

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

% **Date of decision: 14th August, 2018.**

+ **EX.F.A. 21/2016 & CM No.20158/2017 (for direction)**

BRIJ LAL & SONS

..... Appellant

Through: Mr. Tilak Raj Gogia, partner of
appellant.

Versus

UNION OF INDIA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Execution First Appeal under Order XXI Rule 58 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 1st June, 2016 in Execution Petition No.18/2014 of the Court of Additional District Judge-01 (South-East)] of adjourning *sine die* the Execution Petition filed by the appellant.
2. This appeal came up first before this Court on 19th August, 2016, when Executing Court's record was requisitioned. Vide subsequent order dated 24th January, 2017, notice of the appeal was ordered to be issued. Ms. Sakshi Popli, Advocate for the respondent Union of India (UOI) has been appearing but does not appear today.
3. A perusal of the order sheet shows that none appeared for the respondent UOI on the last date of hearing i.e. 7th May, 2018.
4. The need to await the counsel for the respondent UOI any further is not felt.

5. The records have been perused and Mr. Tilak Raj Gogia, partner of the appellant who has been pursuing this appeal in person has been heard.

6. The appellant filed Execution Petition No.18/2014 supra seeking execution of an arbitral award for recovery of money by the appellant from the respondent UOI. On 1st June, 2016, while it was the contention of the appellant before the Executing Court that monies under the arbitral award were due from the respondent UOI to the appellant, it was the contention of the respondent UOI that the entire award/decretal amount had been paid. The learned Additional District Judge, acting as the Executing Court, instead of adjudicating, whether the decree stood satisfied or as to how much amount was due under the arbitral award having force of decree, on the appellant during the course of arguments having submitted that he had already filed an 'appeal' against the arbitral award, adjourned the execution proceedings *sine die*.

7. It is the contention of the appellant that the same was no ground for adjourning *sine die* the execution proceedings. It is pleaded that in the 'appeal' against the arbitral award (probably referring to Section 34 of the Arbitration and Conciliation Act, 1996 proceedings against the award), the appellant is seeking enhancement of the amount due to him.

8. Though the counsel for the respondent UOI has chosen not to appear but has filed a reply to this appeal which has been perused. In the said reply, it is pleaded (i) that the entire awarded amount has been paid to the appellant; (ii) that the appellant had challenged the said arbitral award and the said challenge was dismissed; (iii) that the appellant filed an appeal before this Court and vide order in which appeal, the objections of the

appellant to the arbitral award were ordered to be decided afresh; (iv) that the Additional District Judge set aside the arbitral award and another Arbitrator was appointed; (v) that the said Arbitrator published his award; (vi) that the appellant again preferred objections against the arbitral award and in which yet again a direction was issued to the Arbitrator for decision afresh; (vii) that the Arbitrator again published his award and the amount which the respondent UOI was ordered to pay thereunder has already been paid; and, (viii) that the appellant has again challenged the subject award.

9. Mr. Tilak Raj Gogia, on enquiry, as to what happened to the “appeal against the award”, states that the same is still pending.

10. As would be evident, there is nothing in the reply of the respondent UOI which justifies the order of adjourning *sine die* the execution proceedings.

11. It was for the learned Additional District Judge acting as the Executing Court to determine, whether the entire amount under the award had been paid as claimed by the respondent UOI or had not been paid as informed by the appellant and if the entire amount had not been paid, whether pendency of objections affected the recovery by the appellant in execution of the balance amount, if any due. The learned Additional District Judge has indeed erred in, without giving any reason, depriving the appellant of the benefit of the arbitral award having the force of decree in his favour, awaiting the decision of the objections against the award, without even recording that in the said objections, there was a possibility of the awarded amount being not recoverable by the appellant.

12. Before parting, I may however record that, in my opinion, this appeal did not lie neither under Order XXI Rule 58 of the CPC nor under any other provision. However, since this appeal was entertained by this Court and has now been pending for the last two years and in any case, the remedy of appeal under Article 227 of the Constitution of India would have been available to the appellant against the impugned order, it is not deemed appropriate to dismiss/reject the appeal on this ground.

13. The appeal thus succeeds and is allowed and the impugned order dated 1st June, 2016 is set aside.

14. The learned Additional District Judge-01 (South-East) is requested to proceed with the execution as per the merits thereof.

15. The Executing Court file requisitioned in this Court be returned forthwith.

16. The parties to appear before the Court of Additional District Judge-01 (South-East), Saket Courts, New Delhi on 25th September, 2018.

RAJIV SAHAI ENDLAW, J.

AUGUST 14, 2018

bs