

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

Judgment reserved on: 23.08.2012

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Judgment delivered on: 06.09.2012

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EFA(OS) 19/2010

RAVINDER PRAKASH PUNJ

..... Appellant

Through: Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Raman Gandhi,
Advocate.

versus

PUNJ SONS PVT. LTD & ORS.

..... Respondents

Through: Mr. Naresh Thanai & Mr. Gaurav V.,
Advocates for the respondents No. 1
& 3.

Mr. Anupam Sharma, Advocate for
the respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The appellant is aggrieved by the order dated 18.05.2010 passed in Execution Petition No.186/2009 by the learned Single Judge, whereby the said execution petition has been dismissed on the ground that the same is not maintainable.

2. The execution petition had been preferred to seek to execute the decree passed by the Court while making the award dated 15.11.1989, passed by the learned sole arbitrator, 'rule' of the court with slight modification vis-à-vis, the direction contained in para-9 of the award. The said direction required the parties to go back to the arbitrator for implementation and interpretation of the award in case any dispute arose between them in that regard. The arbitrator also sought to retain jurisdiction to issue subsequent clarification. This aspect was also set aside by the Court while, otherwise, affirming the award and passing a decree in terms thereof vide judgment dated 30.05.1997, passed in *Suit No.327A/1990 titled S.C. Mathur v. V.P. Punj & Ors.* We may note that the aforesaid judgment dated 30.05.1997 was assailed in FAO (OS) Nos.174/1997 and 88/1998 without success, which were dismissed by this Court on 03.03.2009.

3. To appreciate this controversy, it is necessary to give a little background of the matter. Late Sh. Kanhaya Lal Punj, it appears, was a very successful businessman and established various businesses. He and his family members also acquired a large number of properties. After his death, disputes with regard to division of properties and businesses arose between his descendants. These disputes were referred to arbitration.

4. There were three groups of persons before the arbitrator comprising of 27 persons. Whereas 26 of them fell in two groups, namely Group-I and Group-II comprising of 14 and 12 members respectively; Group-III consisted of the widow of late Sh. Kanhaya Lal Punj. The award made by the learned arbitrator was a result of a negotiated family settlement agreeable to all the parties. The award sets out the details of the various properties and businesses which were being carried out by the family, either in the name of incorporated companies or in the names of partnership concerns or proprietary firms, which were made the subject matter of division. The award also recognized that :

“The Companies are being run and owned by the aforesaid Punj brothers alongwith their wives and children in their individual capacity and through HUF wherever applicable and alongwith a small number of shares held by certain outsiders who are close family friends.

Whereas the said companies are in reality in the nature of partnership, though wearing veils of Private Limited Companies.” (emphasis supplied)

5. The learned arbitrator distributed the properties, businesses and the business entities, i.e. the companies amongst the three groups, as enumerated in the exhibits annexed to the award. The procedure to effect the partition,

transfer and vesting of assets in the three groups was also delineated in para-6 of the said award. This procedure, inter alia, provided that the partnership could be changed/modified to give effect to the award; the employees attached to the divisions and companies taken over by each group and any related office staff shall automatically become employees of the respective companies/firms; the scheme of arrangement was required to be framed to settle the distribution of the various divisions of businesses being carried out by private limited companies, and; other similar steps were required to be taken by the parties.

6. The purpose of narrating the aforesaid is to highlight the undisputed position that all the parties to the said award dated 05/06.08.1987 recognised and acknowledged the fact that the assets of the family, though held in the names of family held companies, partnerships, proprietary firms, and in the name of HUFs and individuals, belonged to the family and for their division, and for the division of the running businesses, the corporate veil was lifted and divisions of businesses and properties and other assets undertaken after a negotiated settlement was reached between them, without being inhibited by the fact that various properties and assets were held – not

in the names of family members individually, but by the closely held companies.

7. The aforesaid award was accepted by all concerned and was duly implemented. It was made 'rule' of the Court and a decree in terms thereof was passed by this Court in Suit No.2461A/1987 on 17.03.1988, as no objections were preferred to the said award by any of the parties. This award would be referred to as the 'first award' wherever necessary.

