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

Reserved on: 20.11.2023
Pronounced on: 15.12.2023

+ **CM(M) 220/2022 & CM APPL. 12309/2022**

M/S CNA EXPORTS PVT LTD Petitioner
Through: Mr.Sanjay Rathi & Mr.R.K.
Jain, Advs.

versus

JANAK DATWANI & ORS. Respondents
Through: Mr.Dhruv Gupta & Ms.Bhumi
Agarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed challenging the order dated 25.01.2022 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional District Judge-04, South-East, Saket Courts, New Delhi (hereinafter referred to as the 'Executing Court') in Execution Petition No. 29/2019, titled *M/s C.N.A. Exports Pvt. Ltd. v. Sh. Janak Datwani & Ors.*, dismissing the application filed by the petitioner seeking appointment of a Local Commissioner.

2. The above Execution Petition has been filed by the petitioner seeking execution of the Final Decree of partition of the property bearing No.6, Friends Colony (West), New Delhi, (hereinafter referred



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to as the 'Suit Property') dated 17.04.2007 passed by this Court in CS (OS) No. 698/2003, directing as under:-

"...it is ordered that a final decree of partition in respect of property bearing No.6, Friends Colony West, New Delhi be and the same is hereby passed directing that Portions "A" "B" & "C" as shown in the site plan "Y" shall fall to the share of defendant No.3 (M/s CNA Exports Pvt. Ltd.), defendant No.2 (M/s In Exports Pvt. Ltd.) and the plaintiff (Mrs. Jaskirat Datwani) respectively.

It is further ordered that portions "A1" "B1" & "C1" as shown in the site plan "X" with respect to servants quarters shall fall to the share of defendant No.2 (M/s In Exports Pvt. Ltd.), defendant No.3 (M/s CNA Exports Pvt. Ltd.), and the plaintiff (Mrs. Jaskirat Datwani) respectively.

It is further ordered that a wall measuring 9" ½ inches shall be got constructed vertically to physically divide the aforesaid property as per plans "X" and "Y" by the local commissioner Ms.Deepa Arya Madhok, Advocate, with the assistance of the same architect.

It is further ordered that all the parties shall cooperate at the time when the wall would be constructed and no hindrance will be caused by the parties.

It is further ordered that the plans marked as "X" and "Y" shall form part of the decree."

3. The petitioner herein filed an application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 before the learned Executing Court praying for appointment of a Local Commissioner with the following directions:-

"a) To demarcate the CNA Exports Pvt. Ltd. Decree Holder Company's share in accordance with the final decree of partition



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dated 17.04.2007 to the extent of 38% situated in 6, Friends Colony (West), New Delhi.

b) To under his supervision have erected a boundary wall of 10ft. in height and fixing of an iron gate to ensure independent access and security thereby protecting the Decree Holder Company's share to the extent as detailed in the partition decree dated 17.04.2007."

4. The above application has been dismissed by the learned Executing Court vide the Impugned Order, observing as under:-

"7. It is seen that the Order dated 26.07.2010 was challenged by the Decree Holder before the Hon'ble Supreme Court in SLP (C) No. 32452- 32453 of 2010, wherein the Hon'ble Supreme Court by the Order dated 05.12.2017 found no ground to interfere with the Order dated 26.07.2010. The Receiver has been in possession of the Decree Holder portion of the said property since 2010 and has been filing regular reports.

8. Since the portion of the Decree Holder in the said property is already in possession of the Receiver as the issue of shareholding of the Decree Holder is a subject matter of 6 suits pending before the Hon'ble Delhi High Court. Till the said suits are decided, the Receiver ought to continue with the possession of the portion of the said property belonging to the Decree Holder in terms of Order dated 26.07.2010 passed by the Hon'ble Delhi High Court which has been confirmed by the Hon'ble Supreme Court vide Order dated 05.12.2017."

Petitioner's Submissions

5. The learned counsel for the petitioner submits that the Impugned Order is liable to be set aside by this Court inasmuch as the



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learned Executing Court has failed to appreciate that in terms of the Judgment and Decree dated 17.04.2007 (supra), 38% of the Suit Property fell in the share of the petitioner. The appointment of the Local Commissioner was being sought in order to implement and satisfy the said Decree. He submits that such an application was maintainable in the execution proceedings as the execution proceedings are a continuation of the Suit.

