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

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Date of decision: 22.02.2021

+ EX.F.A. 4/2021

NORTH DELHI MUNICIPAL CORPORATION Appellant

Through: Ms. Namrata Mukim, Standing
Counsel with Ms. Garima Jindal, Advocate.

versus

TARUN KUMAR JAIN Respondent

Through: Mr. Hemant Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

[PHYSICAL COURT HEARING]

RAJIV SHAKDHER, J. (ORAL):

CM APPL. 7044/2021

1. Allowed, subject to just exceptions.

EX.F.A. 4/2021 and CM APPL. 7043/2021

2. The instant appeal has been preferred against an order dated 24.11.2020 passed by the learned ADJ in Ex. No. 1361/2019.

2.1 However, to adjudicate upon the present appeal, the following background facts are required to be noticed.

2.2 Upon *inter se* disputes erupting between the parties herein, the matter was referred to a sole arbitrator. The adjudication by the arbitrator led to the passing of the award dated 25.09.2007. It appears that both parties were aggrieved by the award and, consequently, preferred petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '1996 Act').

2.3 The petition filed by the respondent was dismissed on 17.12.2007,

while the petition filed by the petitioner-corporation was dismissed, *albeit*, for non-prosecution on 29.11.2016.

2.4 Being aggrieved, the respondent lodged an appeal. This appeal was numbered as FAO(OS) 61/2008.

2.5 The appeal was disposed of with the direction to the petitioner-corporation to pay an additional amount pegged at Rs.91,660/-, along with interest at the rate awarded by the arbitrator (i.e. at the rate of 9% per annum), for the period commencing from the date when the claim was filed before the arbitrator and ending on the date of payment.

2.6 Insofar as the petitioner-Corporation was concerned, against the order dated 29.11.2016, it preferred a restoration application which was dismissed by a learned Single Judge of this court *via* order dated 06.03.2020. Pertinently, while dismissing the application for restoration, in paragraph 8 of the order, the learned Single Judge at the behest of the counsel for the petitioner-corporation recorded the following:

"....8. At this stage, Ms. Pushkarna states that execution proceedings, filed by the respondent before the Court of the ADJ (Central), Tis Hazari Courts, have been adjourned to 01.04.2020. She submits that the Nr.DMC requires 8 weeks' time to make payment of the award amount to the respondent. Learned counsel for the respondent, who is present on caveat, states that the execution proceedings will not be pressed for a period of eight weeks from today....."

2.7 It is not in dispute that at the point in time when the aforementioned order dated 06.03.2020 came to be passed the execution petition was pending consideration of the learned ADJ. As a matter of fact, I am told that the matter was listed on the same day before the learned ADJ(a copy of that order has been placed before me by Mr. Hemant Gupta, who appears for

the respondent). A perusal of a copy of the order dated 06.03.2020 passed in the execution proceeding shows that on that date the matter was simply adjourned for arguments on the ‘objection-petition.’ I am informed that the said objection-petition was filed by the petitioner-corporation under Section 47 read with Section 151 of the Code of Civil Procedure, 1908.

2.8 The said objection petition preferred by the petitioner-corporation came to be disposed of *via* the impugned order dated 24.11.2020.

3. Ms. Namrata Mukim, who appears for the petitioner-corporation, says that the impugned order is erroneous given the fact that the period of limitation as provided in Article 136 of the Limitation Act, 1963 (in short ‘1963 Act’) had expired.

3.1 According to Ms. Mukim, period of limitation provided under the said Article is 12 years, which commenced from the date of the award i.e. 25.09.2007 while the execution petition was filed on 26.11.2019.

4. I may also indicate that I had queried Ms. Mukim as to effect the statement recorded by the learned Single Judge on 06.03.2020 (which has been extracted hereinabove). In response to the query, Ms. Mukim submitted that statement could not bind the petitioner-corporation. It was her submission that, at best, it could be taken as a concession in law, which, cannot bind the petitioner-corporation, and therefore, it was entitled to press the objections filed before the executing court.

4.1 In this context Ms. Mukim relied upon the following judgments of the Supreme Court:

- (i) Union of India v. Hira Lal & Ors. 1996 (10) SCC 574
- (ii) *B. S. Bajwa & Anr. v. State of Punjab & Ors.* 1998 (2) SCC 523

5. Mr. Gupta, on the other hand, submitted that the stand of the

petitioner-corporation that the execution petition ought to have been dismissed as limitation had expired is untenable in the facts of the present case.

5.1 Mr. Gupta referred to the dates and events (which are recorded hereinabove) and, based on the same, submitted that the period of limitation could have commenced only after the Section 34 petition filed by either side was put to rest.

5.2 According to him, if one were to take into account the date when the petitioner-corporation's petition under Section 34 was dismissed i.e. 29.11.2016, then, the respondent had time to execute the award up until 2028.

5.3 Mr. Gupta, went on to state, that likewise, if the date when the respondent's appeal was disposed of by the Division Bench is taken into account i.e., 01.05.2012, then, the limitation would expire only in 2024.

5.4 Since the execution petition was filed in November 2019, Mr. Gupta says that no way could it be said that the limitation had expired and therefore, petition ought to have been dismissed.