8. It appears that within the members of Group-II, referred to in the first award, i.e. between four sons of late Kanhaya Lal Punj, namely Sh. Virender Prakash Punj, Sh. Satya Narain Prakash Punj, Sh. Ravinder Prakash Punj, and Sh. Nilender Prakash Punj, disputes arose which were referred to the arbitration of Sh. S.C. Mathur vide reference dated 09.10.1989. This reference agreement contained the list of various properties, private limited companies which were having assets, and all other assets jointly held by the aforesaid four brothers – sons of late Sh. Kanhaya Lal Punj, which were made the subject matter of arbitration. The reference recorded that by an agreement dated 11.07.1987, the parties had appointed Sh. S.C. Mathur as the sole arbitrator and referred all their unresolved disputes to him for settlement by arbitration. It was also recorded that by

various resolutions passed by the Board of Directors and Shareholders, the companies mentioned in the reference dated 09.10.1989 had agreed to consider themselves to be bound by the directions given by the sole arbitrator *“since it was anticipated that in view of achieving an overall settlement which would also have an adverse effect on the businesses of the companies, some reallocation of their assets may become necessary”*.

9. The reference authorized the arbitrator Sh. S.C. Mathur, Chartered Accountant to prescribe:

“(a) (i) Mode and manner of Division and distribution of the ownership, management and business of companies, firms referred to above and

(ii) the allocation and distribution of the Immovable Properties in Schedule-II, between the parties.

(b) In connection with the above, to consider the position of accounts of the respective companies and firms and to assist in the handing over of the running businesses to the parties with financial books, all records, documents and related files since its inception and possession of the premises etc. as a on-going concerns.”

It was also agreed in the reference that *“Alongwith the award, the Arbitrator may give other appropriate directions for transfer of properties, transfer of shares, interests and other matters as deemed necessary.”*

10. The learned arbitrator Sh. S.C. Mathur made and published his award, as aforesaid, dated 15.11.1989. We have already noted the fate of this award, i.e. it was made ‘rule’ of the Court except with the deletion of the direction contained in para-9 thereof.

11. This award, inter alia, enlisted the various businesses, companies, firms, proprietorships etc. belonging to the four groups, namely, Group ‘A’ led by Virender Prakash Punj; Group ‘B’ led by Satya Narain Punj, Group ‘C’ led by Ravinder Prakash Punj and, Group ‘D’ led by Nilender Prakash Punj in Schedule I. It also recorded that:

“The companies are being run and owned by the aforesaid Punj brothers along with their wives and children in their individual capacity and through HUF wherever applicable and along with a small number of shares held by certain outsiders who are close family friends.

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WHEREAS now the parties have left it to me as to how the running businesses are to be allotted, finally divided and shared between the aforesaid four brothers and their heirs who are the

parties to this arbitration and to decide how the assets, liabilities and running businesses are to be settled.”

12. The award also shows that the same was a result of negotiated family settlement agreeable to all the parties and that the arbitrator sought to facilitate the smooth transfer of businesses and immovable properties amongst the four groups, as aforesaid.

13. We may note that the dispute in the present appeal is primarily between the members of the Group ‘C’ and Group ‘D’, the appellant belonging to Group ‘C’ and the respondent no.2 belonging to Group ‘D’. The aforesaid award dated 15.11.1989 is referred to herein as the ‘second award’.

14. Para-3 of the second award deals with the various businesses. One of the companies dealt with in the award is Punj Sons Private Limited (PSPL). It appears that this company had different divisions located at different locations. The learned arbitrator awarded the Ambattur Division to Sh. R.P. Punj falling in Group ‘D’. Clause 4 in para 3.1 of the award provided as under:

“4. Punj Sons Private Limited (Parent Company) shall continue to exist and run its business under the Chairmanship of Shri V.P.Punj and Shri S.N.P. Punj, Managing Director. The Chairman shall have full authority over the entire operations and shall have the right to exercise two votes in case of any dispute. However, the Board is advised to nominate independent persons on the Board to protect the interest of all the shareholders and assist in the resolution of the outstanding issues.”

15. The distribution of the equity shares of this company was provided in clause 13 of para 3.1. Clause 14 under para 3.1 is relevant and reads as follows:

“14. On the winding up of Punj Sons Private Limited, the factory industrial land shall belong to Shri V.P.Punj Group A, Shri R.P.Punj Group-C, Shri N.P.Punj Group D, in equal ratio. The remaining surplus will be divided amongst the four brothers.”

16. A perusal of Schedule 3, Schedule 5 and Schedule 6 of the second award shows that Group ‘A’ (led by Virender Prakash Punj), Group ‘C’ led by Ravinder Prakash Punj, and Group ‘D’ led by Nilender Prakash Punj got, inter alia, 1/3rd share in factory land at Kalkaji of PSPL.

