

Execution (Comm) 97/24
Dilpat Singh (deceased) through LRs vs. Union of India

10.01.2025

(Through VC)

Present : DH No. 1(iv) Sh. Samarpit Chauhan (Through VC).
Sh. Akash Nagar, Ld. Counsel for the DH (Through VC).

Be awaited for the JDs till 12.00 noon today.

(Amit Bansal)

District Judge (Commercial Court)-03
South-West, Dwarka Courts, New Delhi
10.01.2025

At 12.08 p.m.

(Through VC)

Present : DH No. 1(iv) Sh. Samarpit Chauhan (Through VC).
Sh. Akash Nagar, Ld. Counsel for the DH (Through VC).

Be awaited for the JDs till 02.00 p.m today.

(Amit Bansal)

District Judge (Commercial Court)-03
South-West, Dwarka Courts, New Delhi
10.01.2025

10.01.2025 (At 03:46 p.m)

(Hybrid Hearing)

Present: Sh. Akash Nagar, Ld. Counsel for the DHs (Through VC).
None for the JDs.

The JDs have not filed their affidavit of assets in Form 16A of Appendix E u/o 21 Rule 41 (2) CPC.

As mentioned above, none has appeared for the JDs today and none for JDs appeared even on the last date of hearing.

The record would show that one Ld. Counsel for both the JDs appeared on 17.12.2024 and also filed memo of appearance upon which JDs were directed to file their affidavit of assets in form 16A of Appendix E u/o 21 Rule 41 (2) CPC. Thereafter, the JDs were again directed to file the said affidavit of assets in form 16A of Appendix E u/o 21 Rule 41 (2) CPC on the last date of hearing i.e.03.01.2025, however the JDs have not filed the same.

As per record, the JDs were served not only on the execution petition but also on the application of DH to bring on record the list of movable and immovable assets of JD No. 2 National Highway Authority of India (NHAI).

The Ld. Counsel for the decree holder has referred to the Award dt. 30.11.2017 passed by Sh. Dharendra Khadgata, IAS, Additional Deputy Commissioner-Cum-Arbitrator, Jind appointed under National Highway Act, 1956. He has referred to order dt. 17.01.2023 of Hon'ble Delhi High Court in the case *Gujarat Jhm Hotels Ltd. V. Rajasthali Resorts and Studios Limited, 2023 SCC OnLine Del 161: (2023) 300 DLT 271*

and submitted that the party to the petition has the choice to initiate execution in a court within whose jurisdiction, the assets of the judgment debtor may be situated. He also referred to the judgment of Hon'ble Supreme Court of India in case ***Sundaram Finance Limited V. Abdul Samad and Anr., (2018) 3 Supreme Court Cases 622*** and submitted that the enforcement of an award through its execution can be filed anywhere in the Country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the court which would have jurisdiction over the Arbitral proceedings.

Ld. Counsel for the decree holders further referred to the judgment of Hon'ble Supreme Court of India in the case titled as ***Bhagyoday Cooperative Bank Limited Vs. Ravindra Balkrishna Patel deceased through his legal representatives and others, (2022) 14 Supreme Court Cases 417*** and submitted that the mere dismissal of the first application on the ground of default would not result in the decree holder being precluded from filing a fresh execution petition provided it is within time. He in that regard also referred to the order of Hon'ble Delhi High Court in the matter titled as ***Siri Chand Vs. Union of India & Anr., LA.APP.333/2014, date of decision 08.03.2019*** and submitted that an execution proceedings is

inherently different from a suit. While successive suits against the same defendant and for the same reliefs including was for reliefs which could have been claimed against the defendant on the date of institution of the suit cannot be filed and dismissal of a suit in default bars the institution of a fresh suit, it is not so vis-a-vis execution applications. An execution application, if dismissed, the decree holder need not apply for restoration and can always filed a second execution application.

The Ld. Counsel for the decree holders also referred to the judgment of Hon'ble Supreme Court of India in the case titled as *International Seaport Dredging Pvt. Ltd. Vs. Kamarajar Port Limited, 2024 SCC OnLine SC 3112* and submitted that the Arbitration Act is a self contained code and does not distinguish between Governmental and private entities. He further submitted that as per the settled law the Governmental entities must be treated in a similar fashion to private parties in so far as proceedings under the Arbitration Act are concerned, except where otherwise indicated by Law.

