

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE NO.1786 OF 2015

IN

EXECUTION APPLICATION NO.2006 OF 2015

Bharat Hari Singhania & Ors.Judgment Creditors

V/s.

Sushila Singhania & Ors.Judgment Debtors

WITH

NOTICE NO.1653 OF 2015

IN

EXECUTION APPLICATION NO.1913 OF 2015

Madhupati SinghaniaJudgment Creditor

V/s.

Bharat Hari Singhania & Ors.Judgment Debtors

Mr. Dinyar Madon, senior advocate a/w. Mr. Sairam Subramanian i/b. Khaitan & Co. for the applicant/claimant in N/1786/2015.

Mr. Nirman Shah i/b. Rakesh Jain for the claimant/applicant in N/1653/2015.

Mr. Virag Tulzapurkar, senior advocate a/w. Adv. Saumya Srikrishna i/b. Wadia Ghandy & Co. for the judgment debtor no.10.

Mr. Zal Andhyarujina a/w. Adv. Naseem Patrawala i/b. Malvi Ranchoddas & Co. for the respondent nos.2,3,5,6 & 8.

Mr. S.U. Kamdar, senior advocate i/b. S.M. Sabrad for the respondent nos.12 & 13..

CORAM : K.R.SHRIRAM,J

RESERVED ON : 05.04.2016

PRONOUNCED ON : 06.05.2016

P.C.:-

1 The judgment creditors in execution application no.2006 of 2015, who, henceforth are referred to as Calcutta Group for the sake of convenience, were the claimants in an arbitration before Mr. Justice

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S.N. Variava (Retd.) as Sole Arbitrator. The judgment debtors to this execution application were the respondents in the arbitration and participated as two separate groups. The judgment debtor nos.1 to 7, who hereinafter are referred to as Kanpur Group, were respondent nos.1 to 9 in the arbitration and the judgment debtors nos.8 to 14, who hereinafter are referred to as Bombay Group, were respondent nos.10 to 16 in the arbitration. Respondent nos.1 and 4 in the arbitration have since expired. In the arbitration the claimants sought distribution of the assets of the erstwhile partnership firm of M/s. J.K. Bankers (Juggilal Kamlapat Bankers). The Ld. Arbitrator passed an award dated 4th August, 2008 to which certain minor modifications were carried out on 12th September, 2008 (the said award) and distributed the properties. The properties were distributed as under :-

DISTRIBUTION OF PROPERTIES

Sr. No.	<i>Party & Particulars</i>
1	Claimants (Calcutta Group) (i) Kamala Cottage, Property No.6 at Juhu, Mumbai (Property at sr. no.5)
2	Respondent Nos.1 to 9 (Kanpur Group) (i) Property No.29/1 at Kanpur known as Kamla Tower (Property at sr. no.1), (ii) Property No.22/134 at Kanpur known as JK Kothi (Property at sr. no.2), (iii) Property No.11 Cants, Kanpur known as Ganga Kuti (Property at sr. no.3), (iv) Property No.6 at Cantt, Kanpur (Property at sr. no.4), (v) Property No.20/193, Chatai Mohal, Kanpur (Property at sr. no.9) And receive INR 22.71 crores from the Calcutta Group.
3	Respondent Nos.10 to 16 (Bombay Group) (i) Property No.37, Kanpur known as Kamla Retreat (Property at sr. no.6), (ii) Property No.88/473, Hiramam Purva at Kanpur (Property at sr. no.7), (iii) Property No.80/80 at Kanpur known as Oil Mills (lands) (Property at sr. no.8), (iv) Property No.20/131, Patkapur, Kanpur (Property at sr. no.10) And receive INR 23.40 crores from the Calcutta Group.

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2 The Calcutta Group, the Bombay Group and the Kanpur Group were all members of the Singhania family that was carrying on business under the name and style of “M/s. J.K. Bankers” (Juggilal Kamapat Bankers), a partnership firm. Considerable immovable properties were brought into the partnership firm.

3 In 1987, by way of a family settlement, the partnership firm was dissolved and a Deed of Dissolution was executed by all the parties. The parties agreed to distribute the immovable properties in specie free from encumbrances as provided in the Deed of Partnership dated 21st February, 1980. The distribution was to be completed as soon as possible and the parties were to strive to accomplish the same by 31st May, 1987. The properties are as under :-

- “1. Property No.29/1 at Kanpur known as Kamla Tower
2. Property No.22/134 at Kanpur known as JK Kothi
3. Property No.11 Cants, Kanpur known as Ganga Kuti
4. Property No.6 at Cantt, Kanpur
5. Property No.6 at Juhu, Mumbai
6. Property No.37, Kanpur known as Kamla Retreat
7. Property No.88/473, Hiranman Purwa at Kanpur
8. Property No.80/80 at Kanpur known as Oil Mills (lands)
9. Property No.20/193, Chatai Mohal, Kanpur
10. Property No.20/131, Patkapur, Kanpur
11. Property No.360, Harish Ganj, Kanpur
12. Property No.363, Harish Ganj, Kanpur

13. Property No.361, Harish Ganj, Kanpur
14. Property No.14/128, M.G. Marg, Kanpur
15. Property No.80/71, Cooper Ganj, Kanpur”

4 Even though the distribution was to take place as far as possible by 31st May, 1987, the parties could not agree to the manner of distribution of the partnership assets. Actions were commenced and finally the Arbitrator came to be appointed pursuant to an order dated 4th April, 2006 passed by the Supreme Court of India. This happened 19 years after the firm was dissolved.

5 By the said award, the Ld. Arbitrator has ordered and directed the partition and distribution of the various immovable properties of M/s. J.K. Bankers as per the chart given above. In order to do so, the Ld. Arbitrator has grouped the members of the Singhania family, for the purposes of the dispute, into three groups, i.e., Calcutta Group, Kanpur Group and Bombay Group.

