

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 27.09.2011
% Date of decision : 19.10.2011

+ EFA (OS) No.27/2010

J.N.UPPAL APPELLANT

Through : Mr.Suchinto Chatterji, Advocate.

- V E R S U S -

DR.HARISH UPPAL & ORS. RESPONDENTS

Through : Respondent No.1 in person.

None for Respondent Nos.2 to 5.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MS. JUSTICE RAJIV SHAKDHER

Whether the Reporters of local papers
may be allowed to see the judgment? NO

To be referred to Reporter or not? NO

Whether the judgment should be
reported in the Digest? NO

SANJAY KISHAN KAUL, J.

1. The propensity of real brothers to fight over trifling amounts, keeping in mind the value of the properties

in question, has given rise to this first appeal arising from an order dated 10.09.2010 in execution proceedings.

2. The parties to the present appeal are progenies of late Dr.D.R.Uppal and Late Smt. Padmavati. A suit No.146/1994 was filed by R-2, daughter, seeking partition of two properties namely 20, Todarmal Road, New Delhi – 110 001 and 9A/50, WEA, Karol Bagh, New Delhi – 110005.
3. The appellant, the son, also filed a Suit No.528/1994 for partition of the properties, stated to be acquired and purchased by R-1, R-2 and R-5 (son of the pre-deceased daughter) at Delhi, Jaipur and Shimla out of the income accruing from the aforesaid properties. It is the claim of the appellant that a memorandum of family settlement in the hand writing of R-1 was signed on 29.03.1989 recording the factum of an oral partition of the two ancestral properties. That information being conveyed to income tax authorities, the appellant shifted in a portion of the property located at 20, Todarmal Road, New Delhi – 110 001 in September, 1990. R-1 is also stated to

have filed a suit no.12/1994 against the appellant in the court of Sub Judge for permanent injunction, restraining the appellant from selling his portion of the property at 20, Todarmal Road, New Delhi – 110 001. The earlier partition was, however, challenged by R-2 in a suit. R-1 is stated to have withdrawn his suit filed before the Sub Judge. The two suits filed in the High Court were consolidated.

4. It appears that better sense prevailed over the parties and to resolve the disputes, the matter was referred to the arbitration of one Mr.A.P.Malik, husband of one of the sisters of the parties and an award is stated to have been passed by the arbitrator on 25.11.2001. One of the stipulations in the award was for R-1 to pay amount of Rs. 14 lakhs to the appellant as per a procedure laid down in a note dated 07.10.2001. This amount was deposited by R-1 with sole arbitrator on 03.12.2001.
5. The appellant filed an application for withdrawal of Suit No.528/1994 on 11.12.2001 to facilitate release of money as the note dated 07.10.2001 envisaged the handing over the money to the appellant on the

appellant informing the Delhi High Court suitably to withdraw Suit No.528/1994. It may also be noticed that the sole arbitrator vide letter dated 04.12.2001 had informed the appellant to proceed in the matter by withdrawing Suit No.528/1994 by making an appropriate application and *"thereafter you may collect the money from the undersigned."*

6. R-1 was, however, aggrieved by certain averments made in the application for withdrawal and filed a reply. This resulted in a rejoinder being filed by the appellant disputing the averments made in the reply and a prayer being made by the appellant that he may be permitted to withdraw IA No.11644/2001 filed on 11.12.2001 for withdrawal of Suit No.528/1994. It may be noticed that the suits in the meantime came to be transferred to the District Courts and Suit No.528/1994 with its new number was listed before the learned ADJ on 15.05.2004 for arguments on preliminary issue framed on 27.03.2004 when the statements of parties were recorded in terms whereof the suit was dismissed as withdrawn. The order, however, simultaneously

observed that the existence or validity of any arbitration award between the parties can be looked into in a separate case which was filed by the plaintiff therein for executing the alleged award bearing Execution Case No.12/2004. (transferred to the High Court and numbered as Execution Petition No.74/2005)

7. Various proceedings *inter se* the parties have been withdrawn since then albeit belatedly and the matter compromised, but the execution petitions were pending before the learned Single Judge on the original side. One of the issues cropped up was the claim of the appellant that on account of delay in release of the sum of Rs.14 lakhs to him by R-1 (in view of the *inter se* dispute the arbitrator had, in the mean time on 21.08.2002, returned back the money to R-1), the appellant is entitled to interest at the rate of 18 per cent per annum. The various objections of the parties in the execution petitions were dealt with and all the matters were disposed of vide an order dated 02.05.2008. One of the matters discussed in the order dated 02.05.2008 was

Execution Petition No.74/2005 where the appellant had prayed for payment of Rs.14 lakhs along with interest at the rate of 18 per cent per annum. This amount had been deposited by R-1 in court during the proceedings which was permitted to be withdrawn by the appellant. The claim of interest has been discussed by the learned Single Judge in the following terms:

“ 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 03.12.2001. 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 21.08.2002. 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 to Dr.Harish Uppal.”

