$~6

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

\+ EX.F.A. 14/2015

M/S DELHI FINANCIAL CORPORATION .....Appellant
Through: Mr. Deepak Dewan and Ms. Muskan Dewan, Advocates with Mr. Shobit Malik, Manager (Law)

versus

M/S PRAMOD POTTERIES & ORS. .....Respondents
Through: Mr. Siddharth Banbha and Ms. Nandana Menon, Advocates for R-1 & 2

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

O R D E R

% **27.02.2025**

Present first appeal has been filed under Section 104 read with Order XXI Rule 58 challenging the order dated 04.06.2015 passed by the court of learned Additional District Judge, Central District, Tis Hazari Courts, Delhi whereby learned Executing Court had *inter alia* directed that the respondent nos. 1 and 2/judgment debtors to pay a sum of Rs.3,66,985.75/- along with interest @ 14% p.a. w.e.f. 01.12.1975 till its realisation alongwith the cost.

The facts of the present case as outlined in the petition are that the Appellant/Decree Holder had granted a loan of Rs.3.15 lacs to the Respondent/Judgment Debtor against which the Respondent/Judgment Debtor mortgaged property being Plot No. 1571/72, Village Ghewra, Rohtak Road, New Delhi. Due to default in repayment, the Appellant had filed a recovery suit, which was decreed on 17.09.1980 against the Respondent.

Thereafter, the Appellant filed an execution petition bearing no. 42/1982 wherein a tripartite agreement was executed between the Appellant, Respondent and Bhasin Potteries. The agreement outlined, payment of Rs.6,47,888.59/- alongwith 17.5% p.a. interest by Bhasin Potteries to the Appellant, Rs.2 lacs for plant and machinery to be paid by Bhasin Potteries, and balance amount of Rs.4,47,888.59/- alongwith interest pursuant to the transfer of ownership of mortgaged land to Bhasin Potteries.

The Appellant filed an application on 27.10.1987 for revival of execution for Rs.4,47,888.15/- and stipulated interest. It is stated that Bhasin Potteries i.e. Respondent no.3 received Rs.2.45 lacs from Respondent no.1 as per the compromise decree, which constituted partial execution, entitling the Appellant to recover remaining dues as per the decree. Learned Trial Court, in its order dated 04.06.2015, awarded only the decretal amount with interest from the date of the decree. The impugned order *inter alia* read as under:

> *"15. I have already discussed that this sale deed could not be executed due to the objections of Revenue Department. On account of this reason, this agreement was frustrated for all practical purposes. A perusal of the agreement also shows that the amount payable by M/s Bhasin Potteries at the rate of interest i.e. 17 1/2 % per annum agreed upon by the parties is between Delhi Financial Corporation and M/s Bhasin Potteries. This agreement had bound M/s Pramodh Potteries only to the extent of execution of sale deed in favour of M/s Bhasin Potteries and no further. I may point out that the tripartite agreement was a contingent agreement, which was to be executed upon the execution of sale deed by respondent no.l & 2 in favour of respondent no.3. Since, it was not legally possible to execute the said sale deed, the tripartite agreement became void as per Section 32 of the Indian Contract Act 1872. Once, the agreement has fallen and M/s Bhasin Potteries is out of the*

picture due to the facts already stated, this court has no option but to fall back upon the original decree where the applicant is DH and respondent no.l & 2 are JDs. As per the decree sheet, the respondent no.l & 2/JDs were required to pay a sum of Rs.3,66,985.75 along with interest at the rate of 14% per annum w.e.f. 1 12.1975 till its realisation along with the costs. Hence, the applicant is only entitled to this amount. I have asked the Nazir to calculate the amount, which as per his calculation, comes to Rs.24,47,794.95, say Rs.24,47,795 upto 1.7.2015. The amount is subject to correction because the JDs might have deposited some amount with the applicant/DH during litigation. Further in this calculation, the costs of the suit are not included. Therefore, both the parties may file their respective calculations on next date as per the decree dated 17.9.1980."

The prayer of the decree holder/appellant that the amount should be paid in terms of Tripartite Agreement dated 09.09.1983, was rejected by the learned Executing Court *inter alia* holding that the Tripartite Agreement was a contingent agreement, which was to be executed upon the execution of the sale deed by the respondent nos. 1 and 2 in favour of the respondent no. 3. Learned Executing Court discussed in detail that the sale was not legally possible and, therefore, the Tripartite Agreement became void as per Section 32 of the Indian Contract Act, 1872. The appellant being aggrieved of this order, has challenged the same.