6. He submits that the reliance of the learned Executing Court on the order dated 26.07.2010 passed by a Division Bench of this Court in FAO (OS) No. 152/2008, titled **CNA Exports Pvt. Ltd. v. Mrs.Jaskirat Datwani**, and the Order dated 05.12.2017 passed by the Supreme Court in Special Leave Petition (Civil) No. 32452-32453/2010, titled **CNA Exports Pvt. Ltd. v. Mrs.Jaskirat Datwani**, is ill-founded inasmuch as the Division Bench of this Court had made an *interim* arrangement and that the same was to continue till orders to the contrary were passed in CS (OS) 698/2003. The Supreme Court, by the above order, also clarified that the Court dealing with the said Suit will be free to decide the issues independently. He submits that merely because a Receiver has been appointed by the Court, the same cannot be a ground to deny the appointment of a Local Commissioner inasmuch as the mandate of the Receiver shall stand terminated once the Executing Court executes the decree. In support, he places reliance on the judgment of the Supreme Court in **M/s Sherali Khan Mohamed Manekia v. State of Maharashtra & Ors.** (2015) 12 SCC 192.



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7. He submits that the execution proceedings pending before the learned Executing Court have been legally and validly initiated by the Managing Director of the petitioner company, and the said fact can be ascertained from the Company's Master Data. The said Managing Director has duly authorized Mr. Anand Datwani to institute the execution proceedings. Mr. Janak Datwani is raising a sham and frivolous dispute on the shareholding of the petitioner company and, in fact, in the reply to IA No. 7048/2007 filed in CS(OS) 698/2003, he had admitted that Smt. Jamna Datwani is the Managing Director of the petitioner company. The learned counsel for the petitioner submits that even in the written statement filed by the respondent no.1 herein/defendant no.1 in CS (OS) 698/2003, he had admitted that he does not own any share in the Suit Property in his individual capacity. He submits that therefore, respondent no.1 cannot be allowed today to agitate that the Execution Petition is not maintainable or oppose the appointment of the Local Commissioner to aid the execution of the decree.

8. He submits that the learned Executing Court has refused to exercise the jurisdiction vested in it and, therefore, the present petition would be maintainable. In support, he places reliance on ***Rahul S. Shah v. Jinendra Kumar Gandhi***, (2021) 6 SCC 418 and ***Smt. Ved Kumari (dead, through legal representative Dr. Vijay Aggarwal) v. Municipal Corporation of Delhi***, 2023 SCC OnLine SC 1065.

Respondent's Submissions



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9. On the other hand, the learned counsel for respondent no.1 submits that the present petition is not maintainable. He submits that a petition under Article 227 of the Constitution of India can be filed only where the subordinate Court has assumed jurisdiction beyond its competence or has exercised the same in a manner contrary to law or has caused a failure of justice. In support, he places reliance on the judgment of the Supreme Court in ***Surya Dev Rai v. Ram Chander Rai***, (2003) 6 SCC 675. He submits that in the present case, none of the above conditions have been satisfied by the petitioner and, therefore, the petition is not maintainable.

10. He further submits that by the order dated 26.07.2010, the Division Bench of this Court had appointed a Receiver to assume possession of the portion of the Suit Property allocated to the share of the petitioner herein on account of lack of a definitive shareholding of either of the parties. The said Receiver continues to perform her duty and, therefore, the application filed by the petitioner itself was not maintainable. He submits that, in fact, by filing the application, the petitioner/Mr.Anand Datwani is trying to achieve indirectly what he could not achieve directly, that is, possession of the Suit Property falling in the share of the petitioner herein. He submits that the dispute with respect to the shareholding of the petitioner company is pending in six different Suits. The plea of Mr.Anand Datwani that he is entitled to represent the petitioner company as he holds a majority shareholding in the same, has already been rejected by the Division Bench of this Court in its order dated 26.07.2010. The application



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filed by the petitioner was, therefore, rightly rejected by the learned Executing Court.

11. He submits that, in fact, in the absence of the Receiver appointed by this Court, the application filed by the petitioner was not maintainable.

Findings and Analysis

12. I have considered the submissions made by the learned counsels for the parties.

13. There is no dispute on the Decree dated 17.04.2007 passed by this Court in CS (OS) 698/2003, which holds that the petitioner is entitled to 38% share in the Suit Property and to the area specifically demarcated in the site plans attached to the said Decree.

14. An application was earlier filed by Mr. Anand Datwani claiming himself to be the Director of the petitioner company, which came to be dismissed by an order dated 01.02.2008, passed by a learned Single Judge of this Court. In the name of the petitioner company, the said order was challenged by Mr. Anand Datwani by an appeal, being FAO (OS) 152/2008. The said appeal was disposed of by the Division Bench of this Court vide its judgment and order dated 26.07.2010, *inter alia* observing as under:-

“5. The dispute, succinctly stated, relates to the shareholding of the Appellant Company. Learned counsel for the Applicant has not convinced us, and there is no clear evidence in this regard, that his client, Mr. Anand Datwani, has the majority shareholding. What is evident to us is that the shareholding is fragmented



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and is held, inter alia, by various members of the Datwani family.

