgment in *International Amusement Ltd.* (supra). In that case, the agreement between the parties though providing for arbitration of disputes also provided that the premises subject matter of the agreement would be governed by the PP Act. It was in that context that the Division Bench of this Court held that the two clauses of the agreement have

to be read harmoniously. It was held that the arbitration clause could not make the other clause regarding applicability of the provisions of the PP Act redundant. Reading the two clauses harmoniously, it was held that arbitration could not be of the disputes covered by the PP Act. The Division Bench however further held that the PP Act being a special Act prescribing the complete procedure for adjudication of proceedings and being a complete code in itself, the matters required to be adjudicated thereunder could not be made subject matter of arbitration. It was further held that the jurisdiction conferred by the statute on the Estate Officer, could not by contract be conferred on an arbitrator. Proceeding further, it was held that the bar in the PP Act to jurisdiction of courts would apply to the arbitrator also. The counsel for the petitioners would contend that what has been held by the Division Bench qua the PP Act, applies to the DLR Act also.

16. I have already noticed above that the arbitrator has not been held to be a court by the Supreme Court. The bar of Section 69(2) of the Partnership Act applicable to courts has also been held not applicable to proceedings before an arbitrator, by the Supreme Court in ***Kamal Pushp Enterprises Vs D.R. Construction Co.*** AIR 2000 SC 2676. Similarly, in ***Paramjeet Singh Patheja Vs ICDS Ltd*** AIR 2007 SC 168 an arbitration award was not held to

be a decree within the meaning of Section 9(2) of the Presidency Towns Insolvency Act, 1909 inter alia because it is not rendered in a suit commenced by institution of a plaint. Yet again in ***M.D. Army Welfare Housing Organisation Vs Sumangal Services Pvt Ltd*** AIR 2004 SC 1344 it was held in the context of the Arbitration Act, 1940, whereunder arbitration proceedings in the present case also were held, that an arbitral tribunal is not a court of law and its functions are not judicial in nature and it functions in the confines of the four corners of the agreement. Section 34 of the CPC was also not held applicable to arbitration proceedings, in ***Bhagwati Oxygen Ltd Vs Hindustan Copper Ltd.*** AIR 2005 SC 207, for the reason of the arbitrator not being a court.

17. I may also notice that in ***Galib Bin Awaj Vs Mohd. Abdul Khader*** AIR 1987 SC 1565, the Supreme Court held that the bar in Section 99 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 to the jurisdiction of the Civil Court was not against the arbitrator.

18. The question therefore which arises is, whether, what the Division Bench has observed in ***International Amusement Ltd.*** (Supra) qua the PP Act, applies to the DLR Act. The PP Act, without exception, applies to all

public premises. The DLR Act is not such an Act. In fact, the provisions thereof do not even extend to the entire city of Delhi or even to all agricultural lands in Delhi. This Court in ***Ram Lubhaya Kapoor Vs J.R. Chawla*** 1986 RLR 432, ***Narain Singh Vs Financial Commissioner*** MANU/DE/1008/2008, ***N.B. Singh (HUF) Vs Perfexa Solutions Pvt Ltd.*** MANU/DE/0743/2009 and recently in ***Nilima Gupta Vs Yogesh Saroha*** 156 (2009) DLT 129 has held that the DLR Act ceases to apply when the land ceases to be agricultural and is built upon, as is the case with most of the agricultural land in Delhi. The arbitration award in the present case, though describes some of the properties of the family as agricultural land, does not show that any agricultural activity was being carried on by members of the family; rather they are described as carrying on other business. Also Single Judges of this court in ***Trikha Ram Vs Sahib Ram*** 69 (1997) DLT 749 and ***Sis Ram Vs Lallu Singh*** MANU/DE/8613/2006 have held that upon issuance of notification of urbanization of the village, the provisions of the DLR Act cease to apply. Thus, it would be seen that the DLR Act cannot be equated to the Rent Act or to the PP Act.

19. I may also notice that the bar under the DLR Act is only to a suit for partition of holding of a Bhumidhar. From a reading of the award, the claims therein do not appear to be for partition of the holding of a Bhumidhar. The claims therein were with respect to properties admittedly belonging to all the members of the family being held in the name of some of the members only or even in the names of others. All that the parties have done is to divide the said property between themselves. The said division appears to be amicable and with the consent of the parties. The parties appear to have involved the arbitrator only with a view to formalize their family settlement. The DLR Act does not prohibit such family settlement. Only when a suit for partition is required to be filed, is the fora of the courts created there-under provided. What appears to have happened in the facts of the present case, is more akin to a voluntary agreement/family settlement between the parties and with respect thereto in any case, the bar of the DLR Act does not arise. The Supreme Court in ***Kale Vs Deputy Director of Consolidation*** (1976) 3 SCC 119 has held that a very liberal and broad view of the validity of such family settlement has to be taken and they are to be enforced and upheld by the courts and technicalities of law should not be permitted to be an impediment in implementation thereof.