6 As per the Award, the Calcutta Group were to receive vacant and free from encumbrance the Juhu property (Serial No 5 to the list of properties in Paragraph 26 of the Award) from the Bombay group. Against receiving the Juhu property, the Calcutta group was directed to bring into the pool for the family a sum of Rs. 46,11,00,000/-. Out of

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the said amount, The Calcutta group was to pay a sum of Rs. 22.71 crores to the Kanpur group and a sum of Rs. 23.40 crores to the Bombay group for the purpose of equalizing the Calcutta group's share.

7 The Award was challenged under S.34 of The Arbitration & Conciliation Act, 1996 (The Act) by both the Bombay and Kanpur groups. By a common order dated 1 October 2009 the challenge was dismissed. Thereafter appeals were preferred under S.37 of The Act by both Kanpur and Bombay Groups. The appeals were dismissed by a common Order dated 8 March 2013. The challenge to the award stopped here.

8 Thereafter, as per the demand notice dated 26 August 2014 received from the Stamp authorities in Mumbai, the Calcutta group paid the stamp duty amount on 28 August 2014 and subsequently the Award was registered on 11 November 2014. All three groups were represented before the Stamp authorities. A letter from the Calcutta group's Advocates dated 24 November 2014 was sent to both the groups enclosing the demand notice and requesting them to implement the Award. Though lengthy correspondence was exchanged, the Bombay group has only recently (during the pendency of this execution

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application) initiated steps, i.e., filed for execution of the award in Kanpur with regard to execution of the Kanpur properties.

9 Some of the relevant portions of the Award are set out herein for the sake of convenience :

19 ... Thus it is clear In fairness to Counsel it must be stated that it was not argued that the group to whom a property would be allotted would not be entitled to get vacant possession and free from encumbrance....

26. Accordingly I partition the properties as follows:

(a) The Claimants are allotted the property at Sr. No.5 i.e. Kamala cottage, Property No.6 at Juhu, Mumbai. As the market value of this property is fixed at Rs. 89.66 crs. and each group is entitled to assets worth Rs. 43,55,00,000/- the Claimants will have to bring into the pool of the family, in the manner set out hereafter, a sum of Rs 46,11,00,000/-. This then will have to be distributed amongst the other two groups as per their entitlement.

(b) Respondents 1 to 9 are allotted the following properties at the prices mentioned below:

- (i) Property at Sr. No. 1 ...
- (ii) Property at Sr. No.2 ..
- (iii) Property at Sr. No.3..
- (iv) Property at Sr. No.4 ...
- (v) Property at Sr. No.9....

Thus properties worth Rs. 20.84 crs. are allotted to Respondents 1 to 9. they will, in addition to the above, receive a sum of Rs. 22.71 crs. which has to be brought in by the Claimants. They will receive this amount only against delivery of vacant possession, free from encumbrances, of all the properties allotted to Respondents 10 to 16. In other words it will not be open to them to receive a part of this sum of Rs. 22.71 crs. on the ground that they have handed over vacant possession of some of the properties.

(c) Respondents 10 to 16 are allotted the following properties at the prices mentioned below

- (1.i.i) Property at Sr. No. 6....
- (1.i.ii) Property at Sr. No. 7...
- (1.i.iii) Property at Sr. No.8 ...
- (1.i.iv) Property at Sr. No.10...

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Thus Respondents 10 to 16 are allotted properties worth Rs 20.15 crs. As they are entitled to assets worth Rs. 43,55,00,000/- they will, in addition to the above, receive a sum of Rs. 23.40 crs which has to be paid by the Claimants. They will receive this amount only on handing over vacant possession, free from encumbrance, of the Juhu property to the Claimants.

27. Respondents 1 to 9 are in possession of the properties at Kanpur, respondents 1 to 9 are directed to vacate and/or get vacated the property at Sr.6, the portion of the property at Sr. No.8 which is possession of J.K. Oil Mills & the property at Sr. No.10 at Kanpur and hand over vacant possession of the same, free from encumbrances to respondents 10 to 16 within a period of 6 months from today. Clarified that the properties at sr. nos.7 & 8 (not in possession of J.K. Oil Mills) are not to be handed over free from encumbrances but are to be handed over on "as is where is basis". As these properties stand partitioned and allocated to respondents 10 to 16 by this award, respondents 10 to 16 will be entitled to have their names, or the name of such other person as they nominate, mutated in the record of rights on the basis of this award. The claimants and the respondents shall immediately jointly write to all tenants that they must attorn tenancy to respondents 10 to 16. All parties are directed to execute such writings or documents and do all such acts as are required for the purposes of having these properties mutated into the names of respondents 10 to 16 or such other person as they nominate.

29. It must be mentioned that the 6 months period is granted as during submissions, on a query from the Tribunal, it was stated on behalf of the parties that they would require 6 months to vacate. As the period appears to be reasonable the parties are granted this time to vacate or get vacated the properties. It is however clarified that by this Award the properties already stand partitioned. From the date of this Award the party to whom a property is allotted is the owner of that property. Parties who have to vacate or get properties vacated i.e Respondents 1 to 9 and Respondents 10 to 16 must confirm in writing, within 1 month from today, that they will be vacating or getting vacated the properties within the period of 6 months granted to them. If no such written intimation is given, the party to whom the property is allotted will be entitled to presume that possession will not be handed over and can immediately thereafter apply for execution of the Award. If no notice is given then the date of breach will be deemed to be immediately on the period of 1 month, from the date of the Award, getting over. If written notice is given acknowledging that possession will be handed but at the end of six months possession is not handed over the date of breach will be immediately on the six months period, from the date of the Award, getting over.

