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

+ EFA(OS) (COMM) 5/2021 & CM APPLs. 12808-12809/2021

MR. SANJEEV JAI NARAIN AEREN & ANR. Appellants
Through: Mr. P. Nagesh, Senior Advocate with
Mr. Praveen K. Sharma and Mr. Sahil
Nagpal, Advocates.

versus

M/S SOMANI WORSTED LIMITED THROUGH ITS
AUTHORISED REPRESENTATIVE & ORS. Respondents
Through: Mr. Vivek Kohli, Senior Advocate with
Ms. Pankhuri Jain, Ms. Kanika Saran,
and Ms. Nikita Maheshwari, Advocates.

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Date of Decision: 01st June, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J (Oral):

1. The appeal has been heard by way of video conferencing.
2. Present appeal has been filed challenging the order dated 26th February, 2021 passed by the learned Single Judge in a contempt petition being CCP(O) 34/2020 in OMP (Enf.) (Comm.) No.74/2019. Appellant seeks directions to the executing Court to decide objections and especially objection with regard to Section 35 of the Indian Stamp Act before proceeding with the enforcement and contempt petition.

3. Learned counsel for the Appellant states that an Arbitral Award dated 28th December 2015 was pronounced by the Sole Arbitrator for a sum of Rs.168,05,56,182/- on plain paper against the Appellant.

4. Learned senior counsel for the appellant submits that as the arbitral award is passed on a plain paper and requisite stamp duty was not paid at the time of passing of the award, therefore the award cannot be acted upon in view of the statutory bar contained in Section 35 of the Indian Stamp Act and thus the enforcement petition is not maintainable until the requisite stamp duty along with ten times penalty is deposited by the Decree Holder pursuant to the impounding of the award dated 28th December 2015.

5. He also emphasises that the learned Single Judge ought to have appreciated that proceedings before the Executing Court are without jurisdiction as the executing court gets its foundational jurisdiction from the decree/award and when the same is invalid the executing court shall not have the jurisdiction to entertain any such execution or even proceed with such execution.

6. However, this Court finds that by the impugned order, the learned Single Judge has primarily issued notice in contempt petition and directed appellant to file replies to E.As. Further, the learned Single Judge has rightly rejected the objection with regard to Section 35 of the Indian Stamp Act before proceeding with the contempt petition by observing as under:-

“5. The said contention is wholly bereft of any merit. The question whether this Court has jurisdiction to enforce an arbitral award has little relevance as to the court's the jurisdiction to initiate contempt proceedings for wilful violation of its orders. The question in this petition is limited to examining whether the Judgment Debtors have wilfully violated the orders of this Court or have wilfully filed false affidavits before this

court. This Court being a Court of Record has the jurisdiction in terms of Article 215 of the Constitution of India to take the necessary proceedings in this regard.

6. *This Court is of the view that it is not necessary to examine whether the arbitral award is adequately stamped in these proceedings because as noticed above, the issue to be examined in this petition is limited to whether the Judgment Debtors have wilfully violated the orders of this Court and are liable to be proceeded against for the same. The merits of the execution petition are thus not relevant insofar as this petition is concerned. It is well settled that the matter of contempt is one that relates to administration of justice. It is essentially between the contemnors and the court; the petitioner is only a realtor party.....”*

7. Also it is settled law that even orders passed by Court without jurisdiction have to be complied with and for violation of the same, Courts can proceed with contempt proceedings. [See: **Tayabbhai M. Bagasarwalla & Anr. Vs. Hind Rubber Industries Pvt. Ltd. & Ors., (1997) 3 SCC 443**].

8. This is more so in the case of a High Court when it is a Court of record under Article 215 of the Constitution.

9. Accordingly, the present appeal and applications, being bereft of merits, are dismissed.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

JUNE 1, 2021

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