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

\+ **EFA(OS) No.25/2014 & CM Nos.18215-18216/2015, CM No.180/2015**

NATIONAL AGRICULTURE CO-OPERATIVE MARKETING FEDERATION OF INDIA LTD (NAFED) ..... Appellant

Through Mr.T.K. Ganju, Sr. Adv. with Mr.Aquib, Adv., Mr.Manik Ahluwalia, Adv., Mr.Abhishek Bhardwaj, Adv

Versus

ALIMENTA SA ..... Respondent

Through Mr.Arvind K. Nigam, Sr. Adv. with Mr.Shailendra Swarup, Adv., Ms.Aparajita Swarup, Adv., Ms.Bindu Saxena, Adv. & Ms.Sakshi Athwani, Adv.

WITH

\+ **FAO(OS) No.104/2015 & CM Nos.4160-4161/2015**

NATIONAL AGRICULTURE CO-OPERATIVE MARKETING FEDERATION OF INDIA LTD (NAFED) ..... Appellant

Through Mr.T.K. Ganju, Sr. Adv. with Mr.Aquib, Adv., Mr.Manik Ahluwalia, Adv., Mr.Abhishek Bhardwaj, Adv.

Versus

ALIMENTA S.A ..... Respondent

Through Mr.Arvind K. Nigam, Sr. Adv. with Mr.Shailendra Swarup, Adv., Ms.Aparajita Swarup, Adv., Ms.Bindu Saxena, Adv. & Ms.Sakshi Athwani, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI

O R D E R

% **16.04.2015**

1. By way of these appeals, the appellant-National Agriculture Co-operative Marketing Federation of India Ltd. (hereinafter referred to as "NAFED"), assails the order dated 21st August, 2014 passed by the learned Single Judge in EA (OS) No.573/2012 filed by the respondent herein under Sections 151-152 of the Code of Civil Procedure (`CPC'). By way of this application, the respondent has sought rectification of the decree dated 28th January, 2000 passed in CS (OS) No.1885 of 1993.

2. By an order passed on 30th November, 2012, the learned Single Judge held that the application deserves to be transferred to the file of CS (OS) No.1885/1993 as rectification of the decree drawn up therein was prayed. The Registry, however, did not do so. We find that for reasons of expediency, the learned Single Judge has considered the application as filed. However, it has been directed that the order thereon, be treated as an order passed in an interlocutory application in CS (OS) No.1885 of 1993. The learned Single Judge has also directed the Registry to number the application as an interlocutory application filed in CS (OS) No.1885/1993.

3. The said application came to be considered and was allowed by the

learned Single Judge by the order dated 21st August, 2014. In view of the position that the order was directed to be recorded in the suit, the appellant, as a matter of abundant caution, has filed FAO(OS) No.104 of 2015 assailing the order dated 21st August, 2014 as directed to have been passed in the suit. So far as the order dated 21st August, 2014 recorded in the execution petition is concerned, the appellants have filed EFA (OS) No.25 of 2014. The appeals raise identical questions of fact and law and are consequently taken up together for adjudication.

4. The facts giving rise to the instant appeals are within the narrow compass and are also undisputed. Arbitration proceedings between the parties culminated in a foreign Arbitral Award dated 15th November, 1989 whereby the principal amount of US$ 4,681,000 (US dollars four million six hundred and eighty one thousand) was awarded in favour of the respondent no.1 herein with interest thereon at the rate of 10.5% w.e.f. 13th February, 1981 to the date of the Award dated 15th November, 1989.

5. NAFED assailed the said Award and this appeal came to be decided on 14th September, 1990. By the Appellate Award, the principal amount awarded was reduced to US$ 4,526,000 with higher interest at the rate of 11.25% w.e.f. 13th February, 1981 to 14th September, 1990 i.e. the date of the appellate award.

6. Proceedings were consequently initiated by the respondent under

Section 5 read with Section 6 of the Foreign Awards (Recognition & Enforcement) Act, 1961 for filing and enforcement of the Appeal Award dated 14th September, 1990 and for a judgment and decree in terms thereof to be passed. These proceedings were registered as CS (OS) No.1885 of 1993 on the Original Side of this court.