30. As Parties are granted 6 months time to vacate, the amounts receivable by them will only be received at the time they vacate the property in their possession and/or all the properties in their possession and hand them over free from encumbrance. Similarly the sum of Rs. 46,11,00,000/- (Rs. 89.66 crs. less Claimants share of Rs. 43.55 crs.) which has to be brought in by the Claimants will become payable on the date that the Claimants receives vacant possession of the Juhu property. In other words the payment is to be against possession of the property and/or possession has to be against payment. Clarified that one group of Respondents not handing over vacant possession will be no ground for another group not handing over vacant possession. In the event of Claimants getting possession of the Juhu property they will bring in the sum of Rs. 46,11,00,000/- and Respondents 10 to 16 will to receive the sum of Rs.23.40 crs. However if Respondents 1 to 9 have not handed over vacant possession of all the properties to Respondents 10 to 16 then they will not be entitled to receive the sum due to them till they hand over vacant possession of all the properties. In that event the sum of Rs. 22.71 crs will be kept in escrow The amount will only be handed over against vacant possession of all the properties allotted to Respondents 10 to 16 being delivered to them free from encumbrance...

31. By this Award the properties are partitioned and parties are bound to hand over vacant possession free from encumbrance. Before concluding it must be observed that the Supreme Court has inter-alia observed as follows:

“It is thus seen that the above facts would clearly go to show that the contesting Respondents Nos. 1-9 are not at all interested in any conciliation, mediation or arbitration but only interested in enjoying the bulk of the immovable properties of the firm and refusing to carry out their obligations under and pursuant to the Deed of Dissolution by permitting the distribution of properties in specie and free from encumbrance as contemplated by the said Deed of Dissolution dated 26.03.1987 and the supplementary agreement dated 28.03.1987.”

This tribunal has also noticed that parties in possession have shown reluctance to hand over possession. As stated above Respondents 1 to 9 have without any justification claimed and are still claiming that they are entitled to all properties in Kanpur and/or in any event the properties at Sr. Nos. 1, 2, 3 & 6 must be allotted to them. They have not been allotted property at Sr. No. 6. Respondents 10 to 16 have also indicated reluctance to part with the Juhu property. However, it is now hoped that the parties will heed the good advice tendered by the Supreme Court.....

10 Thus, the Bombay and Kanpur groups had been given 6 months to vacate/get vacated the properties. Further, the two Respondent Groups, i.e., the Bombay Group and the Kanpur Group were to intimate within one month their written confirmation that they would vacate within 6 months. If no written communication was received, then the party to whom the property was allotted would be entitled to presume that possession will not be handed over and can immediately apply for execution. As the Calcutta group did not receive any written intimation, either after the Calcutta group's letter dated 24.11.2014, they have filed this Execution Application bearing No. 2006 of 2015.

11 The Calcutta Group has approached this court for execution on the basis that the award provides for independent and separate decrees and separate and independent execution of the rights and obligations of the Calcutta Group. The Calcutta Group is seeking vacant possession free from encumbrances of the Juhu property from the Bombay Group against payment of Rs.22.71 crores and payment of Rs.23.40 crores to Kanpur Group or in the alternative to deposit Rs.23.40 crores in Escrow, if the Kanpur Group does not hand over possession to the Bombay Group. The Bombay Group and the Kanpur

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Group are opposing the execution application on the grounds that :

(a) the award is a joint decree and must be executed as a whole, it cannot be split into parts and allowed in separate executions;

(b) the obligations of the three groups under the award are interlinked with reciprocal obligations towards each other and thus cannot be separated.

(c) it was also submitted by the Bombay Group that the Kanpur Group has not handed over the possession to Bombay Group and if any obstruction is raised to the execution, the right of the obstructionist will have to be decided in appropriate proceedings.

(d) the clarification contained in paragraph 30 of the award contains a clarification only on the word “vacant possession” but does not contain a clarification for free from encumbrances and hence the Bombay Group is not obliged to hand over the Juhu property to Calcutta Group unless they receive the Kanpur properties free from encumbrances.

(e) the trigger point for handing over the Juhu property has not arisen yet since the trigger point is only when the Kanpur Group hands over the properties to the Bombay Group.

(f) the Calcutta Group ought to join the Bombay Group in

the execution in Kanpur as the Bombay Group cannot give up the Juhu property before they get their dues in Kanpur.

12 The Kanpur group also submitted that the Calcutta Group has paid excess stamp duty without the consent from the Kanpur Group and the six months period has not commenced for handing over possession as per the award.

13 Before we proceed further, the settled position in law is that the court's direction was to be complied with by rendering satisfaction to all persons who are jointly interested in the decree. However, there is an exception to this, in as much as, when distinct shares of the decree holders are determined and known, payment to one of the decree holders of his share satisfies the decree to that extent. Strictly speaking such a decree is not a joint decree and a decree holder, who is entitled to obtain satisfaction of his right can claim it without reference to rights of the other decree holders. (*Hurrish Chunder Chowdry vs. Kali Sundari Debia*¹ and *Valchand Gulabchand Shah vs. Manekbhai Hirachand Shah & Anr.*²).

1. 10 Indian Appeal 4 (PC)
2. 1953 ILR 356

14 In **Jai Narain Ram Lundia vs. Kedar Nath Khetan**³, paragraphs 18 and 20 read as under :-

“18. When a decree impose obligations on both sides which are so conditioned that performance by one is conditional on performance by the other, execution will not be ordered unless the party seeking execution not only offers to perform his side, but when objection is raised, satisfies the executing court that he is in a position to do so. Any other rule would have the effect of varying the conditions of the decree : a thing that an executing court cannot do. There may of course be decrees where the obligations imposed on each side are distinct and severable and in such a case each party might well be left to its own execution.

