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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 19th April, 2023

+ **W.P.(C) 3326/2020**

SHRI PRATAP RAJ PANDEY & ORS Petitioners

Through: Mr. Fanish K Jain, Mr. Ankit Garg,
Mr. Nischay Ahuja, Mr. Manak Goel
and Mr. Rohit Yadav, Advocates (M:
9811144749).

versus

**INVESTOR EDUCATION AND PROTECTION FUND
AUTHORITY & ANR.** Respondents

Through: Ms. Shiva Lakshmi, CGSC with Ms.
Srishti Rawat, Advocate (M:
9818054806).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by three brothers i.e. Shri Pratap Raj Pandey, Shri Prabhat Raj Pandey and Shri Pradip Raj Pandey all sons of late Shri. Piyush Raj Sharma Pandey and late Mrs. Prem Kumari Pandey. The Petitioners are Nepalese citizens. The parents of the Petitioners, who were also Nepalese citizens had purchased a total of 2182 shares of M/s Ultratech Cement Ltd.
3. After the demise of the parents, a case for partition of the properties of the parents was filed in 2017 before the District Court, Kathmandu, Nepal. A decree of compromise was passed by the said court dated 11th May 2017 as per which the shares were to be divided equally between the brothers. The relevant clause of the said deed of compromise is set out below:-

“The plaintiff and defendant ourselves, in spite of our litigation against each other, have made a mutual understanding at home to settle our dispute by compromising the case and the content of the compromise is that; the shares of different companies registered in the name of late father Mr. Piyush Raj Pandey and late mother Mrs. Prem Kumari Pandey in India, which are due for distribution under ‘Partition of Property’, are our ancestral property and three brothers do have equal rights over them so that we have agreed to compromise the case upon dividing entire above stated shares registered in the name of late father Mr. Piyush Raj Pandey and late mother Mrs. Prem Kumari Pandey in India and bonus and other benefits thereof into three equal halves as mentioned in the particular and transfer each stake into the name of the plaintiffs and defendant accordingly with equal entitlement according to this deed of compromise so that we came with this joint application pursuant to Clause 182 of “Of Court Arrangement”. Hence, let execute the deed of compromise in the said terms upon clearing the hearing date by today. By saying so we have prepared and typed this deed of compromise pursuant to joint application and affixed thumb impression and signature thereof at our free will and submitted to Kathmandu District Court.”

4. Certified copy of the said decision was also verified and legalized by the Indian Embassy in Kathmandu. In the meantime, due to non-claiming of the dividends by the parents for a period of more than seven years, the shares were locked and now lie in the custody of the Respondent i.e. Investor Education and Protection Fund Authority.
5. On the strength of the compromise decree passed by the District Court, Kathmandu, the Petitioners filed three applications before the

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Respondent-Authority seeking transfer of the shares in their respective names. However, the same was not considered by the Respondent-Authority leading to the filing of ***Writ Petition (Civil) No. 680/2020*** titled '***Pratap Raj Pandey & Ors v. Investor Education and Protection Fund Authority & ANR.***'

6. In the said writ petition, vide order dated 20th January, 2020 the Court directed that the application of the Petitioners ought to be decided within four weeks. The operative portion of the said order is set out below.

"1. This petition has been filed praying for a direction to the respondent no.1 to consider the application of the petitioners for refund of the shares and to refund the shares to the petitioners in case the petitioners are held entitled to the same.

2. It is the case of the petitioners that the parents of the petitioners, who were citizen of Nepal, had purchased the shares in various companies in India including those of M/s Ultratech Cement Ltd. A case of seeking partition of the properties of the parents of the petitioners was filed before the District Court, Kathmandu, Nepal, where, based on a settlement, a decree dated 11.05.2017 has been passed. The petitioners have thereafter applied for transmission of the shares held by the parents of the petitioners and except for the shares in M/s Ultratech Cement Ltd., all other shares have been transmitted to the petitioners. It is further stated that even for the shares of M/s Ultratech Cement Ltd., M/s Karvy Computershare Pvt. Ltd., being the Registrar have approved the transmission of such shares to the petitioners but the shares were already transferred in favour of Investor Education and Protection Fund. An application for transfer and release has been made to the respondents, which has not been decided in spite of repeated representations.

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3. In view of the limited prayer of the petitioners, the respondent no.1 is directed to consider and decide the application of the petitioners within a period of four weeks from today. In case the application of the petitioners is rejected, the respondent no.1 shall communicate the reasons thereof to the petitioners within the same period and it would be open to the petitioners to challenge the same in accordance with the law. In case the application is accepted, the shares shall be duly transmitted to the petitioners.”

