

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

EC/494/2019
IA NO: GA/1/2023

RAJEEV SWAIKA
VS
SUNEEL SWAIKA AND ORS

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 9th January, 2024.

Appearance:

Mr. Jishnu Chowdhury, Adv.

Mr. Debanjan Mandal, Adv.

Mr. S. K. Trivedi, Adv.

Mr. I. Hasan, Adv.

Mr. Aritra Basu, Adv.

Mr. Sanket Sarawgi, Adv.

Mr. Ratnanko Banerji, Sr. Adv.

Mr. D. N. Sharma, Adv.

Mr. Ratnesh Kumar Rai, Adv.

Mr. Sayantan Das, Adv.

1. This is an application for execution of an award dated 9 September, 2010.
2. Briefly, Bijoy Kumar Swaika (since deceased) had two sons, Rajeev Swaika (the decree holder) and Suneel Swaika (the judgment debtor no.1). By an agreement dated 19 August, 2010 the parties referred all their disputes and differences in respect of their joint family assets properties and businesses to arbitration.
3. By an award dated 9 September 2010, the Arbitral Tribunal partitioned and awarded the properties and businesses in different lots. The assets and properties contained in the Second Schedule of the award were awarded to the decree holder. The assets and

properties in the Third Schedule of the award were awarded to the judgment debtor no.1. The assets and properties in the Fourth Schedule of the award were to remain with Ram Das Madhav Prasad HUF represented by their father, Bijoy Kumar Swaika being the Karta and coparcener of the Ram Das Madhav Prasad HUF alongwith his wife Smt. Kusum Swaika being a member of the HUF.

4. Clause 6(e) of the award stipulates as follows:

Each party will co-operate with the other and will enter into and execute a Deed of family arrangement recording the separation of Sri Rajeev Swaika and Sri Suneel Swaika from the said HUF family and the awarding of the properties in favour of each of them as stated in paragraph (a) and paragraph (b) and paragraph (c) above and shall make all such other deeds and documents and deeds of transfer of shares of the limited companies as shall be required to give effect to this award.

5. Pursuant to and in terms of the award, the parties had also entered into a Family Arrangement dated 29 September, 2010 in writing inter-alia recording the separation of the three groups.

6. In or about June 2012, the judgment debtor no.1 filed an execution proceeding being EC 199 of 2012 praying for the following reliefs:

- a) Direction be given upon the parties to have the deed of family arrangement registered with a direction to bear there proportionate costs and charges.*
- b) Alternatively, a Special Officer be appointed to execute and register the family settlement with the Registrar of Assurance.*

- c) *Direction be given upon the Municipal Authorities to mutate the name of the petitioner in the records of the appropriate Municipal Authorities and the respondents be directed to render all co-operation to the petitioner by executing necessary documents.*
- d) *Direction be given to the respondent to transfer the shares of M/s. Auto Resins Pvt. Ltd. in favour of the petitioner.*

7. By an order dated 10 April 2013, EC 199 of 2013 was disposed of by appointing Special Officers to formally register the deed of Family Arrangement dated 29 September 2010 with the Registrar of Assurances. The parties had initially attempted to execute the family settlement as a deed of partition but the same was rejected. Ultimately, by an order dated 30 November, 2015 (unknown to all the parties that the execution application stood disposed of), the attempt to register the Family Arrangement as a Deed of Partition in order to relieve the parties from making payment of the assessed stamp duty was rejected.
8. Thereafter, on 18 August 2017 two separate draft deeds of separation were forwarded by the judgment debtor no.1 to the decree holder. On 4 December, 2018 the Advocates appearing on behalf of the decree holder issued a letter recording that in terms of the award, the parties had taken possession of their respective assets and had also entered into a family settlement. However, the same had not been executed. A draft deed of separation was also forwarded to the Advocates appearing on behalf of the judgment debtors for execution.