7. It is noteworthy that in its application [CS (OS) No.1885/1993], the appellant, inter alia, prayed for an order for deposit of "US$ 4,526.000". Mr.Arvind Nigam, learned Senior counsel for the respondent has drawn our attention to the fact that as is the practice, following the International Currency Depiction Policy, instead of use of a comma (,) as a punctuation, a decimal point(.) is interchangeably used. For this reason, before the triple zeros in the amount mentioned in the prayer clause, the respondent had affixed a decimal point.

8. We may usefully extract the first three prayers of CS (OS) No.1885 of 1993 which reads thus:-

> "(a) to Order that the ***Award of arbitration dated 15th November, 1989 and confirmed by the Appeal Award dated 14.9.1990*** by the Board of Appeal of Federation of Oil Seeds and Fats Association Ltd. (FOSFA)(Annexures B & C hereto) be filed in this Hon'ble Court.
>
> (b) ***Pronounce judgment according to the Award and pass a decree upon judgment being so pronounced***.
>
> (c) Award and order payment of interest @ 18% p.a. from the date of the Award till payment/realisation."

9. The suit came to be finally decided when objections raised by the NAFED against the grant of the prayers were rejected by the judgment dated 28th January, 2000. We find that the learned Single Judge has specifically held that the respondent is entitled to the relief prayed for in the petition and consequently issued the directions rejecting the objections. In para 84, the learned Single Judge directed as follows:

> "84. Accordingly, the <u>petition is allowed with costs</u>. C.Ms 1540/96 and 2562/96 are dismissed. Decree in terms of this order shall be prepared by the registry."

The learned Single Judge, thus, affirmed the Appeal Award and specifically directed that a decree in terms of the said judgment be prepared by the Registry.

10. The above narration would amply make it clear that the decree which was to be drawn up by the Registry, was required to confirm to the Arbitral Award dated 15th November, 1989 as modified by the appellate Award dated 14th September, 1990. Unfortunately, the decree which was drawn up (certified copy whereof was given to the parties), contained the following errors:

(i) In the third paragraph of the decree: Amount directed to be deposited by NAFED read as <u>US$ 4526.00</u> with interest @11.25%. The correct figure was <u>US$ 4,526,000/-</u> in terms of principal amount awarded as per Appeal Award dated 14.09.1990 with interest @ 11.25%.

(ii) In the third paragraph of the decree: Interest @ 11.25% p.a. on principal amount directed to be deposited in court (which should read as US$ 4,526,000/- as submitted in sub-point (i) above) is directed to be paid with effect from 13.02.1981 to 15.11.1989, i.e. date of the original Award. This should have read as being with effect from 13.02.1981 to 14.09.1990, i.e., the date of the Appeal Award, as provided in Appeal Award itself.

(iii) In the first paragraph of the decree: it is stated that the Award dated 15.11.1989 and Appeal Award dated 14.09.1990 are appended as Annexure `A' and `B'. Instead the copies of the said Awards which had been provided along with the Decree were marked as Annexures `B'and `C' respectively, along with the Decree.

11. It appears that without scrutinizing the decree and therefore without noticing the above errors which had crept into it, the respondent filed Execution Petition No.204 of 2002. We are informed that the appellant herein filed a reply to the execution petition pointing out the afore-noticed defects. The errors came to light consequently.

12. As a result, the respondent filed EA (OS) No.573 of 2012 under Sections 151 & 152 of the CPC, seeking rectification of the errors. The respondent, it appears, took the stand that in view of the clear directions in the judgment dated 28th January, 2000, the decree had to be so treated and execution thereof had to be directed.

13. We have heard learned senior counsel for both parties who have carefully taken us through the entire record of the case. From a reading of the impugned order dated 21st August, 2014, which position is not disputed before us, we find that Mr.T.K. Ganju, learned senior counsel

for the appellant had fairly conceded that the third error aforenoticed to the effect that the appellate Award dated 14th September, 1990 should form part of the decree and the error by the Registry in referring to the annexure numbers as well as failing to enclose the Awards with the decree, was correct. The learned Single Judge had passed the order accordingly so far as this objection was concerned. This position is not challenged by the appellant. The appellant has assailed the findings and directions on the other two objections by these appeals.