Learned counsel for the appellant states that the Tripartite Agreement was recorded by the learned Additional District Judge in execution case no. 42/1982, wherein it was agreed that a sum of Rs.6,47,888.59/- besides interest from 01.02.1983 @ 17.5% p.a. payable half yearly with 4% rebate besides additional interest @ 1.5% p.a. over and above the aforesaid interest would be paid. It was further *inter alia* agreed upon that a sum of Rs.2,00,000/- was to be paid immediately by respondent no. 3 i.e., M/s

Bhasin Potteries to Delhi Financial Corporation towards plant and machinery, which respondent nos.1 and 2 i.e. M/s Pramodh Potteries and Mr. Pramodh Mahey, respectively, had agreed to `sell to respondent no. 3 i.e. M/s Bhasin Potteries. It was further agreed that the property no. 1571/72, Village Ghewra, Rohtak Road, New Delhi-110024, which was mortgaged with the Delhi Financial Corporation, shall be transferred by the respondent nos. 1 and 2 in favour of M/s Bhasin Potteries and the sale deed was to be registered and a balance amount of Rs.4,47,888.59/- besides interest w.e.f. 01.02.1983 onwards was to be payable by M/s Bhasin Potteries. Learned counsel submits that the Tripartite Agreement had a force of law and has relied upon ***Sultana Begum vs. Prem Chand Jain***, (1997) SCC 373 and ***Moti Lal Banker vs. Maharat Kumar Mahmood Hasan Khan***, (1968) 3 SCR 158. Learned counsel for the appellant submits that the learned Executing Court has fallen into error by not giving credence to the Tripartite Agreement.

Learned counsel for the respondents has opposed the submission and has *inter alia* submitted that during the proceedings of Execution no. 42/1982, an agreement/understanding between decree holder and M/s Bhasin Potteries was placed before the learned Executing Court by way of joint application on 09.09.1983. Learned counsel submits that in the year 1984, M/s Bhasin Potteries backed out from the aforesaid agreement vide its letter dated 18.07.1984. Learned counsel submits that subsequently, the decree holder on 27.09.1987, filed an application under section 151 CPC before the learned Executing Court duly accepting the cancellation of the agreement/understanding by M/s Bhasin Potteries and seeking permission to re-sell the mortgaged land of the respondent for recovery of remaining decretal amount of Rs.4,47,888.59/- with interest. Learned counsel submits that thus the decree holder had duly acknowledged and accepted the cancellation of agreement/understanding by M/s Bhasin Potteries. It has also been submitted that the respondents have already paid the amount of Rs.4,47,888.15/- to the decree holder vide cheque no. 230753 dated 09.05.1988 and the same has been encashed by the decree holder. Learned counsel submits that the order dated 04.06.2015 of the learned Executing Court is in sync with the law and there is no ground to interfere in the same.

I have heard the learned counsels for the parties. The Court considers that there is no infirmity in the order of the learned Executing Court. The learned Executing Court has duly noted in the impugned order that the subject matter of the property was into the *lal dora* and therefore it could not have been sold. This finding of the learned Executing Court viewed from the prism of Section 32 ICA and the "uncertain event" in the case of sale of the property rightly renders the agreement unenforceable/void. It is imperative to say that the Tripartite Agreement being a contingent contract was incapable of being performed in accordance with the law. In fact, M/s Bhasin Potteries wanted to buy the said land for setting up an industry, which was not permissible under the law. The jurisdiction of an executing court is that it cannot go behind the decree. The Apex Court in ***National Agricultural Cooperative Marketing Federation of India v. Alimenta S.A.*** Civil Appeal No. 667/2012 *inter alia* held that Section 32 of the Contract Act applies in case the agreement itself provides for contingencies upon happening of which contract cannot be carried out and provide the consequences. In the present case the contingency mentioned in the agreement was that the property in question was into *lal dora* due to which the contract could not be carried out.

In view of the discussions made, the order dated 26.02.2018, is vacated. The impugned order dated 04.06.2015 of court of learned Additional District Judge-13, Central District, Tis Hazari Courts, Delhi, be given effect to in accordance with the law.

The present appeal along with pending application(s), stands disposed of.

DINESH KUMAR SHARMA, J

FEBRUARY 27, 2025
N/KR