



\$~70(Appellate)

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

+ EX.F.A. 11/2022 & CM No.26506/2022, CM No.26507/2022

ADHUNIK SECURITY SERVICES Appellant
Through: Mr. Rahul Shukla and
Ms.Sayantani Basak, Advs.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA
..... Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% **31.05.2022**

1. This petition, stated to have been preferred under Order XXI Rule 58(4) of the Code of Civil Procedure, 1908 (CPC) assails the following order, passed by the learned Additional District Judge (the learned ADJ) in Execution Civil 33/2017 (**Adhunik Security Services v. NHAI**):

“EX CIVIL 33/17
M/S AUDHNIK SECURITY SERVICE Vs. NATIONAL
HIGHWAY AUTHORITY OF INDIA

25.02.2022

Present: Sh. Rahul Shukla, Ld. Counsel for DH through
VC.
Sh. C.S. Chauhan, Ld. Counsel for JD.

Ld. Counsel for DH stated that the dispute is regarding para no. 31(iii, iv, v) of the Arbitral Award. Ld. Counsel for DH further stated that as per the amount mentioned in the entry no. 31(iii) and 31(iv), there is dispute regarding interest



and the amount mentioned in the para no. 31(v), no any amount has been paid on behalf of opposite party. It is submitted by Ld. Counsel for DH that as per the section 31(7)(b), the DH is entitled for interest @ 2% higher than the current rate of interest if award is not making provision for interest on a particular amount. On the other hand, Ld. Counsel for JD stated that the issue of interest has already been decided in the award and JD has already made payment of the awarded amount, therefore, they are not liable to pay any further interest as per Section 31(7) (b).

I have considered the submissions of both parties and have also gone through the relevant provision. Section 31(7)(b) reads as “A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.” It is not disputed that the JD has already made payment of the amount as well as the interest as mentioned in the award. Ld. Counsel for JD stated that in the other amounts which are mentioned in the award, the JD has not paid interest at the rate of 2% higher than the current rate as per their above said provisions. However, it is clearly mentioned in the provision that the DH is entitled for the said rate of 2% higher than the current rate of interest if the award does not otherwise directs. However, in the present award, the Ld. sole Arbitrator had specifically mentioned about the rate of interests on particular amounts and had not awarded the interests on other particular amounts which reflect that the Ld. sole Arbitrator has otherwise, directed regarding mode of rate of interest where it is to be paid and where it is not to be paid. Therefore, it is clear that the DH is not entitled for the interest as per the provision mentioned u/s 31(7) (b) but is entitled to the amount of interest as awarded by the Ld. sole Arbitrator in the award. Ld. Counsel for DH further requested that he seeks time to clarify on para no. 5 that whether entries of amount in this para are two different entries or is one entry under another entry as a heading.

Hence, put up for clarification on this point on 20.05.2022.”

2. To my mind, this appeal, at this stage, is not only not



maintainable but is completely misconceived. Order XXI Rule 58(4) reads thus:

“58. ADJUDICATION OF CLAIMS TO, OR OBJECTIONS TO ATTACHMENT OF, PROPERTY.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.”

3. An appeal would lie, under Order XXI Rule 58(4) only where there is adjudication of a claim or objection under Order XXI Rule 58(4), and, in such event, the adjudication is eligible to be treated as a decree and is subject to the same conditions as to appeal or otherwise as would apply to a decree. Appeals against decrees, lie, under the CPC, under Section 96 which reads thus:

“96. Appeal from original decree.

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [ten thousand rupees.]]”

4. “Decree”, is defined, in Section 2(2) of the CPC thus:



“(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.— A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;”

5. It is clear, from a reading of the definition of the expression “decree” in Section 2(2) that it *requires formal expression of an adjudication which conclusively determines the rights of the parties* with regard to all or any of the matters in controversy in the proceedings pending before the Court, whether preliminary or final. The definition clause also includes, by a deeming fiction in the expression “decree”, the rejection of a plaint.

6. Short of a conclusive determination of the rights of the parties with respect to the matters in controversy in the proceedings before a Court, the order of the Court cannot be treated as a “decree”.

7. Though, Section 58(4) deems an adjudication, under the said provision, to be a decree and may not, therefore be subject to all the rigors which stand statutorily engrafted in the definition of “decree” in



Section 2(2), nonetheless, Order XXI Rule 58(4) also requires adjudication of a claim or an objection under Order XXI Rule 58. Adjudication of a claim or an objection, under Order XXI Rule 58 is covered by sub-rules (1) and (2) thereof which read thus:

“58. ADJUDICATION OF CLAIMS TO, OR OBJECTIONS TO ATTACHMENT OF, PROPERTY.

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained-

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or (b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.”

8. Clearly, therefore, Order XXI Rule 58 contemplates adjudication of any claim or objection, regarding attachment of property in execution of a decree in accordance with the other provisions of Order XXI Rule 58. Sub-rule (2) of Order XXI Rule 58 requires the Court to, while adjudicating the claim or objection, determine all questions arising between the parties to the proceedings or in the representatives under the rules relevant to the adjudication of the claim or the objection.



9. “Adjudication” is defined in P. Ramanatha Aiyar’s Advanced Law Lexicon as “the legal process of resolving a dispute; the process of judicially deciding a case”. The High Court of Madras has, in ***T.K. Dandapani v. Chairman & Managing Director, Bank of India***¹ defined “adjudication” as “a legal process involving hearing by Court, after notice, consideration of legal evidence and pronouncement of judgment thereon.” The expression “determination” stands, on the other hand, defined by the Supreme Court in ***Jaswant Sugar Mills v. Laxmichand***², as “(signifying) an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal.” The matter is clarified still further by the decision in ***Ashok Leyland v. State of T.N.***³, which holds thus:

“94. The word “determination” must also be given its full effect, which presupposes application of mind and expression of the conclusion. It connotes the official determination and not a mere opinion of (sic or) finding.”

10. Viewed thus, it cannot be said that the impugned order is either a determination of the issue in controversy between the parties or an adjudication within the meaning of Order XXI Rule 58 of the CPC. It has merely expressed a view with respect to one of the issues which were raised before it. *At the request of the petitioner*, who sought time to clarify a particular aspect, the matter was adjourned to 20th May, 2022. Mr. Shukla, learned Counsel for the petitioner submits that the

¹ 2001 2 LLJ 384 (Mad)

² AIR 1963 SC 677

³ (2004) 3 SCC 1



matter now stands adjourned to 16th September, 2022.

11. No conclusive adjudication or determination, even of the entitlement of the petitioner to interest can be said to have taken place, within the meaning of Order XXI Rule 58, by the impugned order. The learned ADJ is still *in seisin* of the proceedings, which are next listed before him on 16th September, 2022.

12. Till there is a closure, by the learned ADJ, of the issue with which the petitioner is aggrieved, I am of the opinion that the present appeal would not be maintainable under Order XXI Rule 58(4). Though learned Counsel for the appellant sought to contend that the learned ADJ had expressed the opinion that he would not entertain any further arguments on the aspect of the entitlement of the petitioner, as the decree holder before the learned ADJ, to interest, no such observation is to be found in the impugned order. All that is apparent is that the learned ADJ has expressed a view and has fixed the matter for further hearing on 16th September, 2022 on a request made by the petitioner itself.

13. Reserving liberty with the petitioner, therefore, to approach this Court at the appropriate stage, if aggrieved, this appeal is dismissed as not maintainable.

C.HARI SHANKAR, J

MAY 31, 2022/kr