14. We hereafter summarise our findings from the record of the aforestated grievance of the respondent establishing the errors which had crept into the decree which was prepared by the Registry of this Court:

(i) The appellant-NAFED had assailed the judgment dated 28th January, 2000 by way of FAO (OS) No.205 of 2000 wherein an order was passed directing NAFED to secure the principal decretal amount awarded by the appellate Award dated 14th September, 1990, by a bank guarantee. In compliance thereof, NAFED had furnished a bank guarantee for a sum of Rs.22.5 crores which was the rupee equivalent to US$ 4,526,000 (the amount directed by the appellate Award dated 14th September, 1990). This shows that NAFED itself understood that the decretal amount was US$ 4,526,000.00.

(ii) NAFED filed a reply to Execution Application No.434 of 2011 filed in Execution Petition No.204 of 2002 admitting as follows:-

> ".... In any event the principal amount has been duly secured by the Judgment Debtor by way of Bank Guarantee of Rs.22.5 crores which has now been invoked pursuant to the Orders passed by the Hon'ble Supreme Court and is lying with this Hon'ble Court."

(iii) The same stand was taken in Execution Application No.62 of 2012 filed by NAFED in Execution Petition No.204 of 2002 when it is stated that "*the amount of Rs.22.5 crores, which are already lying deposited in this Hon'ble Court on account of the principal amount under the judgment/decree dated 28.01.2000*."

(iv) NAFED filed a reply to Execution Application No.573 of 2012 in Execution Petition No.204 of 2002 again stating that "*the Judgment Debtor has already furnished security for a sum of Rs.22.5 Crores, through an Affidavit dt.19.09.2002.....*"

15. In addition to the above unequivocal and clear admissions of the decretal amount, we are informed by Mr.Arvind Nigam, learned senior counsel for the respondent that NAFED had made admissions in writing in other pleadings as well. It appears that NAFED filed CM No.545 of 2002 in FAO(OS) No.205 of 2000 wherein in para 3, it stated thus:-

> "3......The ***principal amount under the Foreign Award is a sum of US$ 45,26,000/- besides the cost of 9,345 sterling pound***. This on the basis of current prevailing exchange rate of US$ equivalent to Rs.45 approximate, the ***total principal amount comes to approximately Rs.20.36 crores and the legal cost in 6.54 lacs***."
>
> (Emphasis by us)

We may note that this application was handed over to learned Single Judge at the time of argument in EA (OS) No.573 of 2012 and has been extracted in para 9 of the impugned order dated 21st August, 2014.

16. In the affidavit of the Additional Managing Director (F & A) of NAFED dated August, 2002 filed as annexure `A' to NAFED's reply/objection filed in FAO (OS) No.205 of 2000, it was deposed thus:-

> "xxx 4. I say that as per the above order, the appellant had to furnish security for the principal amount decreed to the Registrar of this hon'ble court. The ***principal amount under the Foreign Award is a sum of US$ 45,26,000/-*** besides the cost of 9,345 pound sterling. This on the basis of current prevailing exchange rate of the total principal amount comes to approximately Rs.20.36 crores and the legal cost is approximately 6.43 lacs as stated in CM No.545/2002."
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> (Underlining by us)

17. NAFED filed an application for modification of the order dated 25th October, 2010 passed by the Supreme Court of India in SLP (Civil) No.28325 of 2010 affirming as follows:-

> "The applicant submits that the ***aforesaid directions in the decree are not in accordance with and in fact in excess of the award as the award as would be seen*** from page 117 of the SLP paper book has only directed payment of US$ 11.25% p.a. from February 13,1981 to date of award i.e. ***September 14, 1990*** and costs and expenses of appeal amounting to U.K. Pound 9344.55 and no other amount. It has not granted any interest from the date of award till payment."
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> (Emphasis supplied)

18. These admissions on behalf of NAFED have been repeatedly made

in writing on court records. They have not been disputed before us. Even otherwise, it is unnecessary to travel beyond the original Award dated 15th November, 1989; the Appeal Award dated 14th September, 1990 and the judgment dated 28th January, 2000. The learned Single Judge on 28th January, 2000 had held that the appellant was entitled to a judgment and decree in terms of the arbitral award. As a consequence thereof, the Registry was directed to draw up a decree in terms thereof. Unfortunately, while drawing up the judgment and decree, the Registry has failed to take into consideration the specific directions contained in the Appeal Award dated 14th September, 1990 regarding the amount awarded as well as the rate and period of interest. It cannot be disputed that the decree has to strictly abide by the terms of the judgment.