20. Fry on specific performance..... The basic principle in execution that the executing court must take the decree as it stands and cannot go behind it. If the decree says that on payment being made some definite and specific thing is to be given to the other side, the executing court cannot alter that and allow something else to be substituted for the thing ordered to be given.”

15 In **Jagdish Dutt vs. Dharam Pal**⁴, the court observed that a joint decree can be executed as a whole since it is not divisible and it can be executed in part only where the share of the decree holders are defined and those shares can be predicted or the share is not in dispute.

16 In **Smt. Lalita Devi vs. Smt. Kamla Devi**⁵ Lalitadevi vs. Smt. Kamladevi, it is observed that the law appears to be settled, that in case of a joint decree where the shares of the parties are distinct or separable even though some of the decree holders have transferred

3. AIR 1956 SC 359

4. AIR 1999 (3) SCC 644

5. 1994 SCC Online All 277

their shares to the judgment debtor, the decree does not become inexecutable as a whole but can be executed by one of the decree holders under the provisions of Order 21, Rule 15 of Code of Civil Procedure at least to the extent of the share of the decree holder.

17 In *Ramesh Ch. Deb vs. Barinda Kr. Chakraborty*⁶, the court held that the execution can be commenced against some debtors only and in part. In *Sardar Madhavrao vs. Narayan Damodar*⁷, the court held that the decree holder can execute for his share only, else, he would be obligated to undertake execution proceedings on behalf of everyone else which may cause burden on the decree holder.

18 This being the settled position in law, let us see whether the Calcutta Group can execute the decree in part so far as their share is concerned. In the present case when one considers the award (the decree) the decree/award, in favour of each of the group, viz., Calcutta Group or Kanpur Group or Bombay Group, is distinct and severable and is executable distinctly and separately. The shares of each of the decree holders are expressly apparent on the face of the award.

6. AIR 1997 Gauhati 24

7. AIR 1960 66

19 Strictly speaking in my view, though it is a common decree in favour of each of the group, it cannot be construed as a joint decree that it cannot be stated that the Calcutta Group is not entitled to obtain satisfaction of its right without reference to the rights of the Bombay Group or Kanpur Group. As the shares of the decree holders are apparent on the face of the decree, there can be no objection to a separate satisfaction of the individual decree holder towards his share. The Calcutta Group has repeatedly tried to perform its obligations starting from the letter dated 24th November, 2014 by offering to bring in the money against receiving possession of the Juhu property. It is not the case of anybody that the Calcutta Group is not ready and willing to perform its obligations. The only obligation cast on the Calcutta Group is to bring in money against receiving possession from the Bombay Group. There is no vagueness to the rights and obligations of the Calcutta Group under the award and the same is distinct from and not interlinked with the rest of the obligations between the Kanpur Group and Bombay Group. The Juhu property is defined and the money sought to be brought in is also quantified.

Therefore, the Calcutta Group is entitled to press ahead with the execution proceedings.

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20 It is the case of the Bombay Group that the award is a joint decree and must be executed as a whole, it cannot be split up into parts to allow separate executions as the obligations of the three groups under the award are interlinked with reciprocal obligations towards each other. Hence it cannot be separated. The counsel Mr. Tulzapurkar relied upon *Jagdish Dutt* (supra) and *Jai Narain Ram Lundia* (supra), which were also relied upon by Mr. Madon. Relying on *Jagdish Dutt* (supra), Mr. Tulzapurkar submitted from paragraph 7 of the judgment that when a decree is passed in favour of a joint family the same has to be treated as a decree in favour of all the members of the joint family in which event it becomes a joint decree. In *Jai Narain Ram Lundia* (supra), which was also relied upon by Mr. Madon, Mr. Tulzapurkar read paragraphs 18 and 20 to show that when obligations are interlinked as a family settlement separate execution is not possible and in this case the obligations are interlinked and cannot be executed in peace. The proposition submitted by Mr. Tulzapurkar is the same that was submitted by Mr. Madon and there can be no doubts about it but what is required to be seen is whether in the present matter case the obligations are interlinked. The answer is no.

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21 Mr. Tulzapurkar laid lot of emphasis on the observations made by the Apex Court that a family dispute is of a special nature and family settlement are governed by a special equity principle, where the terms are fair and bonafide taking into account the well being of a family. Mr. Tulzapurkar submitted that as held by the Apex Court the families are governed by a special equity peculiar to themselves and would be enforced if honestly made, the object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family and the courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same. He submitted, therefore, only when Bombay Group gets its share from Kanpur Group, that the Calcutta Group shall get its share from the Bombay Group.

22 The three groups were distributing assets of a partnership firm. The individual groups were like three individual joint families who were partners in the firm. The award (decree) in the present case cannot be treated as a joint decree. Even for a moment we consider the award (decree) as joint, it is trite that even in the cases of joint families it can be executed in part where the shares of the decree

holders are defined or where the share is not in dispute. In view of the separate rights and obligations of the Calcutta Group, the share of the Calcutta Group can be executed independently. The Bombay Group cannot withhold giving possession to the Calcutta Group on the basis that they will not hand over possession of Juhu property unless they get or acquire title to the Kanpur properties. That has to be dealt between Bombay Group and Kanpur Group. In *Jai Narain Ram Lundia* (supra) case also the Appellant – Jai Narain Ram Lundia sought to execute the performance of a contract to sell certain shares in a private limited company together with a five annas' share in partnership firm called the Marwari Brothers. One of the defences put up against the execution was that the partnership firm – Marwari Brothers had been dissolved and was no longer in existence. The Judgment Holder could not proceed because assets in a dissolved firm were different from that of the share in a going partnership firm and no modification had been sought. In the present case, there is no such difficulty. The decree sought to be executed remains the same. There are no interlinked obligations. If the Court allows the objection of the Bombay group that they are not obliged to give possession of the Juhu property till Kanpur gives them the Kanpur properties – the same would be going behind the terms of the Award, as no where in the Award does

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it provide for this.

