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

\+ EFA(OS) 12/2017

MOHD ARIFEEN (NOW DECEASED)
THR HIS LRS ..... Appellants

Represented by: Mr.Raman Kapur, Sr.Advocate instructed by Mr.Rajinder Mathur and Mr.R.P.Singh, Advocates

versus

MOHD IDREES (NOW DECEASED)
THR HIS LRS ..... Respondents

Represented by: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% 27.03.2017

CM No.11949-50/2017

Allowed subject to just exceptions.

EFA (OS) 12/2017

1. Mohd.Idrees and Mohd.Arifeen were brothers. They were partners of a firm M/s Mohd.Idrees Mohd.Arifeen. An industrial plot bearing No.B-26/1 Wazirpur Industrial Area was demised in perpetuity by DDA to Mohd.Idrees and Mohd.Arifeen. The two brothers fell apart. Disputes and differences, including that of the partnership firm, were referred to an arbitrator who published an award on April 21, 2009, which was set aside. Fresh reference resulted in an award being published on December 23,

2011. The award has attained finality. As per the award share of Mohd.Arifeen has been determined at 10% in the subject property and that of Mohd.Idrees at 90%. The value of the property at Wazirpur Industrial Area was assessed at ₹2.85 crores. Mohd.Arifeen having died, his legal heirs were given the first option to purchase the share of Mohd.Idrees. They did not do so. The result was that right in the property was vested in Mohd.Idrees with entitlement of Mohd.Arifeen to ₹28.5 lakhs. In this manner Mohd.Idrees became the decree holder and the legal heirs of Mohd.Arifeen became judgment debtors. Execution of the award was sought. One Vijay Kumar Gupta claimed assignment under the decree holder by relying upon Agreement to Sell as per which full sale consideration was given to Mohd.Idrees and possession taken over. He was substituted as a decree holder vide order dated February 12, 2015. Thereafter, EA No.1161/2015 was filed by the judgment debtors seeking recall of the order. Vide order dated November 29, 2016 said application was dismissed. After noting aforesaid facts the learned Single Judge has noted that to satisfy the award the decree holder has deposited ₹35,46,055/- in this Court. The learned Single Judge has noted that as per the appellant in view of the decision of the Supreme Court reported as AIR 1955 SC 376 *Jugalkishore Saraf V. Raw Cotton Co. Ltd.*, the assignment was not valid. The learned Single Judge has noted that as per the judgment cited on equitable principles substitution could be effected. The relevant extracts of the decision are as under :

> *"....When on a true construction of the deed it actually operates to transfer a decree then in existence, no equitable principle need be invoked, for in that case the transfer is by the deed itself and as such is by an assignment in writing. It is only*

when the deed does not effectively transfer the decree because, for instance, the decree is not then in existence, but constitutes only an agreement to transfer the decree after it is passed that the invocation of the equitable principle becomes necessary and it is in those circumstances that equity fastens and operates upon the decree when it is passed and effects a transfer of it."

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36. The result of the authorities appears to me to be that if by reason of any provision of law, statutory or otherwise, interest in property passes from one person to another there is a transfer of the property by operation of law. There is no reason that I can see why transfers by operation of law should be regarded as confined to the three cases referred to by the Privy Council in Abedoonissa's case (V). If, therefore, I were able to construe the document of the 7-2- 1949 to be a transfer or an agreement to transfer the decree to be passed in future then I would have had no difficulty in holding that by operation of equity the beneficial interest in the decree was immediately after its passing taken out of the transferors and passed to the respondent company and that the latter had become the transferees of the decree now sought to be executed by operation of law."

2. Same contention as was advanced before the learned Single Judge had been advanced before this Bench in EFA (OS) No.10/2017 in which order dated November 29, 2016 was challenged. Keeping in view the fact that the law declared by the Supreme Court which had been correctly appreciated by the learned Single Judge, the appeal was dismissed.

3. Challenge in the instant appeal is to the order dated February 21, 2017 dismissing EA (OS) 724/2016 in which execution was opposed by challenging the award itself.

4. Suffice it to state that the appellants cannot challenge the award at the stage of its execution. This has been held by the learned Single Judge. We concur.

5. The appeal is accordingly dismissed in limine.

6. No costs.

CM No.11948/2017 & CM No.11951/2017

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

YOGESH KHANNA, J.

MARCH 27, 2017
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