$~32

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

\+ **EFA(OS) (COMM) 9/2019**

MALVINDER MOHAN SINGH ..... Appellant

Through Mr. Akhil Sibal, Sr. Advocate with Ms. Vijayalakshmi Menon, Ms. Ekta Kapil, Ms. Suman Yadav, Mr. Aditya Sarin, Mr. Shobhit Ahuja, Mr.Pradeep Chhindra & Ms. Nitya Gupta, Advocates

versus

DAIICHI SANKYO COMPANY LTD & ORS. ..... Respondents

Through Mr. Amit Kumar Mishra, Mr. Mohit Singh, Ms. Kanika Singhal, Ms. Samridhi Hota, Mr. Turab Ali Kazmi & Mr. Kunal Chatterji, Advocates for Respondent No.1

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **09.07.2019**

Caveat 664/2019

1. Since the caveator has put in appearance today, the caveat stands discharged.

CM Appl.No. 29874/2019 (Exemption)

2. Exemption allowed, subject to all just exceptions.

EFA (OS) (COMM) 9/2019 & CM Appl.No. 29872/2019 (stay) & 29873/2019 (for placing additional documents)

3. The challenge in this appeal is to the decision dated 29th March, 2019 passed by the learned Single Judge in IA No.11934/2018 in OMP (EFA)

(Comm) No. 6/2016. By the impugned order, the application filed by the Judgment Debtor (JD) No.1 i.e. the Appellant herein that he should be permitted to operate his bank accounts in order to take recourse to the amount received by him from the erstwhile Ranbaxy Laboratories Limited (RLL) as 'pension' has been rejected by the learned Single Judge.

4. The background facts are that there was a foreign arbitral Award dated 29th April, 2016 passed in favour of the Respondent/Decree Holder (DH) and against RLL and its Directors which included the present Appellant. The objections preferred by the JDs including the present Appellant were rejected by the single Judge of this Court by order dated 31st January 2018. The Special Leave Petition (SLP) filed against the said order was dismissed by the Supreme Court.

5. The Respondent i.e. the DH sought, in the execution proceedings i.e. OMP (EFA) (Comm) No.6/2016, to attach the bank account maintained by the Appellant in which he was receiving certain amounts as 'pension' on a quarterly basis.

6. As regards the said amounts, the facts that are relevant are that the Appellant was on 22nd May, 1998 appointed as Manager (Financial Services) with RLL. Subsequently, in May, 2009 the Appellant resigned as Managing Director and Chief Executive Officer (CEO) of RLL. He thus became entitled to the retiral benefits as per the policy of RLL and by virtue of an employment agreement dated 11th June, 2008 between him and RLL. The DH had also in terms of the policy, paid monies towards pension after it

took over the management of RLL. The arrangement qua the payment to the Appellant continued even after the merger of RLL with Sun Pharmaceuticals Industries Limited (SPIL) in 2015. The amount involved is Rs. 41,05,498/- which the Appellant has been receiving as 'pension' every quarter with this sum directly being remitted to his bank account.

7. The DH instituted OMP (EFA) (Comm) No. 6/2016 in this Court for enforcement of the foreign Award. With the attachment of the JD's bank accounts, the Appellant herein was unable to access the so called 'pension amount' credit to his bank accounts. He claimed that the Court ought to have permitted him to operate the bank accounts so that he could "take recourse to the money in order to provide for himself, Judgement Debtor No.6, their families including their ailing mother." According to the Appellant, JD No.6 i.e. Mr.Shivinder Mohan Singh who is his sibling did not have any source of income. It may be noted that their mother Mr.Nimmi Singh had been arrayed as JD No.13 in the execution proceedings.

8. On 10th August, 2018 a direction was issued by the Executing Court restraining JD Nos. 1 & 6 i.e. the Appellant and Respondent No.5 herein from operating the bank accounts referred to by them in their statements recorded on that date itself by the Court. It is in this background that an application was filed before the learned Single Judge by the Appellant seeking lifting of the said attachment of the accounts. The case of the Appellant before the learned Single Judge was that in terms of Section 60 (1) (g) of the Code of Civil Procedure, 1908 ('CPC') there could be no attachment of the said pension amount.

9. Interpreting the said provision, the learned Single Judge agreed with the Appellant that there could be no distinction drawn between pension payable to employees of the State or its instrumentalities and that paid by a private employer. However, the learned Single Judge took recourse to "the doctrine of dynamic interpretation or updating construction" and concluded that pension payable by private employers to "a single employee or a clutch of employees" on the basis of no perceivable rationale cannot get protection from attachment in terms of Section 60(1) (g) CPC.

10. Two factors weighed with the learned Single Judge in coming to the said conclusion as far as the Appellant was concerned. One was that it appeared to be a special dispensation introduced in the employment agreement specific to the Appellant. The second was that there was nothing placed on record to show that other employees fell in the same class as the Appellant i.e. those who had resigned or intended to resign before completion of 20 years or more of continuous service were also entitled to same pension. The explanation to Section 60 (1) (g) of the CPC would not, according to the learned Single Judge, protect a pension amount of the above nature from attachment in execution proceedings.

11. There were certain other grounds on which the application was rejected by the learned Single Judge. One was that the protection from attachment in terms of Section 60 (1) (g) CPC would only be available till such time the pension was received by the JD and not after it had been so received. This Court does not consider it necessary to go into the correctness of such

conclusion as it was not essential for the decision that the application filed by the Appellant should be rejected. Likewise the question whether the Appellant could take the benefit of the doctrine of 'indoor management' was also not immediately relevant for this purpose.

12. The Court is satisfied that the conclusion reached by the learned Single Judge that the payment in every quarter to the Appellant in the form of 'pension' as per the policy of RLL and by virtue of the aforementioned employment agreement dated 11th June, 2008 between the Appellant and RLL is not protected from attachment under Section 60 (1) (g) of the CPC is based on sound legal reasoning and does not call for interference.

13. Before concluding it must be pointed out that the Respondent had raised a preliminary objection to the maintainability of the present appeal. In view of the fact that on merits, the Court finds no ground to interfere with the impugned order of the learned Single Judge, that question is left open for decision in an appropriate case.

14. For the aforementioned reasons, the appeal is dismissed. The applications are also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 09, 2019/mw