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

Date of decision: 10.04.2024

+ **OMP (ENF.) (COMM.) 208/2022 & EX.APPL.(OS) 944/2023**

KARMYOGI SHELTERS PVT. LTD.

..... Decree Holder

Through: Ms Malvika Trivedi, Sr. Adv. with
Mr Ankit Yadav, Ms Prakriti Rastogi,
Ms Sujal Gupta and Mr Shailendra
Slaria, Advs.

versus

BENARSI KRISHNA COMMITTEE & ANR.

..... Judgement Debtors

Through: Mr Ajay Verma, Sr. Adv. with Mr
Ishaan Verma, Ms Diviani K Verma
and Mr Armaan Verma, Advs. for JD-
1, 2A-2C.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking enforcement of the Award dated 12.05.2004.

The operative portion of the Award reads as under:

“83. Accordingly, the Award is passed:-

(a) Rejection of the Claim of Claimant for specific performance;

*(b) Rejecting the claim of compensation to the tune of Rs. 8.51
crores claimed by Claimant;*

(c) Rejecting the counter claim made by the Respondent No. 1;

*(d) directing the Respondent No. 1 to refund the sum of Rs. 41
lakhs within three months from the date of Award and if it is not
paid the amount of Rs. 41 lakhs shall carry interest @12% per
annum from the date of award till the date of payment;*



(e) directing the parties to bear their respective costs.”

2. The decree-holder was the claimant in the arbitration proceedings and the judgment debtor no.1 was the respondent no. 1
3. Admittedly, after numerous rounds of litigation, the Award has attained finality and has not been varied or modified.
4. The dispute in the present execution is with regard to the refund of sum of Rs. 41 lakhs. As per the execution petition, the judgment-debtor is required to pay the sum of Rs. 41 lakh along with interest at the rate of 12% per annum from 15.12.2004 till today, which works out to about Rs. 90 lakhs, totalling to about Rs. 1.4 crores.
5. Mr Verma, learned senior counsel appearing for the judgment-debtors on the other hand states that the judgment-debtor No.1 on 27.10.2004, 28.10.2004 and 30.10.2004 tendered the amount of Rs. 41 lakhs along with accrued interest till that date to the decree-holder. The decree-holder refused to accept the said amount and hence the interest meter should stop from that date. For this, he relies on Order XXI Rule 1 CPC and Rule 5 CPC.
6. Mr Verma, learned senior counsel further states that Rs. 43 lakhs was deposited with the Registrar General, Delhi High Court on 09.05.2023 pursuant to an order dated 12.04.2023, without prejudice.
7. He further states that the present execution petition is barred by limitation, he states that admittedly the Award is dated 12.05.2004 and was not challenged by the judgment-debtors. As far as the decree-holder is concerned, the decree-holder has also not challenged the Award as regards the principal amount of Rs 41 lakhs is concerned and hence, the execution petition filed after 18 years is barred by limitation.
8. Lastly, Mr Verma, learned senior counsel states that even though



judgment-debtor No.2 was a party there is no finding against judgment-debtor No.2. The judgment-debtor Nos. 2A to 2C were never parties to the arbitration proceedings and are neither legal representatives of judgment-debtor No.2 and hence, cannot be impleaded as parties to the present execution petition.

9. I have heard learned counsel for the parties.

10. Order XXI Rule 1(1)(b) reads as under:

“1. Modes of paying money under decree.—(1) All money, payable under a decree shall be paid as follows, namely:—

...

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing;”

11. Order XXI Rule 1(5) reads as under:

“(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.”

12. Admittedly, the decree-holder had filed FAO (OS) 578/2009 to challenge the order dated 28.08.2009 passed by the learned Single Judge in OMP No. 51/2005 wherein the learned Single Judge was pleased to dismiss the petition under Section 34 of the Arbitration & Conciliation Act filed by the decree-holder challenging the Award dated 12.05.2004.



13. Paragraphs 25 and 26 of the FAO (OS) 578/2009 reads as under:

“25. Suddenly, on 28/10/2004 the appellants received a telephone call from their counsel at that time who represented them in the Arbitration informing them that the respondents have offered to pay monies to the petitioner in terms of the award and sought instructions as to whether to accept the payment or not. It is submitted that till this point of time the appellants had received no knowledge of an award being made after judgment had been reserved in December 2003.

It is at this stage that appellants requested their counsel for a copy of the award to be provided to them. Consequent to this request they received a copy of the award made on plain paper. This copy of the award, which was on plain paper had the noting ‘Recd/ 13/5/04’ on the top left hand side corner of the first page that it had been received on 13/05/2004 by someone on behalf of the counsel. It did not have name and designation of the person who received it. Despite this the appellant had not received a copy till November 2004 and nor had they been informed of its existence.

26. In November 2004 a letter dated 30/10/2004 was received by the appellant from the advocate for the respondent, Mr. Suresh Oberoi informing them about the award and enclosed a Draft for the sum of Rs. 43,31,850/- being Rs. 41,00,000/- along with interest @ 12% per annum from 12/05/2004 upto 30/10/2004. It is submitted that even this letter did not enclose a copy of the award passed by the Ld. Sole Arbitrator on 12/05/2004. True Copy of this letter dated 30/10/2004 is being attached herewith as Annexure A- 10.”