9. In or about early June 2019, the judgment debtor no.1 filed an application seeking the following reliefs:

- a) Direction be given upon the parties to execute, sign the said deed of separation of Suneel Swaika from Ramdas Mahadev Prasad HUF and allotment of equal 1/4th share in the said HUF to Suneel Swika before the appropriate Registering Authority;*
- b) Alternatively a Special Officer be appointed to execute and register the deed of separation and to have the same registered with the appropriate Registering Authority.*

10. The said application was numbered as GA 2605 of 2013 in EC 199 of 2012. In the said application it was inter-alia averred as follows:

9. Your petitioner states that as the said deed of family arrangement was a registerable document in as much as the said deed declared, assigned and extinguished the right, title and interest of any immovable property of above Rs.100/- the same was required to be registered.

16. However, as no registered document has been executed recording separation of undivided equal share of petitioner from the said HUF you petitioner is not in a position to use, enjoy and deal with the properties allotted to the said petitioner effectively in the facts and circumstances aforesaid, it is necessary that a document be executed recording separation of your petitioner from the said HUF.

11. By an order dated 27 September 2016, GA 2605 of 2013 filed by the award holder was disposed of the ground that the main execution

application being EC 199 of 2012 had been disposed of and both parties were granted liberty to apply afresh for the self-same cause.

12. In this background, the present execution application has been filed inter-alia seeking directions for execution of documents to effect a separation of the parties in terms of Clause 6(e) of the award. The judgment debtor no.1 has also filed an application under section 47 of the Code of Civil Procedure, 1908 challenging the executibility of the award. In the meantime, both Bijoy Kumar Swaika and his wife Kusum Swaika have expired and there are differences between the two brothers pertaining to the estate of the Late Bijoy Kumar Swaika.

13. It is submitted on behalf of the judgment debtors that there has been inordinate delay in the filing of the execution application. A question of maintainability of this execution application has also been raised in view of the orders passed in the earlier round of execution proceedings. It is further alleged that the directions contained in the award dated 9 September 2010 have already been given effect to and there is no further scope of passing any further orders in execution of the award. The award dated 9 September 2010 does not refer to either of the two deeds of separation being Annexures G or H. Hence, no reliefs can be granted in respect thereof. It is also urged that the award is declaratory in nature and inexecutable. It is also contended that the prayers made in this execution application if granted would amount to alteration and variation of the decree. It is also contended that after the demise of the said Bijoy Kumar Swaika and Kusum

Swaika there are outstanding disputes which have arisen in respect of the properties allotted to the Late Bijoy Kumar Swaika, Kusum Swaika and Ramdas Madhav Prasad Swaika HUF. In any event, any order passed in this application would result in only part execution of the award. In support of such contentions, the judgment debtors rely on the decisions in *Sanwarlal Agarwal vs. Ashok Kumar Kothari* (2023) 7 SCC 307, *State of M.P vs. Mangilal Sharma* (1998) 2 SCC 510 and *Shiv Charan Dindayal Jain vs. Mohanlal* (2004) 72 DRJ 178.

14. On behalf of the decree holders it is contended that the judgment debtor no.1 has procrastinated and thwarted the execution of the award. Diverse proceedings including a suit being CS No.216 of 2019 has been filed before this Court. Admittedly, all the parties have acted and dealt with the assets and properties allotted to them under the award. There has been no challenge to the award and the same has attained finality.

15. Family arrangements are governed by a special equity peculiar to themselves. The object of the arrangement is to protect the family from long drawn out litigation. Courts while deciding the rights of the parties in cases of family disputes generally to take the broadest view of the matter in the interests of the family and in bringing an end to such disputes. [*Kale vs. Deputy Directors of Consolidation & Ors.* (1976) 3 SCC 119 and *Sita Ram Bhama vs. Ramvatar Bhama* (2018) 15 SCC 130].