5.5 In support of his contention Mr. Gupta relied upon the following judgments:

- (i) *Shanthi v. T.D. Vishwanathan & Anr. 2019 (11) SCC 419*
- (ii) *Ravinder Prakash Punj v. Punj Sons Pvt. Ltd. & Ors. 192 (2012) DLT 661 (DB)*

5.6 Besides this, Mr. Gupta says that the contention advanced on behalf of the petitioner-corporation, today, is contrary to the opinion received by it from its lawyers. In this behalf, he has placed before me a copy of the note-sheet wherein the counsel for the petitioner-corporation appears to have

opined that the petitioner-corporation, in her view, should make the payment and that if it wishes to take a chance, an application for restoration could be filed to 'implore' the court to accept its plea to interdict the award(The last part is the unarticulated part of the note.), and perhaps, (and this is my addition) to persuade the court to take a view which would result in interdicting the award.

6. I have heard learned counsel for the parties and perused the record. In my view while one cannot quibble with the proposition that a concession made by a lawyer on an aspect concerning pure legal issues cannot bind the client, what is evident in this case is that on 06.03.2020 when the petitioner-corporation's application for restoration was dismissed, the court was not considering the impact of Article 136 of the Limitation Act, and therefore, there was no occasion to make any concession in law as claimed by Ms. Mukim.

6.1 It may be pertinent to note that when I queried Ms. Mukim as to the context in which the aforementioned statement was made by the counsel for the petitioner-corporation i.e, that the awarded amount could be paid within 8 weeks, Ms. Mukim read out the grounds set out in the appeal and based on these grounds conveyed that since the attachment orders would have been issued by the executing court, instructions were given to the counsel to make the said statement.

6.2 As indicated hereinabove, a perusal of the order dated 06.03.2020, passed by the executing court, shows that it which simply adjourned the case on that date for hearing the objections preferred by the petitioner-corporation in the execution petition. The order does not suggest that the executing court intended to effect attachment on that date.

7. Be that as it may, I do not intend to dispose of the appeal on the basis of the statement made by learned counsel for the petitioner-Corporation before a co-ordinate Bench of this court on 06.03.2020.

7.1 I must indicate that even in **BS Bajwa**'s case the Supreme Court held that if a concession in law is made, the entity or the person making the concession should be allowed to withdraw the same.

7.2 As alluded hereinabove there was no occasion to make any concession on the aspect of law before a co-ordinate Bench on 06.03.2020 and assuming it was concession in law, no application has been made before the concerned Bench for withdrawing the same.

8. That being said, I intend to agree with Mr. Gupta that limitation, in the facts and circumstances of this case, cannot commence from the date of the award i.e., 25.09.2007 in view of the fact that the award was put in jeopardy by virtue of Section 34 petition filed not only by the respondent but also by the petitioner-corporation. In this behalf, the following observations of the Division Bench in the case of **Ravinder Prakash Punj Vs. Punj Sons Pvt. Ltd. & Ors., 2012 SCC OnLine Del 4678** being apposite are extracted hereafter :

“....28. Under Article 136 of the Limitation Act, period of limitation for filing of an execution petition of a decree begins on the date on which it becomes enforceable. It is well settled that an appeal is a continuation of the original proceeding and the original decree merges in the appellate decree. When an appeal is preferred from an original decree, the decree would also become enforceable after dismissal of the same, and it is immaterial that there was no order staying the execution of the decree and that the decree-holder could execute the decree even during pendency of the appeal. This merger of the original decree into the appellate decree takes place irrespective of the fact that the appellate court

affirms, modifies or reverses the lower court's decree. [See Posani Ramachandraiah v. Daggupati Seshamma, AIR 1978 AP 342; S. Kharak Singh v. Harbhajan Singh, MANU/PH/0303/1878; Ramji Dass v. Tilak Raj, MANU/PH/0427/1988; Syed Abdul Rauf v. Nurul Hussain, AIR 1992 Raj 3; Hari Singh v. Harbhajan Singh, AIR 2001 P&H 108; Chandi Prasad v. Addl. Dist. and Sessions Judge, Hapur, AIR 2001 All 229; Indradeo Sah v. Ram Naresh Sah, 2002 (1) PLJR 423; Nawal Kishore Patel v. Most. Indrapari Devi, 2002 (4) PLJR 272; Uma Shankar Sharma v. State of Bihar, AIR 2005 Pat 94] ...”

9. Admittedly, the petitioner-corporation’s petition under Section 34 was dismissed on 29.11.2016 and likewise the respondent’s execution petition was dismissed on 17.12.2007. I am told by Ms. Mukim that the appeal against this order was filed on 04.02.2008 which, according to her, was allowed and the award was modified on 01.05.2012.

10. Therefore, if either date is taken, it cannot be said that the execution petition is barred by limitation. Thus, I find no merit in the appeal. The appeal is accordingly dismissed. The interlocutory application will suffer the same fate. Resultantly, the same is also dismissed.

11. The only reason I have refrained from imposing cost is on account of the fact that in matter after matter Municipal Corporations appear before this court and say via their counsel that they are financially strapped because of which they are unable to pay salaries and wages of persons employed/engaged by them.

RAJIV SHAKDHER, J.

FEBRUARY 22, 2021/tr

[Click here to check corrigendum, if any](#)