7. The Petitioners’ applications were again considered by the Respondent-Authority which rejected the same vide its order dated 18th February, 2020. The stand of the Respondent-Authority is that the compromise decree passed by the Kathmandu District Court, Nepal is not an executable decree in India as Nepal is not in the list of reciprocating territories notified by the Central Government under Section 44A of the CPC. The relevant portion of the said impugned order is set out below.

“ORDER

Subject: Refund of claim filed by Shri Pratap Raj Singh & Ors. w.r.t. M/s Ultratech Cement Ltd.- reg.

WHEREAS Shri Piyush Raj Pandey and Shri Prem Kumari Pandey (both deceased) Nepalese Citizen held 1637 and 545 Equity shares respectively totalling to 2182 Equity Shares of M/s Ultratech Cement Ltd.

AND WHEREAS these shares were transferred to IEPF on 30.11.2017.

AND WHEREAS, in the event of the death of both the parents, Shri Pratap Raj Pandey, Shri Pradip raj Pandey and Shri Prabhat raj Pandey (al sons of the deceased holders) made claims vide SRNs G73053715, H37260869 & H34259093 of these shares

proportionately (a 727, 727 and 728 respectively) on the basis of the settlement between the parties in the District Court, Kathmandu, Nepal bearing case No. 073-CP3841, which was decided by the said court on the basis of the settlement between the parties on 11.5.2017. it was held in the said judgement that all the three petitioners are entitled to equal shares.

AND WHEREAS Shri Pratap Raj Pandey, Shri Pradip raj Pandey and Shri Prabhat Raj Pandey, all sons of both deceased holders, filed separate claims of such shares for transmission to them as successors with appropriate proportion of claims.

AND WHEREAS, the matter has been examined in the Authority. The compromise decree dated 11/5/2017 through which the claimant is seeking release of shares and dividend from the IEPF, is from the Katmandu District Court, Nepal. Furthermore, the deceased parents of the claimant were citizens of Nepal. Section 44A of the Civil Procedure Code, 1908 (CPC) pertains to execution of foreign decrees passed by Courts in reciprocating territories. It provides that decree passed by Courts in foreign countries are executable in India, only if the said decree are passed by notified superior courts in reciprocating countries. The Government of India has till dated notified only certain countries as reciprocating countries.

AND WHEREAS, even in case a decree is passed by a notified superior court of a reciprocating territory, the same should be filed before the concerned District Courts in India for execution of the same, if the decree does not fall within the exception clauses under Section 13 of the CPC.

AND WHEREAS, in the instant matter, the compromise decree dated 11/5/2017 has been passed by the

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Kathmandu District Court of Nepal, which does not appear to be a reciprocating territory for India, and, as such, the said compromise decree does not seem to be directly executable in India. The claimant in this case would have to file a suit before the concerned court in India for adjudication and subsequent execution of any decree (by the Indian Court) in the matter.

AND WHEREAS, the compromise decree dated 11/05/2017 passed by the Kathmandu District Court in Nepal does not appear to be executable in India due to the fact that Nepal does not feature in the list of reciprocating territories notified by the Central Government under Section 44A of the CPC.

THEREFORE, in the absence of such execution, the claims made cannot be processed further and accordingly, the Competent Authority in Investor Education & Protection Fund Authority has rejected the claims filed vide SRNs G73053715, H37260869 & H34259093.”

8. It is this order which is impugned before the Court. Mr. Jain, Id. Counsel appearing for the Petitioners submits that Section 44A has no application in the present case. In his submission, Section 44A would apply only in cases where there are money decrees to be executed through the provisions of the CPC. Reliance is placed upon the judgment of the Id. Supreme Court in ‘*M.V.A.L. Quamar versus Tsavliris Salvage (International) Ltd.*’, [2000 AIR (SC) 2826]. The relevant portion of the said judgment is set out below:-

“49. Incidentally, a plain reading of Section 44-A would depict the following components:

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- (i) The decree must be of a superior Court of a reciprocating territory;*
- (ii) the decree is to be filed in a District court;*
- (iii) The decree may be executed in India as if it had been passed by the District Court;*
- (iv) Provisions of Section 47 of the CPC shall apply, subject to the exceptions specified in clauses (a) to (f) of Section 13;*
- (v) "Decree" means any decree under which a sum of money is payable. (See Explanation II). "*

9. He further submits that the decree having not been challenged by any one before the Authority or before any other Court, the Authority cannot go behind the said decree and seek enforcement of the decree under CPC being a foreign decree. Finally, it is also submitted that the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 ('Rules') of the Authority were amended only w.e.f. 20th September, 2019. However, the Petitioners' application was filed prior to the said Rule coming into force in January, 2018 itself and accordingly it is submitted that retrospective application of the Rule cannot be permitted. On the strength of all these submissions, it is stated that the shares ought to be transferred.