17. The appellant preferred Execution Petition No. 186/2009 seeking the following reliefs:

“a. Direct that the property at Plot No.4, Factory Land Kalkaji Industrial Area, New Delhi-19 of Punj Sons Pvt. Ltd. be partitioned by metes and bounds and that the petitioner decree holder be put into possession of 1/3rd share of the same.

b. Direct that property at Building facing middle circle, behind plot no. M-4 and M-5, Connaught Place, New Delhi be partitioned by metes and bounds and the petitioner decree holder be put into possession of 1/3rd share of the same.

c. Direct that the rental income being derived from property at Building facing middle circle, behind plot NO. M-4 and M-5, Connaught Place, New Delhi be attached and the petitioner/decreed holder be paid 1/3rd share of the rental income so being derived.

d. Director the defendants to give an account of the rent derived from portion of property as above and the DH be given 1/3rd of the entire rental income so received since the date of decree.

e. Any other and further relief as this Hon'ble Court deems just and proper in the facts and circumstances of the case may also be granted.”

18. The appellant disclosed in the execution petition that the factory land at Kalkaji belonging to PSPL was allotted in the year 1956 by the Union of India (UOI) on leasehold basis, being a plot of land measuring 3 Acres. PSPL was also utilizing the adjacent vacant land admeasuring a few acres. In the dispute which arose with the authorities, i.e. the DDA and the UOI, on account of the demand for conversion charges for transferring the title of the entire plot of land in the name of PSPL, litigation is pending in this Court. The appellant claimed that the factory land at Kalkaji, New Delhi, belonging

to the PSPL has been apportioned in the ratio of 1/3rd each amongst the appellant, respondent No. 2 & respondent No. 3 as per Schedule 3, 5 & 6 of the second award.

19. Before proceeding further, we may at this stage itself take note of the fact that, even according to the appellant, the properties falling on Plot Nos. M-4 & M-5, Connaught Place, New Delhi, did not specifically form part of the arbitral award. On this short ground, the learned Single Judge held that the appellant was not entitled to seek partition by metes and bounds of the said properties or any specific relief in relation to the said properties in the execution petition. Before us, learned counsel for the appellant has not made any submission in relation to the dismissal of the execution petition qua properties falling on Plots Nos. M-4 & M-5, Connaught Place, New Delhi. Consequently, we are not inclined to interfere with the impugned order insofar as it pertains to the said properties bearing Nos. M-4 & M-5, Connaught Place, New Delhi. Even otherwise, we concur with the learned Single Judge that since the said properties specifically did not form part of the arbitral award, the appellant could not have sought the relief of partition or distribution of rental income from the said properties in execution proceedings.

20. So far as the relief sought in respect of the factory land at Kalkaji belonging to the PSPL is concerned, the learned Single Judge had held as follows:

“12. The decree holder in this case does not dispute that the property No.2, Kalkaji Industrial Area belongs to M/s Punj Sons. What is further sought to be argued is that, such company is only nominal, and, if anything, has become defunct. It is also argued that this Court in Execution cannot go behind a decree and has to enforce it uncritically. The Court is unable to accept the contention. Paras 8, 9 and 12 of the award which embodies the rights in respect of the company, was affirmed by this Court on 30.05.1997. These conditions in the award – are clearly premised upon the existence of M/s Punj Sons. Furthermore there is internal indication that the arbitrator was conscious about the continued existence of Punj Sons as is evident by specific clauses which mention about ownership of the Kalkaji property of the said private limited company. It is of course true that in the award a specific shareholding or entitlement to such shareholding in respect of such property has also been spelt out; yet the award like another document has to be read as a whole. It clearly indicates that in the event of winding up or liquidation of M/s Punj Sons, the shareholding or entitlement, towards specific undivided shares would devolve on one party or the other in the ratio as mentioned. Whether the company is defunct or dysfunctional is something that an Executing Court cannot go into. Even if such a position were to be accepted the corollary cannot be that such “defunct” company’s assets are to be transmitted according to the terms of an award, without following the due procedure as prescribed by law, to wit directions by a competent Court constituted under the Companies Act.”

21. In substance, the learned Single Judge held that since PSPL continues to exist and the factory land at Kalkaji belongs to the PSPL, the

factory land at Kalkaji could not be distributed amongst the parties except in accordance with the procedure prescribed by law by a competent Court constituted under the Companies Act. It is only in the event of winding up or liquidation of PSPL that the shareholding or entitlement towards specific undivided shares would devolve on one party or the other in the ratio mentioned in the award.

