

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

+ **EFA(OS) 18/2015 & CM No.10520/2015**

Date of decision : 16th November, 2015

WIMPY INTERNATIONAL LIMITED & ANR Appellant

Through: Mr. Arvind Nigam, Sr. Adv. with
Mr. Hrishikesh Baruah and Mr. Ishan
Das, Advs.

versus

KALVINDER SINGH SANDHU & ORS Respondent

Through: Mr. Ravi Sikri, Sr. Adv. with
Mr. Anand Varma, Adv. for R-1
Mr. Sandeep Sethi, Sr. Adv. with
Mr. Gaurav Khanna and Mr. Giriraj
Subramaniam, Advs. for R-2
Mr. Manav Gupta and Mr. Avinash
K. Sharma, Advs. for R-3

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

GITA MITTAL, J

1. Dr. Sukhvender Kaur-appellant no. 2 is a share holder in M/s Wimpy International Limited-appellant no.1 before us. It is contended that a suit was filed by Mr. Kalvinder Singh Sandhu-respondent no.1 against Mr. Kanwaljit Singh Sidhu-respondent no.3 in the High Court of Chancery at London which culminated in a judgment and decree dated 8th May, 2009 in favour of Mr. Kalvinder Singh Sandhu-respondent no.1. Respondent no. 1 has sought

execution of this decree by way of Execution Petition No. 172/2009 which is pending before the learned Single Judge on the Original Side of this court.

2. In these execution proceedings, a dispute has arisen with regard to transfer of the shareholding of the respondent no. 3 in favour of the appellant no. 2. It is the contention of the decree holder/respondent no. 3 herein that the alleged transfer is a sham transaction.

Premised on this contention of the respondent no.1, when the execution came to be listed on 30th January, 2012, the learned Single Judge passed an interim order of injunction precluding the non-applicants from selling, transferring or alienating the property bearing no. 245, Udyog Vihar, Phase-I, Dundaheera, Gurgaon, Haryana in any manner. The appellant herein filed an application being IA No. 174/2012 seeking vacation of the stay order inter alia on the ground that the property was owned by and belonged to the appellant no. 1 company which was not a party in the litigation in the United Kingdom nor in the execution proceedings. This application is stated to be pending even on date.

3. On 1st October, 2013, the learned Single Judge heard counsels on the objection of the respondent no. 2 with regard to the claim of transfer of the shareholding of the respondent no.3-judgment debtor to his wife Dr. Sukhvender Kaur-appellant no. 2 herein and expressed a prima facie view that a forensic examination of the transfer document was necessary. Learned counsel for Wimpy International Ltd.-appellant no. 1 was present in the court and stated that he had no objection to production of the relevant documents. This resulted in

the direction by the learned Single Judge to the appellant no.1 to produce the (i) relevant share transfer forms; (ii) the minute books of the company; (iii) the correspondence undertaken between the Judgment Debtor, his wife Dr. Sukhwinder Singh and the company in relation to the transfer of shares.

4. Our attention is drawn to the direction made on 30th April, 2015 whereby further directions were issued for production of original documents.

5. Mr. Arvind Nigam, learned senior counsel for the appellants however, submits that in the proceedings initiated by the decree holder in England, this very contention that the transaction with regard to transfer of shareholding was sham was pressed. It is submitted that in these proceedings, a full-fledged trial was conducted and a considered judgment came to be passed on 4th October, 2012 in the proceedings between appellant no.2 and the respondent no.1. The submission is that these findings would be binding in litigation between these parties in all courts before whom such issue is urged and consequently, so far as decision on this issue is concerned, in the litigation between appellant no. 2 and the respondent no.1 before the executing court cannot conduct such enquiry. The submission is that for this reason, the directions made for production of documents on 1st October, 2013 as well as 30th April, 2015 would be unwarranted. It is submitted that this aspect was pointed out to the learned Single Judge on 30th April, 2015. However, the learned Single Judge has not adjudicated on this aspect of the matter and has proceeded further in the proposed inquiry with regard to the transaction of transfer of

shareholding.

6. A perusal of the orders dated 1st October, 2013 would show that it was premised on a no objection by learned counsel for the appellant no. 1 to the production of the documents. The order dated 30th April, 2015 also records an undertaking on behalf of the company to produce the directed documents. The agreement of the company to produce these documents and to refer the same to the forensic science laboratory was reiterated in the order recorded on 10th October, 2013. These proceedings in the execution case have taken place after the passing of the judgment dated 4th October, 2012 by the court in the United Kingdom.

7. It is submitted by Mr. Sandeep Sethi, learned senior counsel appearing for respondent no. 2 that further orders dated 10th October, 2013; 16th December, 2013 and 13th January, 2014 would show that the appellant in fact had consented to the order dated 1st October, 2013 and have had no objection whatsoever to the production of the documents.

8. Be that as it may, it has been pressed before us today that the inquiry by the executing court is completely unnecessary and unwarranted in view of the specific findings on the issue on which the forensic examination has been directed in view of the binding adjudication by the London court. We find that the learned Single Judge on 30th April, 2015 has noted this objection on behalf of the appellants before us and has directed that the order was being passed without prejudice to this submission.

9. A perusal of the record before us would show that the appellant

has never contended before the executing court that it would stand precluded from conducting the inquiry being undertaken by it in view of the adjudication by the London court, though the factum of adjudication has been placed before the court. On the contrary, the orders placed before us record the consent of the appellant company to the production of the documents as well as their willingness to submit to the proposed forensic examination.

10. In the present appeal, the appellants assail the orders dated 30th January, 2012; 1st October, 2013 and 30th April, 2015. The first of these impugned orders on 30th January, 2012 granted an interim injunction and the appellants' application (IA No. 174/2012) seeking vacation thereof is pending. Therefore, there is no final adjudication of rights for which the present appeal could be entertained.

11. So far as the orders dated 1st October, 2013 and 30th April, 2015 are concerned, we are of the view that they do not adjudicate any rights, let alone attach any finality to adjudication of such rights. For this reason, these two orders are not appealable.

12. Mr. Arvind Nigam, learned senior counsel would still press the objection with regard to the finality being attached to the adjudication on the validity of the transaction of transfer of shareholding by the London court adjudication. This issue has to be pressed before the learned Single Judge and adjudication thereon sought before it could be pressed in an appeal.

In view thereof, while dismissing the appeal, liberty is granted to the appellant to raise the issue which is being pressed before us for adjudication before the learned Single Judge.

13. On request of the appellant, they are given a period of two weeks from today to seek such prayer before the learned Single Judge.

Dasti to parties.

GITA MITTAL, J

I.S.MEHTA, J

NOVEMBER 16, 2015

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