23 It was also submitted by the Bombay Group that if any obstruction is raised to the execution, the right of the obstructionist will have to be decided in appropriate proceedings in accordance with law. The stand of the Bombay Group is that there opposition to hand over possession to Calcutta Group of the Juhu property as the Kanpur Group has not handed over possession to Bombay Group must be considered by the executing court as a valid reason for them to not hand over the Juhu property. Mr. Tulzapurkar relied upon *N.S.S. Narayana Sarma vs. Goldstone Exports (P) Ltd.*⁸ to submit that an obstructionist in possession can only be dispossessed in accordance with law and he may not dispossessed until his rights are adjudicated in proper proceedings. It is rather strange that the Bombay Group is raising this issue. In the arbitration the rights of all the parties have been determined and the award (decree) has been passed. As per the award the Bombay Group has to vacate the Juhu property. There is no right of the Bombay Group that has to be adjudicated in these proceedings. When a decree holder complains of resistance to the execution of a decree it is incumbent on the execution court to

8. AIR 2002 SCC 251

adjudicate upon it. But while marking adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and such questions must be relevant to the adjudication of the complaint. The questions which the executing court is obliged to determine is (a) the questions should have legally arisen between the parties and (b) such questions must be relevant for consideration and determination between the parties. For example, third party, who questions the validity of a transfer made by a decree holder to an assignee. But in this case the rights of the Bombay Group and Calcutta Group are already determined or decided. The Calcutta Group has a decree in their favour directing the Bombay Group to hand over possession against the Calcutta Group paying certain amounts to the Bombay Group. The Calcutta Group is willing to make the payment. Therefore, there is nothing remaining in the matter and the rights have been adjudicated. In the present case the execution proceedings are pending and notice under Order 21 Rule 22 has been taken out for the purpose of dealing with the objections.

24 Paragraph 30 of the award provides “clarified that one group of respondents not handing over vacant possession will be no ground for another group not handing over vacant possession”. According to the Calcutta Group this clarification in paragraph 30 makes it clear that the Bombay Group cannot refuse to vacate the Juhu property on the ground that the Kanpur Group has not handed over to the Bombay Group properties in Kanpur. I am in agreement with them. But according to Bombay Group the clarification contained in paragraph 30 of the award contains a clarification only on the word “vacant possession” but does not contain a clarification for free from encumbrance.

25 Mr. Tulzapurkar submitted that the Arbitrator was conscious of the wording of the clarification and deliberately phrased it the way he did. Thus, the Bombay Group is not obliged to hand over the Juhu property in Mumbai to the Calcutta Group unless they receive the Kanpur properties free from encumbrance. According to Mr. Tulzapurkar any other reading would be against the spirit of the family settlement as a family settlement means all get their due simultaneously. Mr. Tulzapurkar also relied upon *Shiv Chander*

Kapoor vs. Amar Bose⁹. Relying on this judgment, Mr. Tulzapurkar submitted that where there is an exception, it must be strictly construed and the scope thereof should be limited to that content. Mr. Tulzapurkar submitted that the clarification provided in paragraph 30 of the award is also an exception and not a clarification and hence it must be construed strictly. According to Mr. Tulzapurkar since it only talks about vacant possession, the exception cannot be broadened to read free from encumbrance in it and unless it is strictly interpreted as an exception the Bombay Group and Kanpur Group would be tempted to encumber the property and then hand it over. Mr. Tulzapurkar also relied upon **Century Textiles Industries Ltd. vs. V. Deepak Jain and Anr.**¹⁰ and submitted that the executing court cannot go behind the decree, it must take the decree according to its tenor; has no jurisdiction to widen its scope and is required to execute the decree as made.

26 I am afraid, I cannot agree with this submission of Mr. Tulzapurkar. One cannot read the award/decreed in bits and pieces or here and there. The award has to be read as a whole and harmoniously for its true and correct meaning. If we have to accept

9. 1990 (1) SCC 234

10. 2009(5) SCC 634

what Mr. Tulzapurkar is saying, then that sentence in paragraph 30 was not required at all. When reading the award (decree) as a whole what each group is going to get and what each group is obliged to do is expressly and distinctly identified. The Learned Arbitrator perhaps envisaged such a situation that the Bombay Group may argue that unless the Kanpur Group hands over the properties, the Bombay Group is not obliged to hand over against payment. It is precisely for that reason the Learned Arbitrator thought it fit to insert the sentence in paragraph 30. Moreover it is just a clarification and is not the operative part. It depends wholly on other paragraphs to find the meaning. There is no need to substitute the word clarification with the word exception. Moreover the Arbitrator in paragraph 19 has recorded that the parties were in agreement with whomsoever had to receive possession, had to receive property vacant and free from encumbrances. It therefore, appears that the expression “possession”, “vacant possession” and “vacant possession free from encumbrances” have been used loosely and synonymously throughout the award except in case of properties at serial nos.7 & 8 which were not to be delivered free from encumbrance, as could be seen from paragraph 27 of the award. Where it need not be delivered free from encumbrance, the Arbitrator has spelt it out. Some of the paragraphs from which it

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so appears are paragraph 19, 20(c), 21 and 27 of the award which read as under :-

“19... Thus it is clear In fairness to Counsel it must be stated that it was not argued that the group to whom a property would be allotted would not be entitled to get vacant possession and free from encumbrance....