22. The submission of learned counsel for the appellant, premised on the aforesaid background is that the corporate veil had been lifted by the learned Arbitrators in both the arbitration proceedings as per the understanding and agreement of the parties. It was the clear understanding and admission of the parties that the family concerns/companies were truly in the nature of partnership and the fact some of the family businesses were run by closely held companies incorporated under the Companies Act did not come in the way of the arbitral tribunal in treating the assets held by these companies as different and distinct from the two companies. It is for this reason that the learned Arbitrator in his award consciously distributed the shareholding in the company PSPL separately from its assets.

23. Learned counsel further submits that the Clause 4 of para 3.1 of the second award, which talks about the continuation of PSPL and Clause 14 of

para 3.1, which provides that on the winding up of PSPL, the factory industrial land shall belong to Groups 'A', 'C' and 'D' in equal ratio were required to be understood in the proper context and reconciled which, it is stated that, the learned Single Judge has failed to do.

24. Respondent No. 2 supports the present appeal of the appellant. Learned counsel for the respondent No. 2 Sh. Rajinder Dorian Punj submits that even though, under the award, respondent No. 2 is also entitled to 1/3rd share in the factory land of PSPL at Kalkaji, it is being deprived of the same. It is submitted that the appellant is occupying about 25% of the said land and exploiting the same, whereas respondent No. 1, represented by respondent No. 3 is occupying the remaining about 75% and exploiting the same. He places reliance on Section 26 of the Transfer of Property Act to submit that the conditions imposed in the second award for transfer of the factory land at Kalkaji of PSPL stand fulfilled, and that the possession thereof should be equally divided between the appellant, respondent No. 2 and respondent No.3.

25. On a query from the Court as to why the appellant or respondent No. 2 have not initiated proceedings for winding up of the PSPL, learned counsel for the appellant has informed that since the factory land of PSPL at

Kalkaji (to the extent of 3 Acres) is under a lease from the authorities, and there is a dispute with regard to conversion charges and transfer charges for the entire land which admeasures about 10 Acres (including the land admeasuring 3 Acres duly allotted to PSPL), until and unless the allotment of the entire land is regularized and converted into freehold, respondent No. 1/PSPL cannot be wound up as the same would put the entire property into jeopardy. Learned counsel for the respondent No. 2 has responded to by stating that respondent No. 2 does not have the requisite shareholding in PSPL to be able to take any action for winding up of PSPL.

26. The appeal is primarily opposed by Mr. Naresh Thanai, who appears on behalf of respondent No. 1 as well as respondent No. 3. He seeks to place reliance primarily on Clause 14 of para 3.1 of the second award by submitting that only on winding up of PSPL, the factory land shall belong to Sh. V.P. Singh of Group 'A', Sh. R.P. Punj of Group 'C' and Sh. N.P. Punj of Group 'D' in equal ratio. Till so long as the company PSPL is not wound up, the appellant has no right to seek partition of the said land by metes & bounds and possession thereof to the extent of 1/3rd. He further submits that the execution petition is barred by limitation. He submits that the second award was made 'rule' of the Court upon dismissal of the objections by the

learned Single Judge on 30.05.1997 in Suit No. 327A/1990. Merely because an appeal from the said judgment was pending and the appeal came to be dismissed by the Division Bench on 03.03.2009, the limitation for preferring the execution petition did not stop to run from the date on which the award was made a 'rule' of the Court, as there was no stay operating in the appeal with respect to the judgment of the learned Single Judge dated 30.05.1997 making the award a 'rule' of the Court. He has sought to place reliance on the decision of the Hon'ble Supreme Court in *Manohar Shankar Nale & Others Vs. Jaipalsing Shivilalsing Rajput & Others*, AIR 2008 SC 429, in support of this submission. He submits that even though the issue of limitation was raised by him before the learned Single Judge, the said issue had not been gone into by the Court. He submits that the limitation for preferring the execution petition under Article 136 of the Limitation Act was twelve years, which expired before the filing of the execution petition.

