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

\+ EX.P. 267/2015

SUSHIL KUMAR SARAF & ORS.

.....Decree Holder

Through: Mr. Ajay Garg, Mr. Rajiv Shukla, Ms. Shivani Kapoor, Mr. Sanjay Kumar, Advs.

versus

BISWANATH AGARWALA & ORS.

.....Judgement Debtor

Through: Mr. Abhinav Vashisht, Sr. Adv with Mr. Sourabh Gupta, Mr. Puneet Yadav, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

<u>O R D E R</u>

% **30.07.2024**

1. This is an execution petition filed with the following prayer:

> *a) Issue directions for transfer of the title/possession of movable and immovable properties to respective parties through execution of relevant documents in accordance with the terms and conditions of the Arbitral Award dated 04.02.2014;*
> *b) Direct the Respondents to present before the appropriate authorities to execute requisite documents qua the satisfaction of the Award/ Decree;*
> *c) Award the costs of the present Execution Petition in favour of the Decree Holders;*

2. The facts of the case indicate that several companies and properties, held in joint or family ownership among the parties, were divided into

two groups, referred to as Group I and Group II, and the said properties were accordingly divided by the learned Arbitrator in the Arbitral Award dated 04.02.2014. Additionally, the Arbitral Award also categorized the parties involved into these two groups, Group I and Group II.

3. As per the Arbitral Award, the decree-holder in the present case belongs to Group II and the judgment debtor belongs to Group I.

4. Since the execution petition has been pending for more than 9 years, all the issues between the parties pertaining to the said companies and properties have been amicably resolved except for a company namely, M/s AKT Securities Pvt. Ltd.

5. In order to adjudicate the remaining dispute subsisting between the parties para 6, 9, and 34 of the Arbitral Award are important and the same reads as under: -

> *"6. Land to go to Gr. I are as under:*
>
> | | | |
> |---|---|---|
> | *a.* | *Revali Land* | *(@10.00)* |
> | *b.* | *A112 Saraswati Vihar* | *(@09.75)* |
> | *c.* | *607 Saraswati Vihar* | *(@06.00)* |
> | *d.* | *Pataka Factory* | *(@05.75)* |
> | *e.* | *Raghunandan Gali* | *(@00.05)* |
> | *f.* | *Omax City* | *(@00.70)* |
> | *g.* | *Siliguri Room* | *(@00.15)* |
>
> *. . . .*
>
> *9. The two companies, namely GRS & AKT will go to GR. I.*
>
> *. . . .*
>
> *34. AKT share transfer and I.T. Asst. Expenses will be paid in joint account of the Group."*

6. Mr. Garg, learned counsel for the decree-holder submits that in view of

Para 6 and 9 of the Arbitral Award, M/s AKT Securities Pvt. Ltd. along with the land at 607 Saraswati Vihar is to go to the judgment debtor, i.e. Group No. I and in return, the judgement debtor have to pay about 1/3rd of Rs. 4.17 crores to the decree-holder.

7. He further states that once the award has categorically stated that the company i.e. M/S AKT Securities Pvt. Ltd. along with the land at 607 Saraswati Vihar is to go to Group No. I, this Court in execution petition is required to ensure that the proportionate amount of the purchase price i.e. 1/3rd of Rs. 4.17 crore should go to the decree-holder.

8. In this regard, learned counsel has drawn my attention to the orders dated 25.10.2016 as well as 21.12.2017 passed earlier by this Court. Paragraph 2(ii) of order dated 25.10.2016 and paragraph 4.4 of order dated 21.12.2017 read as under:-

> *"2. . . . .*
> *(ii) The concerned persons belonging to Group-II shall also tender their resignation as Directors from AKT Securities Pvt. Ltd. within a period of three weeks from today.*
>
> Paragraph 4.4 of order dated 21.12.2017 is as under:-
> *4. . . . .*
> *4.4 That for accounting purposes, it is agreed by both the Groups that the figures mentioned against each item in Clauses 1 and 6 of the Arbitration Award are in crores, which are duly accepted and shall be taken into account for the purpose of calculation and distribution of Capital and final settlement of accounts. The book values mentioned in the books of accounts of both the Groups in respect of the said items of Clauses 1 and 6 shall be ignored."*

9. Mr. Vashisht, learned senior counsel for the judgment debtor states that the judgment debtors were required to pay for the valuation of the land at 607 Saraswati Vihar as well as the company provided i.e. M/s AKT Securities Pvt. Ltd. came to the share of Group No. I, i.e. the judgment debtors.

10. He further states that M/S AKT Securities Pvt. Ltd. is neither owned/belonged nor controlled by the family members who are parties to the present execution petition.

11. Learned senior counsel further submits that the judgment debtor/ Group No. I have never had any control or ownership of the land at 607 Saraswati Vihar and most importantly, in terms of para 34 of the Award, no value for the shares has ever been paid for acquiring M/s AKT Securities Pvt. Ltd.

12. I have heard learned counsels for the parties.

13. A perusal of Para 6 and 9 of the Arbitral Award dated 04.02.2014 shows that the terms used “to go to” and “will go to” are meant for future purposes and not for the present time meaning thereby that Group No. I shall be entitled to own/ control M/s AKT Securities Pvt. Ltd. as well as the land in the future.

14. On 25.10.2016, this Court with the consent of the parties had appointed an independent Chartered Accountant for the purpose of reconciling and settling the accounts between the parties.

15. It is pertinent to mention that Note 3 of the official report dated 11.12.2019 given by the Chartered Accountant clearly indicates that the M/s AKT Securities Pvt. Ltd. has not come to the share of Group No. I nor is under the control.

16. In my view, the decree-holder has not provided any document to demonstrate any payment made for acquiring the company, M/s AKT Securities Pvt. Ltd., as required by paragraph 34 of the Arbitral Award other than a sale deed dated 02.01.2013 concerning 607 Saraswati Vihar, which shows that the said land belongs to M/s AKT Securities Pvt. Ltd.
17. There is no document that shows that M/S AKT Securities Pvt. Ltd. or the land at 607 Saraswati Vihar is either controlled or is under the ownership/possession of the judgment debtor.
18. For the said reasons, I am of the view that M/S AKT Securities Pvt. Ltd. has not come to the share of the judgment debtor and the decree-holder cannot be granted the proportionate value of the said company.
19. Since, there are no other issues pending between the parties as all the other pending issues have already been settled, the parties shall withdraw the suits *inter se* pending between the parties expeditiously in terms of the order dated 21.12.2017 passed by this Hon'ble Court.
20. The execution petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

JULY 30, 2024 / (MS)

<u>*Click here to check corrigendum, if any*</u>