20 (c) ... She also submitted that the Supreme Court in its judgment dated 4 April 2006 has observed as follows –

If for any reason any of the defendants do not permit and comply with the directions for getting vacant possession of any of the immovable properties listed in items 1 to 13 of the Ex D to the plaint then the same should be valued on basis of vacant possession and the plaintiffs should be paid their share on the basis of the vacant possession by the defendants..

21.Thus other members, who have had no possession for all these years cannot now be denied allotment/ possession merely on the ground that some other group is in possession. Distribution in specie necessarily means that the group in possession and/ or control will have to vacate or get vacated the properties.

27. Respondents 1 to 9 are in possession of the properties at Kanpur, respondents 1 to 9 are directed to vacate and/or get vacated the property at Sr.6, the portion of the property at Sr. No.8 which is possession of J.K. Oil Mills & the property at Sr. No.10 at Kanpur and hand over vacant possession of the same, free from encumbrances to respondents 10 to 16 within a period of 6 months from today. Clarified that the properties at sr. nos.7 & 8 (not in possession of J.K. Oil Mills) are not to be handed over free from encumbrances but are to be handed over on “as is where is basis”. As these properties stand partitioned and allocated to respondents 10 to 16 by this award, respondents 10 to 16 will be entitled to have their names, or the name of such other person as they nominate, mutated in the record of rights on the basis of this award. The claimants and the respondents shall immediately jointly write to all tenants that they must attorn tenancy to respondents 10 to 16. All parties are directed to execute such writings or documents and do all such acts as are required for the purposes of having these properties mutated into the names of respondents 10 to 16 or such other person as they nominate.”

27 Infact it should also be noted that any encumbrances on the property had already been factored in the valuation. Moreover as per the award, the properties stood partitioned and allotted to the groups so named. Hence, it is not open to the erstwhile group owners to create fresh encumbrances just because they happened to continue in possession. The properties have been partitioned as on the date of the award.

28 It was also submitted by Mr. Tulzapurkar that the Bombay Group will be obliged to give up the Juhu property only at the time the Kanpur Group hands over to them and as the Kanpur Group is yet to hand over properties to the Bombay Group, the trigger point for handing over of the Juhu property to Calcutta Group has not yet arisen.

29 The award provides for separate decrees. The parties/groups are free to independently execute. If we have to assume a trigger point so far as the execution by the Calcutta Group is concerned, it has to be from the point the Calcutta Group agrees to bring in the money and simultaneously the Bombay Group giving up possession of the Juhu property. The counsel for the Calcutta Group also submitted that even if the order of performance of reciprocal promises is not expressly stated,

it shall be performed in that order which the nature of the transaction requires. For this, the counsel relied upon Section 52 of the Contract Act, 1872, which reads as under :-

“Section 52. Order of performance of reciprocal promises -

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of transaction requires.”

30 Thus, to the extent the Calcutta and Bombay Group have a reciprocal obligation to each other, that will serve as the trigger. For it is only when money comes into the pool, will the properties be released.

31 Next point of objection from Mr. Tulzapurkar is that the Calcutta Group ought to join the Bombay Group in the execution in Kanpur as the Bombay Group cannot give up its Juhu property before they receive their due in Kanpur. As I have already concluded that the decree in its strict sense not a joint decree where obligations are interlinked and each party is free to execute the decree at the place and pace at which they wish to, I see no reason why the Calcutta Group, which is not the recipient of any of the properties in Kanpur from the Kanpur Group should join the Bombay Group in the execution in

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Kanpur. The Calcutta Group has to merely pay to the Kanpur Group money once it receives its Juhu property or deposit it in court.

32 Mr. Tulzapurkar of course agreed that the present execution application is maintainable since the Juhu property which has to go to the Calcutta Group is situated within the jurisdiction of this court. Infact one of the members of the Bombay Group family – Madhupati Singhania, who is judgment debtor no.9 has filed an execution application no.1913 of 2015 seeking execution of the award and acknowledging that the decree has to necessarily be executed first in Bombay. He is seeking protection for any money that may be paid by the Calcutta Group for the Juhu property as he anticipates the rest of the Bombay Group will take the money for themselves to his exclusion. Of course judgment debtor no.9 – Madhupati Singhania is not entitled to receive any monies separately since the Bombay Group has not come back with its internal arrangement and dynamics. In *Valchand Gulabchand* (supra), it was observed that under that rule..... but it cannot compel one or more of the joint decree holders to levy execution for a fraction of the decree. Nor can the Court at the instance of the judgment debtor be asked to decide a dispute between the decree holders inter se.... If the executing court is asked to launch upon such

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enquiryit would in effect be deciding a suit for partition between the joint decree holders with reference to the property, which is the subject matter of the decree primarily, and incidentally with regard to the other property held jointly on the same tenure or relationship as the property which is the subject matter of the decree.

33 As per Rule 2 and 2A of Order 21 of the CPC, payment in court is good payment. Rule 2A provides provides that no payment or adjustment shall be recorded at the instance of the judgment debtor unless (a) the payment is made in the manner in rule 1. Rule 1 (1) (a) specifically allows for all money payable under a decree to be paid by deposit into the Court. As the execution for the Bombay property has been applied for in this Hon'ble Court, the deposit of the money will be made into the Court by the Calcutta Group on receiving vacant and free from encumbrance possession of the Juhu property. There is no obligation on the part of the Calcutta group with regards to protecting specifically any amount towards Respondent No.11.

34 Mr. Tulzapurkar tried to distinguished *Hurish Chunder Chowdhury* (supra) that was relied upon by the judgment creditor by submitting that the facts of the said judgment were not pertaining to a

family settlement, which have a special bearing. Mr. Tulzapurkar also submitted that there was no reciprocity or reciprocal obligations in the facts of the case. In my view, the judgment in *Hurish Chunder Chowdhury* (supra) is a very clear on the proposition that separate shares could be executed by individual decree holders.

