



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.1026-1027 OF 2019

BHARAT KANTILAL DALAL (DEAD)
THROUGH LR.

... APPELLANT

VERSUS

CHETAN SURENDRA DALAL & ORS.

... RESPONDENTS

WITH

CIVIL APPEAL NOS.1028-1029 OF 2019

JUDGMENT

ALOK ARADHE, J.

These appeals call in question the correctness of orders dated 06.03.2018 passed by a Division Bench of the High Court of Bombay in Letters Patent Appeals, namely Appeal No(s). 320 and 372 of 2015. By the aforesaid orders, the High Court has stayed two orders passed by the learned Single Judge dated 18.12.2014 passed in chamber summons no.243 of 2014 and chamber summons (L) no.1297 of 2013 in Execution Application (L) No. 1036 of 2013. The relevant facts for deciding these appeals briefly stated are as under.

FACTS

2. The appellant is the son of late Mr. Kantilal Dalal (hereinafter, referred to as 'father') and nephew of late Mr. Girdharilal Dalal (hereinafter, referred to as 'uncle'). The first respondent is the nephew of the appellant, and the son of second respondent. The other respondents are cousins of second respondent. A fracture in the joint family-steeped in business dealings, shared ventures and mutual expectations, led to discord about the accounting and distribution of family funds. To resolve the dispute with his father in relation to the family assets, the appellant sought the intervention of sole arbitrator, Shri Dilip J Thaker. The sole arbitrator passed an arbitral award on 12.07.2010 in favour of the appellant. The father addressed the communication dated 23.07.2010 to the arbitrator alleging unfair conduct of arbitral proceedings and signalling his intent to challenge the arbitral award. A caveat was filed by the appellant, but challenge to the arbitral award dated 12.07.2010 under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act) did not materialise.

THE ARBITRAL AWARD TRAVELS ACROSS JURISDICTIONS: -

3. The appellant initiated the execution proceeding for execution of the arbitral award in Dubai, where the father resided. The Court in Dubai, declared the father as judgment debtor. However, the arbitral award remained unsatisfied. The appellant moved the High Court of Singapore which also recognized the arbitral award and held the father liable for US \$12,951,078.03, a garnishee notice followed. The father responded to the notice by denying the knowledge of the execution proceeding and claiming residence in London. The uncle filed an affidavit asserting that his brother i.e., the father was not the sole beneficiary of Auro Mira Services Private Limited i.e., the concerned company but both of them were the directors and shareholders of the company. It was averred that corporate separateness insulated him from the repercussions of the arbitral award.

4. The father had executed a Will dated 16.09.1994 in favour of the uncle. The father expired on 08.03.2013. The appellant, therefore, required the uncle, who was a substantial beneficiary under the aforesaid Will executed by the father, to disclose the

details of assets of the father. The uncle refused to divulge the details of the assets on the ground that the arbitral award dealt with the properties in which he had personal stakes, and he was not bound by the arbitral award dated 12.07.2010 passed in favour of the appellant, as he is not the party to the same. The uncle filed a Civil Suit, namely suit no. 470 of 2013 in the High Court of Bombay, seeking a declaration that the arbitral award dated 12.07.2010 is a nullity. The learned Single Judge by an order dated 08.07.2013 directed the appellant to file an affidavit in reply within a period of two weeks. The appellant thereupon filed an affidavit in reply in the said civil suit, which is pending.

EXECUTION PROCEEDING IN BOMBAY: -

5. The appellant filed Execution Application (L) no.1036 of 2013 in the High Court seeking execution of arbitral award dated 12.07.2010. The appellant also filed a chamber summons no.243 of 2014, in the execution application seeking issuance of notice under Order 21 Rule 22 of the Code of Civil Procedure (for short “CPC”) and various reliefs *inter alia* for disclosure of assets, issuance warrants of attachment, sale and arrest.

THE ORDERS: -

6. The learned Single Judge by an order dated 18.12.2014, held that execution must proceed and a notice under Order 21 Rule 22 of the CPC should issue. The learned Single Judge further directed the respondents not to create any third-party rights in respect of share, entitlement of the father in the property situate in London. It was also directed that in case the respondents create any third-party rights in respect of the properties which belong to the father, the same shall be subject to further orders of the Court.

7. The uncle filed a chamber summons (L) No. 1297 of 2013 raising various objections, to the execution of the arbitral award and assailed the same on the ground that it is a nullity.

8. The learned Single Judge, by another order passed on 18.12.2014, on an application of uncle i.e. chamber summons (L) no.1297 of 2013, *inter alia*, held that, the arbitral award which has attained finality can neither be set aside under the Act nor can the same be declared as nullity. It was further held that the chamber summons taken out by the uncle is premature. It was

also held that execution shall proceed in accordance with law, and the chamber summons was accordingly disposed of.