6. A Local Commissioner had earlier been appointed and under her supervision a one brick demarcation had been erected/placed on the suit property.

7. Learned counsel for Respondent No.2/In Export Private Limited and Respondent No.3 has answered affirmatively to our suggestion that awaiting any decision with regard to the ownership and control of the Appellant Company, a Receiver may be appointed in respect of the Green portion. This appears to us to be a just and expedient solution since, avowedly, it is the Appellant Company which is entitled to ownership and enjoyment of the Green portion. We have already observed that Mr. Anand Datwani has failed in establishing, even prima facie, that he is the majority shareholder of Respondent No.2. It is his grievance that because his mother, Mrs. Jamna Datwani, had sided with his brother, Mr. Janak Datwani, the Applicants' efforts to take possession of the Green portion on behalf of the Appellant Company had been defeated and rendered futile. Presently, it transpires that their mother, Mrs. Jamna Datwani, is siding with the Appellant, but keeping the circumstances in view, we think that this may well be a transient phase. In any event, even if the shareholding of Mrs. Jamna Datwani is added to that of Mr. Anand Datwani, they would not have become majority shareholders in the Appellant Company. In this state of flak, we think it imperative that a Receiver should be appointed in respect of the Green portion.

8. Learned counsel for Respondent Nos.2 and 3 has denied that Mrs. Jamna Datwani was ever denied access to the room in her occupation. He confirms that she is free to occupy it whenever she chooses provided she



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resumes residing there herself. The said room is enclosed in black border in the Site Map. It is clarified that Mrs. Jamuna Datwani may come to reside in the said room herself. This liberty is extended exclusively to her.

9. We accordingly appoint Ms. Sonia Singh, Advocate, A-14, Nizamuddin(East), New Delhi - 110 013, Phone NO.46502980 as the Receiver with instruction to take possession of the Green portion as shown in the sketch map. If the demarcation is subsisting and clear, no further action in that regard needs to be taken. We do not think it necessary to construct a higher wall or brick structure since that would impede enjoyment of easementary rights of the occupants/owners of the blue portion. However, none of the parties shall be entitled to use the Green portion without the leave of this Court. The Receiver shall protect the Court's possession of the Green portion. He shall be entitled to unimpeded ingress and egress to the Green portion. The Receiver shall file a bi-annual Report to this Court in this context. The Receiver shall be paid a monthly fee of Rs.2,000/- per month, to be borne by both the Applicant and Respondent Nos.2 and 3, which shall be borne equally by Mr. Anand Datwani and Mr. Janak Datwani and shall be paid before the seventh day of each calendar month. This arrangement shall continue till orders to the contrary in CS(OS) No.698/2003."

15. Mr. Anand Datwani, in the name of the petitioner company, challenged the said order before the Supreme Court by way of Special Leave Petition (Civil) No. 3242-3243/2010. The same were dismissed by the Supreme Court observing as under:-

*"Heard learned counsel for the parties.
We do not find any ground to interfere with the impugned order.*



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However, the Court dealing with the Suit being CS (OS) No. 698/2003 or any other proceedings will be free to decide the issue independently.

The special leave petitions are, accordingly disposed of.

Pending application(s), if any, shall also stand disposed of.”

16. It is not the case of the petitioner that the Receiver appointed by this Court vide its Judgment and Order dated 26.07.2010 has been removed under any order passed by a competent Court.

17. In terms of the Order passed by the Division Bench of this Court, the possession of the Suit Property falling in the share of the petitioner herein is in the hands of the Receiver. There is also a finding that the Court did not consider it necessary to construct a higher wall or brick structure to demarcate the said portion as it would impede the enjoyment of the easement rights of the occupants/owners of the blue portion marked in the site plans with the Decree. It was further directed that none of the parties shall be entitled to use the portion which has been demarcated in the share of the petitioner herein, and the Receiver shall protect the Court's possession over the same.

18. It is also not contested by the petitioner that there are other litigations pending between the parties with respect to the shareholding of the petitioner company and as to who can represent the petitioner company. Mere reliance on the pleadings of respondent no.1 in a reply to an application or in the written statement filed in CS (OS) 698/2003, in my view, cannot be held to be sufficient, at this



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stage, to hold that Mr. Anand Datwani can represent the petitioner company, especially in light of categorical findings of the Division Bench in the judgment and order dated 26.07.2010 reproduced hereinabove, and in absence of any order to the contrary.

19. In view of the above, the learned Executing Court did not commit any error in dismissing the application filed by the petitioner herein. Such an application, if any, could have been filed only by the Receiver appointed by this Court.

Conclusion

20. I, therefore, find no merit in the present petition. The same, along with the pending application, is dismissed.

21. There shall be no order as to costs.

NAVIN CHAWLA, J.

DECEMBER 15, 2023/Arya/am/RP