35 Mr. Tulzapurkar also submitted that the *Valchand Gulabchand* (supra) case relied upon by Mr. Madon has no bearing on the facts of the present case as there was no reciprocity and the obligations were only in one direction. In my view, this judgment proceeded on the basis that it was a joint decree from the beginning. At page 370 of the judgment it is stated as under :-

“As the decree was a joint decree, the darkhast application came to be filed under the provisions of O.XXI R.15, which enables one or more of the decree-holders to apply for execution of the whole decree for the benefit of all the decree holders.”

36 Mr. Madon had cited this judgment for the purpose of demonstrating the well settled proposition that when separate shares are ascertainable, decree holders can file execution application for their own share and the fact that it is a family matter has no bearing and even in a family matter it is possible.

I agree with Mr. Madon because in *Valchand Gulabchand* (supra) case it was held that ascertaining the respective shares of the decree holders in a joint decree is foreign to the nature of the execution proceedings. In the present case, there is no such difficulty as the Calcutta Group is to bring in a fixed sum of money and receive possession of the Juhu property in Mumbai.

37 Mr. Tulzapurkar laid lot of emphasis on the observations made by the Apex Court that a family dispute is of a special nature and family settlement are governed by a special equity principal, where the terms are fair and bonafide taking into account the well being of a family. Mr. Tulzapurkar submitted that as held by the Apex Court the families are governed by a special equity peculiar to themselves and would be enforced if honestly made, the object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family and the courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same.

In this case however, it is the conduct of the Kanpur Group and the Bombay Group that so much of bad blood has been spilt. The

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reluctance of the Bombay Group and Kanpur Group in handing over the properties have been, inter alia, observed in paragraph 62 of the *judgment of the Apex Court*¹¹ while considering the civil appeal directed against the final judgment and order dated 8th/9th June, 2004 passed by the Division Bench of this Court in appeal no.440 of 1996 in arbitration suit no.1904 of 1992. Paragraphs 62 & 63 of the said judgment have been reproduced in the quotation in the next paragraph.

38 The Division Bench of this Court while considering the appeal filed by the Bombay Group and the Kanpur Group challenging the dismissal of the petitions filed by the Bombay Group and Kanpur Group under Section 34 of the Arbitration and Conciliation Act, 1996¹² has in paragraphs 12 & 23 observed as under :-

“12. The judgment of Supreme Court took note of the fact that the assets of the partnership were largely with the Kanpur group and an amicable settlement for the division of the assets had not been arrived at for over eighteen years, since those who were enjoying the assets in question were “merely trying to drag proceedings endlessly forever and for another period of uninterrupted enjoyment of the assets”². The Supreme Court observed that it was an admitted fact that the three branches of the Singhanian family are each entitled to a one third share in the immovable properties. In regard to the conduct of the Kanpur group, the Supreme Court made the following observations in the course of the judgment :

“62. it is thus seen that the above facts would clearly go to show that the contesting Respondents 1-9 are not at all interested in any conciliation, mediation or arbitration but only interested in enjoying the bulk of the

11. (2006) 4 SCC 658

12. Appeal No.361/2010 and 505/2010 dated 8.3.2013

immovable properties of the firm and refusing to carry out their obligations under and pursuant to the said deed of dissolution by permitting the distribution of the said properties in specie and free from any encumbrance as contemplated by the said deed of dissolution dated 26 March 1987 and the supplementary agreement dated 28 March 1987.

63. It has now come to a stage that the real dispute has arisen between the parties. Already the matter is pending adjudication from 1987 onwards, Respondents 1-9 are admittedly in possession and enjoyment of the valuable immovable properties depriving the valuable rights of the appellants and the other Respondents 10-20. We should not, therefore, allow Respondents 1-9 to drag the proceedings any further. The parties have to settle their disputes one day or the other. In our opinion, the time has now come to nominate a single arbitrator as provided under clause 13 of the agreement. It was argued that in case this Court allows the appeal, the matter may be remitted to the High Court for appointment of a single arbitrator and in case the parties are unable to agree upon a single arbitrator a panel of three arbitrators shall be appointed as provided in the said agreement. We feel that such a course, if adopted, would only enable the contesting Respondents 1-9 to squat on the property and enjoy the benefits, income, etc. arising therefrom.”

“23. It was in this background that the arbitrator observed that in a case as the present, it was impossible to exactly divide in specie the immovable properties as that would mean a physical division of some of the properties and that none of the parties had asked for such a physical division. The arbitrator held that though the distribution was to be in specie, there would have to be an equalization of shares in terms of money. The shares of the parties were not in dispute. Since the Juhu property was valued at Rs.89.66 crores, the party to whom the Juhu property was to be allotted, would have to pay a sum of Rs.46.11 crores which would be distributed between the other two groups considering 27 of 31 APP.361.2010 the value of the properties allotted to them. The Kanpur group which was in possession of the Kanpur properties desired to retain the entirety of the Kanpur properties but this conduct, as we have noted earlier, has been the subject matter of adverse comment in the judgment of the Supreme Court. The Juhu property, as the arbitrator noted, could not be allotted to the Mumbai group since it was not willing to accept the allotment of the property at Rs.89.66 crores whereas the Kolkata group was willing.

to accept allotment at that price. The arbitrator, in our view, was justified in holding that when one group was willing to accept the allotment of the Juhu property at Rs.89.66 crores, there was no justification for the Mumbai group to expect that the property be allotted to them at a lower price. The submission of the Mumbai group was that the Juhu property had been over valued by the valuer. The arbitrator noted that if according to them the property had been over valued, they ought to willingly accept their share from the consideration of the Juhu property, which was offered by the Kolkata group. Moreover, the proposal of the Mumbai group, as noted earlier, was to allow bids and to allot properties to the highest bidder. They cannot possibly have an objection to the Juhu property being allotted at a much higher value than they were willing to offer.”

