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

\+ **EFA(OS) 13/2016**

% Date of decision: 11th April, 2018

WIMPY INTERNATIONAL LIMITED & ANR ..... Appellants
Through: Mr.Hrishikesh Baruah, Mr.Pranav Jain, Ms. Radhika Gupta, Advs.

versus

KALVINDER SINGH SANDHU & ORS ..... Respondents
Through: Mr. Anand Verma, Ms. Manpreet Kaur, Ms. Shubhangi Jain, Advs. for R1
Mr. Giriraj Subramanium, Mr.Simarpal Singh Sawhney, Mr.Vikash Pathak, Advs. for R2
Mr. Manav Gupta, Ms.Esha Dutta, Mr.Sahil Garg, Advocates for R3

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J (ORAL)

CM No.14895/2016

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 37 days in filing of the appeal against order of the single Judge dated 5th February, 2016. Reply to this application has not been preferred by the respondents.

2. Paragraph 3 of the application reads as under:

> "That the Applicant/Appellant herein had applied for the certified copy of the impugned judgment and order dated 05.02.2016 in the first week of March, 2016. However, mistakenly a certified copy of the order dated 19.02.2016 was provided. That subsequently, the Applicant/

> Appellants again applied for the certified copy of the impugned order. The certified copy of the impugned order was finally received by the Applicants/Appellants on 31/4/16 and therefore a delay of 37 days has been caused in filing the present Appeal."

Certified copy of the impugned order dated 5th February, 2016 placed on record would show that it was applied for on 31st March, 2016. Certified copy of the order dated 19th February, 2016 referred to in paragraph 3 of the application has not been placed on record.

3. It is therefore clear that the averments in the application for condonation of delay are vague and without requisite and required details. We would have directed the appellant to furnish better details, but counsel for respondent Nos.1 and 2 states that the matter may not be adjourned as this appeal has remained pending since 2016.

4. Noticing the period of delay and the vague explanation, we allow the present application and condone delay in filing of the appeal subject to payment of costs of Rs.5,000/- to the said respondents. Costs would be paid within four weeks. Application is disposed of.

<u>EFA(OS) 13/2016</u>

M/s Wimpy International Limited and Dr. Sukhvender Kaur (hereinafter referred to as appellant Nos.1 and 2 respectively) have preferred the present intra court appeal impugning order dated 5th February, 2016 passed by the single Judge dismissing Execution Application (OS) No.1174/2015 filed by them under Section 151 Code of Civil Procedure, 1908 for recall/modification of orders dated 1st October, 2013 and 30th April, 2015.

2. Counsel for Kalvinder Singh Sandhu and Michael Fortune (hereinafter referred to as respondent Nos.1 and 2 respectively) have urged that the present appeal is not maintainable under Section 10 of the Delhi High Court Act, 1966 read with Order XXI Rule 58, CPC as an appeal is not maintainable against an order rejecting an application for review, though an order granting the application could be objected to in an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit is preferred.

3. We find substantial merit in the objection raised by respondents Nos.1 and 2. However, even otherwise having examined issues raised by the two appellants on merits, we do not find any substance in this appeal.

4. Respondent No.1 has filed Execution Petition No.172/2009 against the third respondent before us, namely, Kanwaljit Singh Sidhu, for recovery of Rs.43,52,22,870.40/- along with interest vide the decree in Claim No.5436/2002 passed by the High Court of Justice (Chancery Division) at London .

5. Appellant No.2 is the wife of the third respondent, namely, Kanwaljit Singh Sidhu, judgment debtor in the aforesaid Execution Petition No.172/2009.

6. During the pendency of the said Execution Petition, question arose regarding alleged transfer of shares held by the third respondent, Kanwaljit Singh Sidhu to his wife, i.e. the second appellant, namely, Dr.Sukhvender Kaur in the first appellant company, namely, M/s Wimpy International Ltd. On 1st October, 2013, after hearing counsel for the first respondent, i.e. the decree holder, the third respondent, i.e. the judgment debtor, and the

appellant No.1, i.e. M/s Wimpy International Ltd., the following order was passed:

> "I have heard counsels for some time and in my view it is absolutely necessary that the original documents of the transfer of share holding from the judgment debtor to his wife Dr. Sukhwinder Kaur, which is alleged to have taken place in the year 2001-07, are produced before this Court for forensic examination. Learned counsel for the company, Wimpy International, who is present in Court, states that he has no objection in producing all the relevant documents. Accordingly, the following documents be produced:
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> (i) Relevant share transfer forms;
> (ii) The minute books of the company;
> (iii) The correspondence undertaken between the judgement Debtor, his wife Dr. Sukhwinder Singh and the company in relation to the transfer of shares.
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> On the next date, the decree holder shall assist the Court in identifying the documents on which the admitted signatures of the judgment debtor, his wife Dr. Sukhwinder Kaur and the officers of the company who have signed on behalf of the company are available so that the said documents could be sent for forensic examination.
>
> List on 10.10.2013
>
> Dasti."

The above order, it is apparent, was a consent order passed after recording the concession or statement by the counsel for the appellant No.1 (Wimpy International Ltd). who had stated that they had no objection in placing all the relevant documents on record. The Court felt that it was absolutely necessary that the original documents of transfer of shareholding by the third respondent / judgment debtor to the appellant No.2, his wife, must be produced before the Court and send for forensic examination. Appellant No. 1 had agreed and accepted to the suggestion.

7. Thereafter, order dated 10th October, 2013 was passed by the single Judge, which records the statement made by the counsel for the first appellant that they were in possession of original documents required for production by the Court in terms of the earlier order. The order refers to as many as 23 documents that purportedly bear the signature of the third respondent. Appellant No. 1, the order records, had consented to inspection of the said documents by the counsel for the decree holder, i.e. respondent No.1. The third respondent had thereafter filed an affidavit dated 23rd October, 2013 in compliance of the court orders. Appellant No.1 had filed an affidavit on 1st November, 2013 in terms of order dated 10th October, 2013 passed by the single Judge in respect of the documents with purported signatures of the third respondent. Thereafter, order dated 16th December, 2013 was passed referring to the affidavits and the execution proceedings continued. However, forensic examination could not take place as there was dispute regarding admitted signatures of the third respondent.

8. Thereupon, order dated 30th April, 2015 was passed by the single Judge. The said order being relevant is being reproduced in entirety:

> "Learned counsel for the decree holder has drawn attention of this Court to the orders passed by the predecessor of this Court dated 01.10.2013 followed up by a subsequent order dated 10.10.2013.There was a dispute as to whether the share transfers of the judgment debtor in the name of his wife (Dr. Sukhwinder Singh) was a valid transfer or whether the documents were sham.

This Court has noted the submissions and counter submissions of the parties. The earlier order passed this Court had though it fit to send the admitted and questioned documents for a forensic examination. Various detailed orders followed by the affidavits of the respective parties had been placed on record. There were 23 documents which the judgment debtor as also the company were asked to produce but only the documents detailed in para 3 of the affidavit of the company dated 01.11.2013 (being 14 signatures) were brought to the Court for perusal. These documents are still with the company and the learned senior counsel for the company undertakes to file these documents within one week from today. These would be the admitted signatures of the judgment debtor. The questioned signatures of the judgment debtor on the documents i.e. share transfer forms (four in number) are also lying with the company so also the minute books of the company and the correspondence undertaken between the judgment debtor and his wife Dr.Sukhvinder Singh and the company in relation to the transfer of shares. Learned senior counsel for the company undertakes to file all these documents in original as well. This is in continuation of order 01.10.2013. Needful be done in two weeks. Thereafter, the original documents i.e. the questioned signatures on the share transfer forms as also the admitted signatures (four in number) on the aforesaid documents will be sent to the forensic expert i.e. CFSL, Lodhi Road. The forensic expert shall determine:-

(i) Whether the admitted and questioned signatures are of the same person i.e. the judgment debtor Kanwaljeet Singh Sindhu.
(ii) What is the age of the document and the age of the signatures on the questioned documents.
(iii) The CFSL shall submit its report expeditiously and preferably before the next date. A copy of this order be sent to the Director, CFSL for information and compliance.

> This order is passed without prejudice to the argument raised by the learned senior counsel for the company that this exercise has in fact already been effected before the London Court and the evidence on the forensic examination of the admitted and questioned signatures of Dr. Kanwaljit Sidhu had already taken place.
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> List on 14.09.2015."