9. The respondents assailed the validity of the orders dated 18.12.2014 passed in chamber summons (L) no.1297 of 2013 and chamber summons no. 243 of 2014, in Letters Patent Appeals, namely Appeal No.320 and 372 of 2015, before the Division Bench of the High Court. The Division Bench by orders dated 06.03.2018, admitted the appeals subject to maintainability of the same, and thereafter, by separate orders passed on the same day admitted the appeal and stayed the orders dated 18.12.2014 passed by the learned Single Judge in chamber summons (L) no.1297 of 2013 and chamber summons no.243 of 2014. In these Civil Appeals, validity of orders dated 06.03.2018 passed by Division Bench of the High Court in Appeal No(s). 320 and 372 of 2015, have been challenged.

SUBMISSIONS: -

10. Learned Senior Counsel for the Appellant, while inviting the attention of this Court to Sections 5, 36, 37 and 50 of the Act, submitted that, against the orders dated 18.12.2014 passed by the learned Single Judge in the Chamber Summons, no Letters

Patent Appeals lie, as the Act is a complete code in itself. In support of the aforesaid submissions, reliance has been placed on decisions of this Court in **Paramjeet Singh Patheja v. ICDS Ltd.¹**, **Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.²**, **Union of India v. Simplex Infrastructures Ltd.³**, **Kandla Export Corporation and Anr. v. OCI Corporation and Anr.⁴**, **Sundaram Finance Ltd. v. Abdul Samad and Anr.⁵**, **Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd. and Ors.⁶**, **Noy Vallesina Engineering Spa v. Jindal Drugs Limited & Others⁷**, **PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited⁸** and **Electrosteel Steel Limited v. Ispat Carrier Private Limited⁹**, and decisions of the Bombay High Court in **Jet Airways (India) Ltd. v. Subrata Roy Sahara¹⁰** and **Sushila Singhania v. Bharat Hari Singhania¹¹**.

11. It is further submitted that the Division Bench of the High Court grossly erred in not assigning any reasons while admitting

¹ (2006)13 SCC 322

² (2011) 8 SCC 333

³ (2017) 14 SCC 225

⁴ (2018) 14 SCC 715

⁵ (2018) 3 SCC 622

⁶ (2022) 1 SCC 209

⁷ (2021) 1 SCC 382

⁸ (2021) 7 SCC 1

⁹ (2025) 7 SCC 773

¹⁰ 2011 SCC OnLine Bom 1379

¹¹ 2017 SCC OnLine Bom 360

the appeals and for staying the operation of the orders dated 18.12.2014 passed by the learned Single Judge. It is also pointed out that notice under Order 21 Rule 22 (1) of the CPC is yet to be issued to the respondents. It is urged that the chamber summons filed by the respondents in the execution proceedings, seeking a declaration that the arbitral award dated 12.07.2010 is a nullity is misconceived, and the chamber summons filed by respondents was premature. It is also pointed out that the respondents have already filed the Civil Suit seeking a declaration that the arbitral award dated 12.07.2010 is a nullity. It is, therefore, prayed that the impugned orders dated 06.03.2018 be quashed and set aside and the learned Single Judge be directed to proceed with execution expeditiously.

12. On the other hand, learned Senior Counsel for the Respondents contended that the respondents are strangers to the arbitration proceeding and the arbitral award dated 12.07.2010, and they do not have locus to challenge the same under the Act, as the Act envisages the challenge to the arbitral award in the manner indicated, therein by a party. It is, therefore, contended that the Letters Patent Appeals filed by the respondents are

maintainable. It is also pointed out that, while deciding the chamber summons, the learned Single Judge has held that the arbitral award (i) is not without jurisdiction, (ii) not accentuated by fraud, (iii) not barred by limitation and (iv) is not against the public policy. It is further contended that the learned Single Judge ought to have appreciated that the arbitral award deals with properties of which the respondents are either the owners or have substantial interest. It is, therefore, urged that appeals are liable to be dismissed.

ANALYSIS: -

13. We have considered the rival submissions and have perused the record. Before proceeding further, it is apposite to take note of the relevant statutory provision, namely Order 21 Rule 22, which is extracted below for the facility of reference.

“22. Notice to show cause against execution in certain cases.—

(1) Where an application for execution is made—

(a) more than [two years] after the date of the decree, or

(b) against the legal representative of a party to the decree [or where an application is made for execution of

a decree filed under the provisions of section 44A], [or]

(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent,

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than [two years] having elapsed between the date of the decree and the application for execution if the application is made within [two years] from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

14. Thus Order 21 Rule 22 mandates that where execution is sought (a) more than two years after the decree or (b) against the legal representative of judgment debtor or (c) against the assignee or receiver in insolvency, where party to the decree has been adjudged to be an insolvent, the executing court shall issue notice to the person against whom execution is sought, requiring him to show cause, why the decree should not be executed.