16. On a plain and ordinary reading of Clause 6(e) of the award, it would be evident that the award contemplates separation of the assets, properties and business of the Swaika family. There are separate and distinct properties which have been allotted to each of the three groups. All the parties have unequivocally accepted, acquiesced and acted upon the award (*Narayan Prasad Lohia vs. Nikunj Kumar Lohia & Ors. (2002) 3 SCC 572* and *Quippo Construction Equipment Limited vs. Janardan Nirman Pvt. Ltd. (2020) 18 SCC 277*).
17. By filing the earlier execution proceedings, i.e. EC 199 of 2012, the judgment debtor no.1 had on a prior occasion sought for separation of the assets and properties allotted to him and his group in terms of the award. The true scope of clause 6(e) of the award is to inter-alia effect a separation in respect of the separate lots i.e. Schedule II and Schedule III which are allocated to the decree holder and the judgment debtor no.1 respectively and execute all necessary documents in respect thereof.
18. Time plays its own role in every litigation, moreso in family disputes. The co-operation of all the parties to execute all such documents has been expressly directed in the award. At an earlier stage, undoubtedly, the parties were *ad idem* insofar as their joint attempt to register the family arrangement as a deed of partition was concerned. Obviously, the joint intent of all the parties at that stage was to save on stamp duty, registration fees etc. The award has been unequivocally accepted and acted upon by all the parties. Some of the assets and properties

have also been dealt with, transferred and sold by each of the parties pursuant to the award.

19. By filing the earlier proceedings, the judgment debtors are now estopped from taking an inconsistent and irreconcilable position insofar as the award is concerned. The award is not a declaratory award but contemplates positive directions for necessary execution of further documents to give effect to the separation by and between them [*State of Madhya Pradesh vs. Mangilal Sharma (1998) 2 SCC 510*].
20. It is true that the subsequent event of the demise of Bijoy Kumar Swaika and his wife Kusum Swaika may have created a stalemate insofar as the assets and the properties mentioned in the Fourth Schedule are concerned but that cannot be a reason to deprive the decree holder of the remaining fruits of the decree. There is also no merit in the submission that the award has been fully implemented and there are no obligations of either of the parties which remain to be performed. In fact, it would be evident from the prayers made in the GA No.2605 of 2016 that the judgment debtors accepted the position that further documents to effect separation needed to be necessarily executed.
21. There are also pending disputes which have arisen after the death of the Late Bijoy Kumar Swaika and his wife Kusum Swaika which have culminated in the filing of a suit pending before this Court. This would naturally take its own course. In the meantime, there is no reason as to why the separation of the properties allotted both to the decree

holder and the judgment debtor no.1 should not be given effect to. The plea of the judgment debtors to insist on registration of the family settlement would inevitably entail a huge monetary burden on the decree holders which is unacceptable and commercially imprudent. Thus, to insist on registration of the entirety of the award or the family settlement is unjustifiable.

22. All the decisions cited by the judgment debtors are inapposite and distinguishable. In *Sanwarlal Agarwal & Ors. Vs. Ashok Kumar Kothari & Ors. (Supra)*, there was a question of outstanding loans between the parties which was not the subject matter of the decree. Both the Trial Court and the Division Bench had expanded the scope of the decree in interpreting the same. Similarly, there is no quarrel with the proposition laid down in the decision of *State of Madhya Pradesh vs. Magilal Sharma (Supra)*. However, the same is distinguishable and inapplicable to this case.

23. For the above reasons, there are no grounds to oppose the prayers made for in this application. There shall be an order in terms of the prayers (a) and (c) of the Tabular Statement. Mr. Prabhakar Choudhury, a member of the Bar Library is appointed as a Special Officer to implement this order and to oversee execution of the deeds of separation in terms thereof. The minor typographical error in the draft deed forwarded by the Advocates of the decree holder is to be ignored. The remuneration of the Special Officer is assessed at 3000 gms to be shared equally by both the parties. The parties are left to

take appropriate steps in accordance with law insofar as the assets and properties in the Fourth Schedule of the award are concerned. With the aforesaid directions, EC 494 of 2019 is disposed of. GA 1 of 2023 stands dismissed.

(Ravi Krishan Kapur J.)

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