19. Before us, the appellant has contended that the decree which has been drawn, is in accordance with the prayer made in the suit. We have noted heretofore that the international practice (with regard to using a decimal point instead of using comma while setting out large figures) is the practice which has been followed by the respondent in the prayer clause in the suit. The decree required to substitute the decimal point by a comma or reproduce the figure with the decimal point which was not done. In any case, the figures had to comport with those in the Award. The admissions which we have noted above would show that the appellant had also correctly understood the judgment dated 28th January,

2000 as well as its liability under the award and decree.

In view of the above, we find no infirmity in the order dated 21st August, 2014 to the extent that it allowed EA (OS) No.573/2012 directing rectification of the figures in the decree in the suit to the above extent.

20. It also appears that EA (OS) No.434 of 2011 was filed by the respondent herein under Order 21 Rules 41 & 54 read with Sections 51 & 151 of the CPC. By this application, the respondent prayed for the following prayers which have been extracted in para 14 of the impugned judgment:-

> "14. This is an application filed by the DH whereby four prayers are made. These being: (a) disclosure of assets, both movable and immovable, and particulars of the bank accounts, by the director of the JD; (b) immediate attachment of movable and immovable properties; (c) injunction on the JD from alienating, transferring, creating a charge or third party interest in the movable and immovable properties; and (d) appointment of a receiver."

21. After disposing of the EA (OS) No.573 of 2012 directing rectification of the decree, the learned Single Judge has also heard and decided EA (OS) No.434 of 2011 and directed appointment of a court receiver.

22. We now come to the second limb of challenge to the order dated 21st August, 2014. It is submitted by Mr.T.K. Ganju, learned senior counsel that the appellant has filed objections to the execution of the

decree. It is submitted that further proceedings in the execution case can take place only after the rectification is formally effected and a formal decree sheet is placed on record. He would, further submit that further proceedings in the execution can take place only after the objections to the execution are decided by the learned Single Judge. For this reason, the appellant is assailing the order passed in EA (OS) No.434 of 2011 at the same time. We find that on the 21st of August, 2014, without issuing directions for taking possession or custody of property, the learned Single Judge has issued only limited directions to the court receiver to ascertain the details of movable and immovable properties of the appellant. The learned Single Judge has directed the court receiver also to submit a report as to which of the properties are free from encumbrances; the extent of encumbrance of the encumbered property and their present market value. The learned Single Judge has postponed the consideration of the prayers "(b)" & "(c)" made in the application for attachment and injunction.

23. So far as the grievance of the appellant on the requirement of a formal decree sheet in terms of the order for rectification for maintaining the execution petition is concerned, the same is justified. Certainly, it would not be appropriate to proceed with the execution in the absence of the corrected decree.

24. However, so far as the challenge to the directions of appointment

of the receiver, in view of the limited directions issued by the order dated 21st August, 2014 are concerned, we find the directions of the learned Single Judge to be fair. The limited directions are really for the purposes for gathering information which would facilitate the court for moulding appropriate relief in the execution. The same is in the interest of justice and in our view, cannot be faulted.

25. So far as the adjudication on the objections of the appellant is concerned, the same are still pending. It is open for the appellant to press adjudication thereof prior to further directions by the learned Single Judge in the execution case which request as and when made, shall be considered by the learned Single Judge in accordance with law.

26. In view of the above, challenge to the orders dated 21st August, 2014 passed on EA (OS) No.573/2012 is rejected. The challenge to the order passed in EA (OS) No.434 of 2011 is accepted only to the above extent.

The Registry shall forthwith prepare a decree sheet in accordance with the orders dated 21st August, 2014 passed by the learned Single Judge, in any case, not later than two weeks from today.

It shall be the responsibility of the respondent to place the decree sheet on record of the execution case. Further proceedings in the execution case shall be kept in abeyance till the rectified decree sheet is produced on record.

There shall be, in the given facts and circumstances, no orders as to costs.

These appeals are disposed of in the above terms.

GITA MITTAL, J

P.S.TEJI, J

APRIL 16, 2015
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