15. The use of word 'shall' in Order 21 Rule 22 (1) admits of no ambiguity and the executing court is under an obligation to issue notice to the person against whom a decree is sought to be executed in the circumstances enumerated therein. The mandate of Order 21 Rule 22 (1) stands on two independent and mutually reinforcing foundations (i) the statutory compulsion-the use of word 'shall' in the provision leaves no discretion to the executing court in the circumstances enumerated therein, (ii) it incorporates the principles of natural justice as the legal representative of the deceased cannot be proceeded unless he is given an opportunity to contest the execution. Thus, the requirement of notice under Order 21 Rule 22 (1) to the persons enumerated therein is not a mere procedural courtesy but is the

very foundation of the jurisdiction when the execution is sought against the estate of the deceased judgment debtor. The foundation of this requirement was laid down by the Privy Council in **Raghunath Das v. Sundardas Khetri**¹², wherein it was held that notice under Section 248 of the Old Code, (equivalent to Order 21 Rule 22) is a condition precedent to jurisdiction of the Court to proceed with execution against the legal representative of a deceased judgment debtor.

16. Now, we may advert to Order 21 Rule 23 of the CPC which reads as under:

23. Procedure after issue of notice. —

(1) Where the person to whom notice is issued under [rule 22] does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

17. The aforesaid rule prescribes the procedure after issue of notice. Order 21 Rule 23 (1) provides that where a person to whom notice is issued under Rule 22 does not appear or does not

¹² AIR 1914 PC 129

show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed. Order 21 Rule 23 (2) provides that where any person offers any objection to the execution of the decree the court shall consider such objection and shall make such order as it thinks fit.

APPLICATION OF AFORESAID PROVISIONS TO THE PRESENT CASE: -

18. In the backdrop of relevant statutory provisions, we may advert to the facts of the cases in hand. Admittedly, the father of the appellant had executed a Will on 16.09.1994 in favour of his brother. From perusal of the cause title of the execution proceeding, it is axiomatic that the uncle was arrayed in execution proceedings as legal representative/executor of the Will dated 16.09.1994 of the father and not in his individual capacity. The respondents, therefore, cannot be treated as third party to the arbitral award.

19. The Act is a self-contained code and is founded upon principles of party autonomy, expedition and finality. The legislative design of the Act restricts judicial interference. The orders of the learned Single Judge dated 18.12.2014, were passed

in course of execution of arbitral award and are, therefore, traceable to the Act and not to CPC. The execution of the arbitral award is sought against the respondents in their capacity as executors of the aforesaid Will. The respondents step into the shoes of judgment debtor of the limited purpose of the execution. The Letters Patent Appeals filed by respondents were therefore not maintainable. The Division Bench of the High Court erred in admitting the appeals subject to maintainability of the same and in admitting the appeals without assigning any reasons.

20. A careful scrutiny of the order dated 18.12.2014 passed in chamber summons no.243 of 2014, reveals that the learned Single Judge has held that the issue with regard to attachment of properties shall be dealt with at an appropriate time, upon an application made in accordance with law. It has further been held that a notice under Order 21 Rule 22 (1) of the CPC to proceed in execution of the arbitral award is granted.

21. Thus, it is axiomatic that the notice under Order 21 Rule 22 (1) of the CPC is yet to be issued to the respondents. Once a notice is issued to the respondents, it is open for them to raise an objection to the execution of the arbitral award under Order 21

Rule 23(2) of the CPC. However, we find that the learned Single Judge while deciding the chamber summons (L) No.1297 of 2013, has made observations/findings though not determinative, have the potential to prejudice the respondents in their objections under Order 21 Rule 23 (2) of the CPC, which they are statutorily entitled to raise on receipt of notice. The respondents, therefore, must be placed in the position, the law intended them to occupy i.e. the legal representatives are entitled to be heard before their estate is saddled with execution.

CONCLUSION: -

22. In view of foregoing discussion, impugned orders dated 06.03.2018 passed by the Division Bench of the High Court of Bombay in Letters Patent Appeals, namely Appeals No.320 and 372 of 2015 are quashed and set aside. The aforesaid Letters Patent Appeals are dismissed as not maintainable. In order to restore the execution proceeding to the track mandated by the CPC, as well as in the facts and circumstances of the case, we deem it appropriate to issue following directions: -

(i) The learned Single Judge in Execution Application (L) No. 1036 of 2013, shall issue notice to respondents under Order 21 Rule 22 (1) of the CPC.

(ii) On receipt of such notice, it would be open for the respondents to prefer objections to the execution proceedings under Order 21 Rule 23 (2) of the CPC.

(iii) The objections which may be preferred by the respondents shall be dealt with, on its own merit, by the learned Single Judge without being influenced by any of the observations/findings contained in the orders dated 18.12.2014 passed in chamber summons no(s). 243 of 2014 and 1297 of 2013 in Execution Application (L) No.1036 of 2013.

23. The appeals are accordingly disposed of on above terms.

.....**J.**
[SANJAY KUMAR]

.....**J.**
[ALOK ARADHE]

NEW DELHI;
NOVEMBER 20, 2025.