He submitted that this court has jurisdiction as an executing court to decide the present execution petition based on a Award passed under The National Highway Act, 1956. In that regard, he referred to the judgment of

Hon'ble Supreme Court of India in the case titled as ***National Highway Authority of India Vs. Sheetal Jaidev Vade and Others, 2022 SCC OnLine SC 1070.***

The Ld. Counsel for decree holder has pressed for issuance of warrants of attachment in respect of immovable property of JD No. 2 that is situated at G-5 & 6, Sector-10, Dwarka, New Delhi-110075 within the jurisdiction of this Court and has referred to order dt. 17.12.2024 of this Court wherein the prayer No. (i) of the application of the DH to bring on record list of movable and immovable assets of JD No. 2 NHAI was disposed off with the order that the list of movable and immovable assets of JD No. 2 as mentioned in the application are taken on record. He has further referred to the order dt. 29.10.2024 and 24.09.2024 of this Court wherein earlier the Bank Account No. 536401010000419, Union Bank of India, Sector-6, Bansal Plaza, Dwarka, New Delhi – 110075 was sought to be attached to the extent of the decretal amount, however, the concerned bank employee from the said bank had submitted that the said account pertaining to JD – NHAI was lying dormant without any money in it and the balance was zero. He has further submitted that in any case, the JDs have failed to file their affidavit of assets in Form 16A of Appendix E u/o 21 Rule 41 (2) CPC.

The Ld. Counsel for the decree holder has further submitted that an affidavit on behalf of Sh. Samarpit Chauhan DH No. 1 (iv) dt. 01.08.2024 is already on record. He has submitted that the said Award has been challenged by some other persons before the Court of Smt. Neha Nohria, Ld. ADJ, Jind, Haryana, however, DHs have not challenged the said award and by the said affidavit dt. 01.08.2024 it has also been mentioned that there is no stay operating on the said award dt. 30.11.2017.

He therefore prayed that warrant of attachment in respect of above said immovable property within the jurisdiction of this Court may be issued by this Court against JD No. 2 for enforcement of decretal amount awarded in favour of DH in the said arbitral award dt. 30.11.2017.

The record would reveal that notice of the execution petition as well as the application of the DH to bring on record the list of movable and immovable assets of JD No. 2 NHAI was served on the JDs, however, the JDs have failed to file any reply or objections to the same. The ordersheet dt. 29.10.2024 would also reflect that the employee of the abovesaid bank of bank account of JD No. 2 NHAI submitted that the said account was lying dormant without any money in it and the balance was zero. The

ordersheet dt. 17.12.2024 at 02:43 p.m. would reflect that Ld. Counsel for both the JDs was present and the JDs were directed to file their affidavit of assets in Form 16A of Appendix E u/o 21 Rule 41 (2) CPC. The ordersheet dt. 03.01.2025 would also show that the JDs were once again directed to file their affidavit of assets in Form 16A of Appendix E u/o 21 Rule 41 (2) CPC, however, the JDs have not filed the said affidavit of assets. The Ld. Counsel for DH has also prayed that the execution petition be executed by attaching of above mentioned immovable property i.e. G-5 & 6, Sector -10, Dwarka, New Delhi – 110075 of JD No. 2, which has already been taken on record vide order dt. 17.12.2024, as the JDs have failed to pay any money to DHs in pursuance to the arbitral award dt. 30.11.2017.

Keeping in view the aforesaid facts and circumstances of the case and also the fact that the JDs have failed to comply with the directions for furnishing affidavit of their assets despite grant of opportunities, this court while agreeing with the above noted submissions made on behalf of Ld. Counsel for DH, finds it a fit case for issuance of warrants of attachment against immovable property of JD No. 2 i.e G-5 & 6, Sector -10, Dwarka, New Delhi – 110075. Accordingly, issue warrants of attachment of immovable property of JD No. 2 National

Highway Authority of India (NHAI) i.e. G-5 & 6, Sector -10, Dwarka, New Delhi – 110075 situated within the territorial jurisdiction of this Court on taking requisite steps by DH in accordance with the provisions contained in Order XXI Rule 54 CPC, which shall state that the Judgment Debtor No. 2 (JD No. 2) is prohibited from transferring or charging the property in any way, and all the persons from taking any benefit from such transfer or charge and shall further require the JD to attend this court on the next date to be so fixed by this court in order to take notice of the date to be fixed for settling the terms of the proclamation of sale, returnable for next date. All the requisite conditions of Order XXI Rule 54 CPC be complied with.

In view of above said discussion, the prayer no. (ii) of the application dated 16.11.2024 of the DH to bring on record list of movable and immovable assets of JD No. 2 NHAI is also disposed of and the said application is also disposed of accordingly.

Put up on **19.03.2025** for further proceedings.

Digitally
signed by
AMIT BANSAL
Date:
2025.01.10
16:46:46
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(Amit Bansal)

District Judge (Commercial Court)-03
South-West, Dwarka Courts, New Delhi
10.01.2025