8. The effect of the aforesaid is that the appellant has been held dis-entitled to interest for the initial period when the suit had not been withdrawn but the fact that R-1 was returned back the money by the sole arbitrator and enjoyed the same till deposit of the same with the Court was a factor which was taken into account while awarding 6 per cent per annum simple interest for that period.
9. R-1 vide a letter dated 23.06.2008 sought to tender the amount in pursuance to the order dated 02.05.2008. R-1 stated in the letter that as per the note dated 07.10.2001, the amount was liable to be handed over to the appellant by the sole arbitrator Sh.A.P.Malik after Suit No.528/1994 was withdrawn. The suit was withdrawn only on 15.05.2004 and thus R-1 stated in the letter that the appellant was not entitled to receive the award amount before

15.05.2004. The interest at the rate of 6 per cent per annum was thus payable only from 15.05.2004 to 10.05.2007 i.e. for a period of about 3 years. The pay order dated 10.05.2007 for Rs.14 lakhs had already been deposited in the court and a banker's cheque towards the interest element for 3 years at the rate of 6% per annum on the sum of Rs.14 lakhs amounting to Rs.2,52,000/- was enclosed with the letter. Thus, R-1 refused to pay interest from 21.08.2002 to 15.05.2004 which at the rate of 6% per annum on Rs.14 lakhs amounted to Rs.1,44,000/-.

10. The appellant continued to remain aggrieved about non-payment of this Rs.1,44,000/- and thus filed EA No.354/2009 qua this amount to revive the execution petition in view of the leave granted vide order dated 02.05.2008. The application has, however, been dismissed vide impugned order dated 10.09.2010. It is this order which is sought to be assailed in the present appeal by the appellant.

11. A perusal of the impugned order shows that the learned Single Judge recorded the history of the

case and also took note of the order passed on 02.05.2008 on account of non-payment of amount of Rs.1,44,000/-. R-1 opposed this application and pointed out that the decree holder had carried the matter in appeal in EFA(OS) No.1/2009 which was rejected on 30.03.2009 and thereafter the Supreme Court dismissed the SLP No.5510/2010 on 16.08.2010.

12. Thus, the undisputed position which is apparent is that the order dated 02.05.2008 has become binding on the parties. R-1 pleaded that he had complied with the order of the arbitrator and deposited the amounts as directed within time. The conduct of the appellant in seeking to challenge the award was called into question but despite recording all these facts, the order dated 02.05.2008 had directed payment of interest at the rate of 6 % per annum from 2002 onwards. Even that part of the order stood complied with post the withdrawal of the suit on 15.05.2004.

13. The learned Single Judge thereafter took into consideration the note dated 07.10.2001 prescribing

the mode of deposit and release of the amount in favour of the appellant. The amount was deposited by R-1, but since suit was not withdrawn (the application filed for withdrawal having been contested and the appellant seeking to withdraw the same), the amount was taken back by R-1 which had been deposited with the sole arbitrator, on the ground that the appellant had not complied with the terms.

14. Learned Single Judge has taken a view that the exact procedure agreed to by the parties for the withdrawal of sum of Rs.14 lakhs was not brought to the notice of the Court while passing the order dated 02.05.2008 and thus having regard to the facts of the case even though the order dated 02.05.2008 directed payment of interest from 21.08.2002, it was held that the appellant could not legitimately claim the sum at least till 15.05.2004 and thus no further grievance can be raised qua the non-payment of Rs.1,44,000/-.

15. The sole plea advanced before us revolved around the effect of the order dated 02.05.2008

which undisputedly required R-1 to pay the amount to the appellant along with interest for certain period and that period included the period in question on the basis of which the amount of Rs.1,44,000/- has been quantified. It was the plea of the learned counsel for the appellant that the impugned order dated 10.09.2010 amounted to going behind and reviewing the order dated 02.05.2008 as there was no doubt about the interpretation or effect of the order dated 02.05.2008 which had received the imprimatur even of the Supreme Court. The order, thus, became final and binding between the parties. However, the plea of R-1, appearing in person, was that the order dated 02.05.2008 amounted to a direction *de hors* the award qua the issue of interest and, in fact, went behind the award which had been binding *inter se* the parties, which was not permissible. It was thus submitted that even if the order dated 02.05.2008 had attained finality, the direction qua payment of interest was without jurisdiction and R-1 could not be compelled to pay the amount.

