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

+ EX.P. 319/2014
DDA

..... Decree Holder
Through: Ms. Beenashaw Soni, ASC with
Ms. Mansi Jain, Ms. Ann Joseph,
Advocates.

versus

KOCHAR CONSTRUCTIONS WORKS Judgement Debtor
Through: Mr. Vinayak Marwah, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **01.02.2024**

1. Delhi Development Authority ["DDA"] filed this execution petition in the year 2014, with the following prayers:

"(i) That the warrants of attachment of immovable property of the JD i.e 126, Sunder Nagar, New Delhi may kindly be issued in favour of DH and against the JD and thereafter the property be sold by auction to release the decreed amount and the same after its realization be paid to the Decree Holder.

(ii) That the amount of Rs 50,000 lying deposited in the court in case FAO (OS) 61/2000 may also kindly be released to the Decree Holder.

(iii) Pass any other order or give directions which this court thinks fit and proper in the facts and circumstances of the case."

2. While it is not very clear from the execution petition as to which award/order is sought to be executed, Ms. Beenashaw Soni, learned counsel for the petitioner, states that the present proceedings are for execution of an arbitral award dated 12.03.2014.

3. Disputes between the parties were initially referred to arbitration,



culminating in an award dated 28.08.1993. 14 claims were agitated by the respondent, out of which claim No. 8 is the subject matter of the present proceedings. As far as claim No. 8 is concerned, the learned arbitrator awarded a sum of Rs.12,58,000/-, in favour of the claimant.

4. The award dated 28.08.1993 came to be challenged before this Court. The challenge was ultimately adjudicated in FAO(OS) 61/2000, which was decided by a Division Bench on 16.07.2009. As far as claim No. 8 is concerned, the award was set aside and the matter was remitted to another arbitrator. During the course of proceedings in this Court, DDA had deposited the awarded amount, which had been released to the respondent, except for a sum of Rs.50,000/- which remained deposited in Court. The amount of ₹50,000/- was released to DDA by order dated 05.01.2012.

5. The second learned arbitrator rendered an award dated 17.03.2010, which was also set aside by this Court, by order dated 03.09.2012 in CS(OS)762/2010. The proceedings were remitted to another arbitrator for a decision on claim No. 8.

6. The arbitrator so appointed made an award dated 12.03.2014, in which he reduced the claimed amount from the original of Rs.12,58,000/- to Rs.9,86,675/-. This is the award under execution, in the sense that DDA sought to recover the difference between the amount deposited against claim No. 8 (which had already been released to the respondent, except for Rs.50,000/-) and the amount awarded by the award dated 12.03.2014.

7. However, in the interregnum, the award dated 12.03.2014 was also challenged by the respondent, and the challenge in CS(OS) 1018/2014



came to be decided by a judgment dated 02.08.2016. The Court held as follows:

*“23. In view of such reasons mentioned above, **the impugned award is set aside.** The objections filed by the plaintiff are allowed.*

*24. The award against claim No.8 dated 28th August, 1993 should have been for Rs. 12,18,588/- against the initial award of Rs. 12,58,000/- which had been deposited by the defendant No.1 in this Court. **Out of the amount deposited, Rs. 50,000/- has already been released back to the defendant No.1 /DDA by the order of this court dated 5th January, 2012. Thus, the plaintiff is entitled to receive the remaining amount of a sum of Rs.10,588/-.**”*

[“Emphasis Supplied”]

8. It is evident that the award dated 12.03.2014, of which DDA seeks execution in these proceedings, was set aside by the Court; and the Court came to the conclusion that the plaintiff therein (respondent herein) was entitled to receive an amount of Rs.10,588/-. Consequently, the position today is that DDA seeks execution of an award which has been set aside. In fact, by order dated 23.10.2018 in these proceedings, more than five years ago, the Court recorded the submission of learned counsel for DDA that she would return with instructions as to whether anything survives in this matter. However, further time was taken for this purpose on 14.12.2018, and the matter has remained pending since.

9. Ms. Soni states that the parties have submitted fresh calculations. Her contention is that the amount originally deposited by DDA into Court against claim No. 8 included not just the sum of Rs.12,58,000/- but also interest thereupon. According to DDA, taking into account the final adjudication of claim No. 8 at Rs.12,18,588/- in the judgment dated 02.08.2016, after computation of interest and adjustment of the sum of Rs.50,000/-, an amount of Rs.21,336/- has been overpaid by the DDA to



the respondent.

10. I am of the view that this contention cannot be accepted in these execution proceedings. First, the award of which execution is sought has been expressly set aside by this Court. Second, while doing so, the Court has categorically recorded that, taking into account the amount of Rs.50,000/- which had already been released to DDA, the respondent was entitled to receive the remaining amount of Rs.10,588/-. The contention now advanced is directly in the teeth of this order, which has not been challenged by either party and has attained finality.

11. Ms. Soni's contention is that in the judgment dated 02.08.2016, this Court did not account for the interest amount deposited by DDA. It was for DDA to challenge the said judgment, if it suffered from such an error. It cannot be agitated in execution proceedings, even less so in respect of an award which no longer exists in law.

12. The execution petition is, therefore, disposed of.

PRATEEK JALAN, J

FEBRUARY 1, 2024

“Bhupi”/