9. Appellants Nos. 1 and 2 had preferred EFA(OS) 18/2015 before a Division Bench impugning orders dated 30th January, 2012, 1st October, 2013 and 30th April, 2015. This appeal in so far as orders dated 1st October, 2013 and 30th April, 2015 were concerned, was held to be not maintainable in view of the fact that the said orders had not adjudicated any rights, let alone had attached any finality to adjudication of rights. Learned counsel for the appellant Nos. 1 and 2, however, relies upon paragraph 12 of the order dated 16th November, 2015 which reads as under:

> "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."

According to the appellant Nos. 1 and 2, the aforesaid observations should be read as giving liberty to the appellants to file a fresh application for review or recall of the orders dated 1st October, 2013 and 30th April, 2015. It is submitted that the appellants in terms of the liberty had preferred Execution Application (OS) No.1174/2015 which has been dismissed by the impugned order passed by the single Judge. In support, it is submitted that the issue of authenticity of signatures of the third respondent on the transfer deeds was examined and was the subject matter of the order dated 4th October, 2012 passed by the High Court of Justice, Chancery Division, London and the finding was that the transfer had taken place prior to the freezing order passed by the said High Court on 8th May, 2009.

10. We do not agree with the submission made by the counsel for the appellants. In fact an identical submission was raised by the appellants in EFA(OS) No.18/2015. Paragraph 5 of the order dated 16th November, 2015 deciding this execution first appeal records the identically submission in the following words:

> 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.l. 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.l 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."

11. Reflecting on the submission, the Division Bench had observed as under:

> 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.
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> 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.
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> 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.
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> 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.
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> 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."

In other words, the Division Bench was clearly of the view that contention raised and the reliance placed on the order of the High Court of Justice (Chancery Division) London dated 4th October, 2012 would not matter as orders dated 1st October, 2013 and 30th April, 2015 were consent orders. Appellants had not contended before the executing court that the executing court was precluded from conducting the inquiry, in view of order dated 4th October, 2012. Lastly, the order dated 15th April, 2015 records that the order being passed without prejudice to the submission relying on order dated 4th October, 2012.

12. Paragraph 12 of the order dated 16th November, 2015 records the submission made on behalf of the counsel for the appellants as to the finality attached to the adjudication by the High Court of London vide order dated 4th October, 2012. The Division Bench on the said aspect had observed that the order dated 30th April, 2015 in the last paragraph had left the issue open to be decided after forensic reports were received. It is in this context that the Division Bench had stated that appellant No.1 was at liberty to raise the

issue before the single Judge before final adjudication on the question of authenticity of the signature on the transfer deeds was passed. This order did not permit and allow the appellants to expressly or impliedly file a new application for review or recall of orders dated 1st October, 2013 and 15th April, 2015. It is also apparent that the Division Bench had opined and had referred to the no objection given by the counsel for the appellant No.1 as was recorded in order dated 1st October, 2013 and the undertaking given by the appellant No.1 in the order dated 30th April, 2015. Reference was also made to the order of the single Judge dated 10th October, 2013, which records assurance by the appellant No.1 to produce the documents for forensic examination. These proceedings and orders were passed, after and post the order dated 4th October, 2012 by the High Court of London.

13. In these circumstances, we do not find any justification and reason to interfere with the impugned order dated 5th February, 2016. The appeal is dismissed.

14. While the aforesaid order was dictated, learned counsel for the parties had drawn our attention to the order dated 26th April, 2016 passed by the single Judge. Learned counsel for the appellants had thereafter sought time to talk to Director of the appellant No.1 and obtain instructions. Learned counsel for the appellants after obtaining instructions from Director of the first appellant states that they would be depositing the original documents before the Court on or before 26th April, 2018. In case original documents are not deposited on or before 26th April, 2018, bailable warrants in terms of the order dated 26th April, 2016 can be issued afresh for being executed.

15. We are inclined to impose Rs.50,000/-. However, counsel for the appellants has pleaded for waiver of costs as the appellants' would be

depositing original documents. In view of the prayer made, it is directed that in case original documents are deposited on 26th April, 2018, then cost of Rs.50,000/- imposed on the appellants would be made easy and need not be paid.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

APRIL 11, 2018
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