27. We proceed to first consider the submission of Mr. Thanai that the execution petition was barred by limitation. Firstly, we may notice that even though the said issue of limitation was raised by respondent nos.1 and 3, the executing court did not return a finding thereon. In spite of that being the position, the said respondents neither preferred a review nor an appeal before

this Court. Since the executing court did not dismiss the execution petition on the ground of limitation, it means that the said objection of respondent nos.1 and 3 was not accepted. Not having preferred a review or an appeal from the impugned order, in our view, it is not open to the respondent nos.1 and 3 to now argue as respondents that the execution petition was barred by limitation. In any event, we have considered the said submission on merits and we find no merit therein.

28. Under Article 136 of the Limitation Act, period of limitation for filing of an execution petition of a decree begins on the date on which it becomes enforceable. It is well settled that an appeal is a continuation of the original proceeding and the original decree merges in the appellate decree. When an appeal is preferred from an original decree, the decree would also become enforceable after dismissal of the same, and it is immaterial that there was no order staying the execution of the decree and that the decree-holder could execute the decree even during pendency of the appeal. This merger of the original decree into the appellate decree takes place irrespective of the fact that the appellate court affirms, modifies or reverses the lower court's decree. [See *Posani Ramachandraiah vs. Daggupati Seshamma*, AIR 1978 AP 342; *S. Kharak Singh vs. Harbhajan Singh*, MANU/PH/0303/1878;

Ramji Dass vs. Tilak Raj, MANU/PH/0427/1988; *Syed Abdul Rauf vs. Nurul Hussain & Ors.*, AIR 1992 Raj 3; *Hari Singh vs. Harbhajan Singh*, AIR 2001 P&H 108; *Chandi Prasad & Ors. vs. Addl. Dist. and Sessions Judge, Hapur & Ors.*, AIR 2001 All 229; *Indradeo Sah vs. Ram Naresh Sah & Ors.*, 2002 (1) PLJR 423; *Nawal Kishore Patel vs. Most. Indrapari Devi*, 2002 (4) PLJR 272; *Uma Shankar Sharma vs. State of Bihar*, AIR 2005 Pat 94].

29. In *Uma Shankar Sharma* (supra), the Patna High Court has observed as follows:

“8. Article 136 of the Limitation Act, 1963, specifically provides that the time from which period of limitation begins to run is when the decree of order becomes enforceable. In a case where the decree of the Lower Courts is challenged in Second Appeal which results into a decree passed by this Court, then the decree of the Courts below merge with the judgment and decree of the Second Appeal and the decree becomes enforceable and the period of limitation under Article 136 of the Limitation Act is to be counted from the date of the judgment in the Second appeal. Even when the appeal is dismissed on any preliminary matter or is dismissed for default, it would naturally; amount to confirmation of the judgments and degree of the Lower Courts, which would attain finality only thereafter and hence the final decision would be that of the second appellate Court and the decree of the Courts below could be legally treated as enforceable only thereafter. It would thus be absolutely immaterial that there was no order in the Second Appeal staying execution of the decree and that the decree of the Courts

below could have been executed by the Decree-holder immediately after the said decree.

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10. Furthermore, so long as there is any question sub-judice between the parties, those affected shall not be compelled to pursue the so often thorny path of execution which, if the final result is against them, may lead to any disadvantage. Nor in such case as this is the judgment-debtor prejudiced as he has indeed obtained a boon of delay which is so dear to debtors and if the judgment-debtor is virtuously inclined, there is nothing to prevent his paying what he owes into Court, specially when in this case the judgment-debtor is a welfare State”.

30. The period of limitation, thus, for execution also begins from the date of the decision of the appellate court.

31. The decision in ***Manohar Shankar Nale*** (supra) does not advance the case of the respondent. In that case, the material factual difference was that the decree holder sought to place reliance on the pendency of the review petition to claim that the limitation started upon disposal of the review petition. The Hon’ble Supreme Court did not find favour with the submission, for the obvious reason that a review, unlike an appeal, does not tantamount to continuation of the original proceedings.

32. In the present case, the appeal against the judgment dated 30.05.1997, whereby the award was made 'rule' of the court, came to be dismissed by this court on 03.03.2009. The period of limitation for preferring the execution thus, began from 03.03.2009. The execution petition was preferred by the respondent herein within the said period i.e. on 30.06.2009. Consequently, the same was not barred by limitation. Accordingly, the plea of the appellant of the execution petition being barred by limitation stands rejected.