16. On examination of the controversy in question, we find that there can be no doubt about the fact that the award is binding *inter se* the parties as directed by the arbitrator. The Executing Court cannot not go beyond the decree. The facts in this case were, however, peculiar on account of the nature and conduct of parties and the learned Single Judge while passing the order dated 02.05.2008 recorded the complete historical aspect of the dispute and finally came to the conclusion that R-1 should pay interest to the appellant at 6% per annum for a specified period within two months of the date of the order. It is not in dispute that R-1 did pay interest in compliance of that order albeit for a shorter period. R-1 took upon himself the authority to decide as to for which period he would pay interest and for which period he would not pay interest. He, thus, decided not to pay interest for the period prior to date of withdrawal of the suit i.e.15.05.2004, which has been upheld by the learned Single Judge.

17. We are of the view that if the principle that an Executing Court cannot go behind a decree is well accepted, it can also not be disputed that once the order is passed by the Executing Court and is not challenged by the parties or is confirmed by the appellate court and even by the Supreme Court, the matter cannot be looked into again as that would imply that there can be no end to a *lis inter se* the parties. While objection to jurisdiction can be raised at any stage and even in collateral proceedings but it is, in manner of speaking, a bullet which can be fired once. Being spent cannot be utilized once again; since one of the principal attributes of litigation is finality. Once the order dated 02.05.2008 became final, it became final in all aspects which *inter alia* included the amount on which interest was to be paid, the rate of interest and the period for which interest had to be paid. There cannot be partial compliance of the order. Learned Single Judge had specifically granted liberty to the appellant to seek revival in case the amount was not paid by R-1 as directed in the order. It cannot be disputed that R-1

has not paid the amount as directed since interest for certain period has not been paid which amounts to Rs.1,44,000/- calculated on the sum of Rs.14 lakhs at the rate of 6% per annum from 21.08.2002 to 15.05.2004.

18. We are of the considered view that the learned Single Judge vide the impugned order dated 10.09.2010 could not have gone behind or reviewed the order passed by the coordinate Bench presided by a learned Single Judge who was then dealing with the execution case while passing the order dated 02.05.2008. It cannot be said that certain aspects were not brought to the notice of the Executing Court while passing the order dated 02.05.2008 (which stands confirmed in appeal and by the Supreme Court) and thus there has to be re-examination of the controversy qua the period for which interest stood paid. This is exactly what the learned Single Judge seeks to do vide the impugned order dated 10.09.2010.

19. We are fortified in our view by the observations in Sundarjas Kanyalal Bhatija and Ors. v. Collector,

Thane, Maharashtra and Ors.; (1989) 3 SCC 396

where it has been held that a binding decision of a coordinate bench of the same court cannot be ignored. The exercise of discretion can only be when there is no declared principle to be found, no rule and no authority and in case of disagreement in views, the matter has to be referred to a larger bench.

20. We, thus, conclude that the impugned order dated 10.09.2010 is not sustainable and R-1 is liable to pay amount as per the order passed earlier on 02.05.2008.

21. The result of the aforesaid is that EA No.354/2009 stands allowed and the Execution Petition No.74/2005 is liable to be proceeded with for recovery of a sum of Rs.1,44,000/- by the appellant against R-1. However, in case R-1 pays this amount to the appellant within one month from today, the occasion to further proceed with the execution petition would not arise and the order dated 02.05.2008 would stand complied with and the decree satisfied.

22. We, in the end, express our dismay and regret at the way the two parties are continuing to litigate, with litigation fatigue not having set in, even over a period of 17 years. Having re-conciled their differences, they continue to nurture ill-will towards each other resulting in continuous pin pricks to each other. The value of the asset is such that it really made no difference to either of the parties keeping in mind the amount involved in the present dispute, yet these proceedings are continuing on account of obdurate stand of the parties who seem to have developed a hobby for litigation, wasting precious judicial time.

23. The appeal is accordingly allowed leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

OCTOBER 19, 2011
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RAJIV SHAKDHER, J.