14. A perusal of the above two paragraphs clearly shows that the decree-holder has admitted that the judgment-debtor No.1 sent a draft for a sum of Rs. 43,31,850/-, i.e. Rs. 41 lakhs along with interest, to the decree-holder by hand. It is the decree-holder who refused to accept the same as the decree-



holder had not received the copy of the Award till that date.

15. I am of the view that Order XXI Rule 1(1)(b) and Order XXI Rule 1(5), CPC clearly mandates that once the amount of the decree along with interest has been tendered to the decree-holder and the decree-holder refuses to accept the same, the interest should cease to run from that date. The fact that the decree-holder was not having a copy of the Award is not relevant for the said purpose.

16. No fault can be found with the judgment-debtors as the judgment-debtors on getting to know of the Award duly complied with the terms of the award and unconditionally tendered the decretal amount along with interest. To burden the judgment-debtors with interest despite the fact that the judgment-debtors unconditionally tendered the decretal amount is not the scheme of Order XXI Rule 1(1)(b) and Order XXI Rule 1(5).

17. The judgment relied upon by learned senior counsel for the decree-holder in ***Nepa Limited through its Senior Manager (Legal) v. Manoj Kumar Agrawal*** 2022 SCC OnLine SC 1736 is distinguishable as that is a judgment under Order XXI Rule 1(1)(a) and not under Order XXI Rule 1(1)(b) and Order XXI Rule 1(5) and proviso to Order XXI Rule 1(5). Para 14 of the said judgment reads as under:

“14. In our opinion, the judgment of the High Court is unsustainable and contrary to the law. In the present case, it is accepted and admitted position that the respondent had withdrawn amount of Rs. 7,78,280/-, which had been deposited by the appellant, on 08.11.2001. In this background, the question of notice in terms of sub-rule (4) to Rule 1 to Order XXI of the CPC becomes irrelevant. In Gurpreet Singh v. Union of India, (2006) 8 SCC 457, a five Judges Bench of this Court had examined Rule 1 to Order XXI of the CPC, post the substitution



by Act No. 4 of 1976, and observed that the effect of the substitution is that upon deposit of the decretal amount in the court and giving notice thereof to the decree holder, there would be cessation of interest from the date of notice to the decree holder of such deposit. Rule 1 to Order XXI of the CPC also postulates payment by the judgment debtor to the decree holder by other specified modes, namely, by postal money order, bank or by payment evidenced in writing, in which case the interest ceases to run from the date money is tendered. The legislative intent clearly, is that the interest would cease on the principal amount paid by the judgment debtor to the decree holder. Issue of notice is to enable the decree holder to withdraw the amount deposited. Therefore, when the deposited amount is withdrawn and gets credited in the account of the decree holder, he is not entitled to interest on the deposited amount, even when there is failure on the part of the judgment debtor to issue notice of deposit. In absence of notice, the interest would cease to run from the date when the amount is transferred/credited in the account of the decree holder. If notice is issued, interest ceases to run from the date of service of notice.”

18. A perusal of the judgment shows that the Hon’ble Supreme Court categorically holds that *under Order XXI Rule 1(1)(a) in case payment is made by the judgment-debtor to the decree-holder by postal money order, bank or by payment evidenced in writing, the interest should cease to run from the date the money is tendered.*

19. In the facts of the present case, I am of the view that the judgment-debtor No.1 tendered the decretal amount by DD, in writing to the decree-holder which the decree-holder refused.

20. Ms Trivedi, learned counsel for the decree-holder argues that as the chapter suggests, Order XXI, CPC relates to payment under judgment and



decree. In the present case, since there was no Award made available to the decree-holder, the said provisions will not apply and there was no execution pending.

21. I am unable to agree with the contention of the learned senior counsel for the decree-holder. The intention of levying of interest is that the judgment-debtor should be liable to pay interest where the judgment-debtor has not made payment to the decree-holder and continues to enjoy the fruits of the money which should have been given to the decree-holder.

22. In the present case, the judgment-debtor before the execution could have been filed, voluntarily tendered the decretal amount along with up-to-date interest and hence cannot be burdened with further interest.

23. The other argument of Mr. Verma, learned senior counsel for the judgment-debtors that the petition is barred by limitation needs to be rejected. Section 36 of the Arbitration and Conciliation Act, 1996, as stood prior to the amendment, reads as under:

“36. Enforcement.- Where the time for making the an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908(5 of 1908) in the same manner as if it were a decree of the Court.”

24. A perusal of the same shows that once a petition under section 34 of the Arbitration and Conciliation Act, 1996 has been filed there was an automatic stay of the execution petition. The said embargo was removed by the amendment in 2015. Hence, the present petition filed in the year 2022 is within the period of limitation.

25. The judgment-debtor Nos. 2A to 2C were not party to the arbitral



proceedings. There is no Award against judgment-debtor Nos. 2A to 2C. Hence, according to me they are neither proper nor necessary parties to the execution petition.

26. For the said reasons, the amount lying deposited in this Court along with accrued interest is directed to be released in favour of the decree-holder and/or its nominee.

27. With the release of the amount, the decree stands satisfied.

JASMEET SINGH, J

APRIL 10, 2024/sr

(Corrected and released on 24th April, 2024.)

Click here to check corrigendum, if any