10. On behalf of the Respondent, Ms. Shiva Lakshmi, Id. CGSC submits that the decree being a decree of a foreign Court, the Authority cannot recognise the same automatically. Thus, the applications of the Petitioners have been rejected. The Ld. counsel also submits that the said decree ought to be examined by an Indian Court before an order can be passed.

11. Insofar as foreign judgments and decrees are concerned, the provisions of the CPC which govern the same are stated as under:-

"13. When foreign judgment not conclusive.- *A foreign judgment shall be conclusive as to any matter*

thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except,-

- (a) where it has not been pronounced by a Court of competent jurisdiction ;*
- (b) where it has not been given on the merits of the case;*
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;*
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;*
- (e) where it has been obtained by fraud;*
- (f) where it sustains a claim founded on a breach of any law in force in India.*

Section 14-Presumption as to foreign judgements.

The court shall presume upon the production of any document purporting to be a certified copy of a foreign judgement, that such judgement was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction"

12. A perusal of the above two provisions would show that it is only in case where the exceptions contained in Section 13 are triggered that a foreign judgment is not to be considered conclusive in India. In fact, Section 14 clearly recognises a presumption in respect of certified copies of foreign judgments, that the same was passed by a Court of competent jurisdiction. The only ground on which the presumption can be rebutted is by proving want of jurisdiction.

13. In the present case, the certified copy of the decree which has been passed by the Nepalese Court is stated to have been duly attested by the

Indian Embassy in Nepal.

14. Section 3(2) of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 is extracted below-

“ Section 3. Powers as to oaths and notarial acts abroad.

(1) Every diplomatic or consular officer may, in any foreign country or place where he is exercising his functions, administer any oath and take any affidavit and also do any notarial act which any notary public may do within a State; and every oath, affidavit and notarial act administered, sworn or done by or before any such person shall be as effectual as if duly administered, sworn or done by or before any lawful authority in a State.

(2) Any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of any person authorised by this Act to administer an oath in testimony of any oath, affidavit or act, being administered, taken or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.”

15. A perusal of the provisions under the CPC and under the 1948 Act would show that once a certified copy of a foreign judgment is produced before any authority, so long as it is certified, it would be presumed to be pronounced by a Court of competent jurisdiction. If the same is attested by an official of the Indian Embassy in the said country, the document can also be admitted in evidence.

16. The question of reciprocating or non- reciprocating territory would apply only when the execution of foreign judgments or orders is being sought. In the present case, the document is being produced only for the purposes of the same to be taken on record by the authority to recognize the

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rights of the Petitioners in the shares. Thus, this is not a case which involves execution of a decree of foreign Court.

17. In any event, in the decisions of *CS(OS) 894/2001* titled '*La Chemise Lacoste & Another v. Crocodile Indl. Pte. Ltd.*' [Delivered on 18th January 2007] and *CS (OS) 1152/2013* titled '*Captain Aaditya Jugal Garg v. The Kingfisher Airlines Limited*' [Date of decision : 3rd April 2014] , Courts have even recognized the affidavits and other similar documents which are notarized in non- reciprocating territories.

18. The Petitioners are all three brothers, who are siblings in whose favour the said assets of the parents have devolved. The decree of the foreign Court of Kathmandu is clear to the effect that the Petitioners have equal shares in the assets of their parents.

19. Accordingly, there is no further enquiry which would be required in the present petition. The impugned order dated 18th February, 2020 is set aside. The Respondent shall refund the shares to the Petitioners in terms of their applications bearing no. SRN Nos. G73053715, H37260869 & H34259093.

20. The said transfer shall be made within a period of four weeks.

21. The present petition is disposed of in these terms. All pending applications, if any, are also disposed of. There shall be no order as to costs.

PRATHIBA M. SINGH
JUDGE

APRIL 19, 2023

mr/rp

corrected & uploaded on 29th April, 2023