20. I also do not see any practical difficulty in following the aforesaid course. Under Section 54 read with Order XX Rule 18 of the CPC, where the decree is for partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the collector or any gazetted subordinate to that collector deputed by him in this behalf in accordance with law for the time being in force relating to partition, or the separate possession, shares, of such an estate. The civil court before which the decree is filed for partition is then required to direct such partition or separation to be made by the collector or his subordinate in accordance with the declaration as to shares. It thus cannot be said that the execution poses any problem.

21. The claim of the petitioners in the present case is found to be dishonest. The arbitration award made rule of the court and to execution whereof objections have been filed has admittedly been implemented to a large extent and the petitioners have also availed benefits thereunder and are objecting only to implementation qua one branch of the family. The Supreme Court in *Puran Chand Nangia Vs National Fertilizers Ltd* (2003)

8 SCC 245 has held objections to the award to be not maintainable after a party has submitted to the award. To the same effect is the judgment of this court in *Anand Kumar Jain Vs UOI* MANU/DE/0191/1987. The principle is found to apply to the facts of the present case and the reliance by the petitioners on *Harshad Chimanol Modi Vs. DLF Universal Ltd.* (2005) 7 SCC 591 is misconceived.

22. I may also notice that the petitions have been preferred under Article 227 of the Constitution of India. The exercise of jurisdiction there under is discretionary, though of course, in accordance with the established parameters. The said jurisdiction has been conferred primarily to ensure that any of the orders of the subordinate court / tribunal does not result in injustice to any of the parties in the present case. The Supreme Court in *State Vs Navjot Sandhu* (2003) 6 SCC 641 and *Surya Dev Rai Vs Ram Chander Rai* (2003) 6 SCC 675 has held that the powers thereunder are to be exercised to meet the ends of justice and where the orders impugned have occasioned grave injustice or failure of justice. The equities are loaded against the petitioners and are in favour of the decree holders. It is perhaps for this reason only that the counsel for the petitioner chose to confine himself to the aforesaid legal issues only. Else as aforesaid, not only did the

petitioner not prefer any objection to the arbitration award of 1973 but the same was made rule of the court with modifications in terms of the compromise arrived at between the parties, as far back as in 1975. It is the case of the decree holder that the petitioners cannot wriggle out of the compromise; that the petitioner along with their other family members have been enjoying the immovable properties which under the award had fallen to the exclusive share of their branch of the family since 1975 and have also been selling off some of the properties claiming themselves to be the exclusive owners thereof by virtue of the award made rule of the court, as aforesaid. The decree holder has taken the plea that the petitioners having availed of the benefits of the decree are now estopped from challenging the same. It is also pleaded that the petitioners, in other legal proceedings, have been relying on the aforesaid award and decree and are precluded from challenging the same. Not only so, it is further pleaded by the decree holders that the petitioners themselves had applied for execution of the aforesaid award made rule of the court and decreed and taken possession of the properties which had fallen to their share under the aforesaid award. It is contended by the decree holders that after having taken possession and having sold off some of the properties which had fallen to their shares, the

petitioners are now creating obstructions to the decree holders getting their share of the properties as per the said award. It is further contended that the award has been acted upon and remains only qua the decree holder. In the circumstances no case for exercise of discretion in favour of the petitioners is found. The petitioners by preferring objections are purporting to perpetuate injustice and which cannot be permitted under Article 227 of Constitution of India. The Supreme Court in ***Ravinder Kaur Vs Ashok Kumar*** (2003) 8 SCC 289 has held that courts of law should be careful enough to see through diabolical plans of judgment debtors to deny the decree holders the fruits of the decree obtained by them.

23. The learned Additional District Judge however, erred in applying the provisions of the Arbitration Act 1996 to the matter in controversy when not only the award but also the proceedings for making the same rule of the court and decree in terms thereof were long prior to the coming into force of the 1996 Act. There is a material difference between the 1996 Act and the 1940 Act. While under the 1996 Act, the award after the expiry of the period prescribed for preferring objections is a decree without being required to be made rule of the Court, under the 1940 Act, the court was required to

apply itself to the correctness of the award before making the award a rule of the court. A duty was cast on the court to satisfy itself that the award was in accordance with law before making the same rule of the court even if any objections had been preferred there against. In the present case, not only did the court make the award the rule of the court but the petitioners expressly agreed to the same being made rule of the court. The question of estoppel would certainly arise against the petitioners. The petitioners cannot be permitted to indulge in re-litigation.

24. That brings me to the judgment of the Division Bench of this Court in ***Jagat Ram Trehan*** (supra); in that case the arbitration was to cease upon the arbitrator being transferred or vacating his office. The objection was that the arbitrator had vacated his office on the date when the award was pronounced. It was on these facts that the Court held that the objection qua the award could be taken even in execution. That case did not concern exclusive jurisdiction of any other Court.

25. Thus looked at from any perspective, I am unable to find any merits in favour of the petitioners. The petitions are mala fide and vexatious and are dismissed with costs of Rs.25,000/- each, payable to the respondents.

**RAJIV SAHAI ENDLAW
(JUDGE)**

February 9, 2010
gsr