33. The above narration of the manner in which the properties and businesses being run by the family were treated by the parties and, with their consent, by the learned Arbitrators while making both the awards clearly shows that the parties did not consider the closely held private limited companies held by them to be separate juristic entities, rather they were treated as partnership concerns and upon the consent of the parties, the learned Arbitrators lifted the corporate veil of the closely held private limited companies. The learned Arbitrators were thus not inhibited by the mere cloak donned by various business entities as that of a company registered under the Companies Act, 1956. The learned Arbitrators were given the freedom to equitably distribute the shareholdings in the companies distinctly

from the assets held by them. We have set out the relevant clauses of the reference dated 09.10.1989 which clearly shows that the parties contemplated that, to achieve an overall settlement, reallocation of their assets may be necessary and so as to meet any possible subsequent objection on the ground that the companies are separate juristic entities and not bound by such reallocation of assets of companies, the Board of Directors and shareholders of the various companies passed resolutions agreeing to consider themselves to be bound by the directions given by the sole Arbitrator. The mode and manner of division & distribution of the ownership, management and business of companies envisaged that the Arbitrator may give appropriate directions for transfer of properties, transfer of shares, interest and other matters as deemed necessary. Therefore, there was no impediment in the Executing Court in lifting the corporate veil and treating PSPL as a partnership concern and distributing its assets in terms of the award.

34. The award, on the one hand, provides that PSPL shall continue to exist and run its business under the chairmanship of Sh.V.P. Punj and Sh. S.N.P. Punj, Managing Director. It also provides that on winding up of PSPL, the factory industrial land shall be divided, as aforesaid, in three equal shares.

On the other hand, it also provides that 1/3rd share in the factory land at Kalkaji shall go each to Group 'A', Group 'C' and Group 'D'.

35. Merely because the company PSPL continues to exist in terms of the award, it does not mean that the said factory land at Kalkaji belonging to PSPL could not be distributed in equal ratio between Groups 'A', 'C' & 'D'. The title of the company PSPL in respect of the entire factory land at Kalkaji has not yet been perfected as disputes are stated to be pending with the Government authorities. Moreover, the 3-Acre land allotted to PSPL is held by it on leasehold basis. Obviously, the said land cannot be transferred or hired of by PSPL to give legal effect to the distribution of the factory land as envisaged in the award. That, however, in our view, should not have inhibited the Executing Court from directing provisional physical demarcation of the factory land at Kalkaji for distribution amongst the Groups 'A', 'C' & 'D' so that each of them could use, exploit and enjoy, in the meantime, the said factory land in equal shares. Otherwise, it has been leading to, and would continue to lead to a highly inequitable situation not contemplated under the award, with respondent No. 3 enjoying about 75% of the said factory land and the appellant enjoying about 25% of the said factory land, and respondent No. 3 being completely ousted therefrom. The

provisional division and distribution of the said factory land does not militate against the continued existence of PSPL. In our view, on a complete reading of the award, it is clear that the learned Arbitrator also envisaged the said course of action to be adopted as, otherwise, the group holding majority shares and Directors in PSPL could take control of the entire factory land at Kalkaji and defeat the distribution of the said factory land as envisaged under the award, particularly when the award provides for the continued existence of PSPL. In our view, clause 14 of para 3.1 of the award, which provides that on winding up of PSPL the factory industrial land at Kalkaji shall belong to Groups 'A', 'C' & 'D' means that upon such winding up, the legal title to the said land was to be transferred to Groups 'A', 'C' & 'D', However, the said clause does not contra indicate the actual physical provisional division of the said factory land for use, enjoyment and exploitation by the said three groups till so long as PSPL continues to exist.

36. There can be no doubt that the assets of a company cannot be *de jure* transferred without completing the procedure prescribed by law, i.e., by obtaining directions from a competent Court constituted under the Companies Act, 1956. However, when the award distributes the factory land belonging to the company PSPL amongst the three groups in equal shares, it

is open to one or the other group, who wishes to enforce the said direction to require the others to take all steps necessary for effectuation of the award both, in letter & spirit.

37. Accordingly, we allow the present appeal, set aside the impugned order and restore the execution petition to its original number. We direct that the factory land at Kalkaji belonging to PSPL be provisionally divided in three equal shares by metes and bounds and be allocated to Groups 'A', 'C' & 'D', either as mutually agreed upon by them, or by draw of lots.

38. To give effect to the aforesaid directions and for passing further orders, the parties should appear before the Executing Court on 14.09.2012

39. The appeal stands disposed of leaving the parties to bear their respective Costs.

(VIPIN SANGHI)
JUDGE

(SANJAY KISHAN KAUL)
JUDGE

SEPTEMBER 06, 2012
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