(emphasis supplied)

39 Even in the award at paragraph 31 it is observed as under :

31. By this Award the properties are partitioned and parties are bound to hand over vacant possession free from encumbrance. Before concluding it must be observed that the Supreme Court has inter-alia observed as follows:

“It is thus seen that the above facts would clearly go to show that the contesting Respondents Nos. 1-9 are not at all interested in any conciliation, mediation or arbitration but only interested in enjoying the bulk of the immovable properties of the firm and refusing to carry out their obligations under and pursuant to the Deed of Dissolution by permitting the distribution of properties in specie and free from encumbrance as contemplated by the said Deed of Dissolution dated 26.03.1987 and the supplementary agreement dated 28.03.1987.”

This tribunal has also noticed that parties in possession have shown reluctance to hand over possession. As stated above Respondents 1 to 9 have without any justification claimed and are still claiming that they are entitled to all properties in Kanpur and/or in any event the properties at Sr. Nos. 1, 2, 3 & 6 must be allotted to them. They have not been allotted property at Sr. No. 6. Respondents 10 to 16 have also indicated reluctance to part with the Juhu property. However, it is now hoped that the parties will heed the good advice tendered by the Supreme Court.....

(emphasis supplied)

40 Therefore, it is quite obvious that the Kanpur Group does not want to part with the property and the Bombay Group, whose attempt to retain the Juhu property at a lower price did not succeed before the Arbitrator and challenging the award having been dismissed are finding a very convenient alibi in the Kanpur Group. Both are enjoying the assets in question. They are merely trying to drag proceedings endlessly forever and for another period of uninterrupted enjoyment of the assets.

It is true that family disputes have a different concept and equity. The courts accept the litigating parties to bury their differences which is essential for maintaining peace and harmony in the family. In cases of family disputes and settlement, court do not take a technical approach. But in this case the attitude and conduct of the parties have changed, inter alia, in different directions even though the parties with a good intention had entered into Deed of Dissolution to divide the properties in equal measure in 1987. The parties are members of a family descending from a common ancestor and they must sink their disputes and differences, settle and resolve their conflicting claims once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The Bombay Group and Kanpur

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Group should strive to enforce a family arrangement and the award (decree) honestly.

41 Mr. Kamdar, counsel appearing for respondent no.12 (Gautam Hari Singhania) adopted the submissions of Mr. Tulzapurkar. Therefore, we do not have to deal with that separately.

42 Mr. Andhyarujina, counsel appearing for the Kanpur Group, at the outset adopted the submissions of Mr. Tulzapurkar. The main thrust of course of the Kanpur Group was that the Calcutta Group has paid excess stamp duty without consent from the Kanpur Group and therefore, the Calcutta Group will be obliged to pay any additional stamp duty that may be levied by the Uttar Pradesh Stamp Authorities. As could be seen from the proceedings, all the parties were involved with the proceedings before the Stamp authorities. It does not lie in the mouth of the Respondent groups to now say that the stamp duty has been paid without their consent when they were equally responsible for following up the proceedings. Further, even after being informed way back in 2014 that the stamp duty had been paid, they have not objected or challenged the adjudication. It is not their case that less stamp duty has been paid which would render the Award unenforceable. The

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Calcutta group has reserved their right to claim the proportionate share in the same and the Kanpur group can deal with the same when their right is exercised. This cannot possibly be a reason for halting these execution proceedings. The Award provides for equal sharing of the stamp duty. In the event the Uttar Pradesh authorities levy further duty (despite Section 19A of the Indian Stamp Act, 1899 (as applicable in Uttar Pradesh) which gives credit to the stamp paid in Maharashtra already), the Calcutta group is bound by the Award and will have to act in accordance with law.

43 It was also submitted by the Kanpur Group that the six month period has not commenced for the handing over the possession as per the Award. This submissions is preposterous. At the hearing Mr. Andhyarujina admitted that the Kanpur Group had to vacate the premises but the period of six months to vacate has not begun and when the period begins is not clear. The dispute between the parties has now been going on for almost thirty years. To raise an issue that the 6 month period has not begun/ is not over is a desperate attempt to clutch at straws. The Calcutta Group informed the Kanpur Group of the stamping as far back as in November 2014. Thereafter the Kanpur group has been served with the execution application which encloses a

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copy of the Award duly stamped all of which disclose the day of stamping, assuming for the sake of argument the date of stamping is the time from when the obligation for vacating arose. The 6 months period is long over. The Kanpur group has not even complied with the written confirmation as required under Paragraph 29 of the Award. In absence of such a written confirmation that they are willing to vacate the properties, they are in breach and have made themselves liable to execution proceedings.

44 In the circumstances, the objections raised by the Bombay and Kanpur Groups cannot be accepted though we see that family settlements and family disputes have a special equity and attempt should be made for the parties to live harmoniously. The conduct of the Bombay Group and Kanpur Group in dragging this litigation over 30 years despite entering into a family settlement on 1987 smacks of utter dishonesty and self-conteredness. Using their money power, the Kanpur Group and Bombay Group (all are leading industrialists) have for their selfish motives and greed only dragged on the litigation and consumed precious judicial time of this court and also of the Apex Court.

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45 I have observed in some other matters also that the Courts should be alert in dealing with such speculative actions and shoot down such bogus litigation at an early stage. This action of the Bombay Group and Kanpur Group, it is quite obvious is inspired by vexatious motives. I observe with regret the infliction of the ordeal upon the Courts by parties like the Bombay Group and Kanpur Group by presenting a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if such speculative and frivolous litigations are dealt with a tough hand. Substantial judicial time will be saved if such parties are saddled with substantial costs so that they would not continue the onslaught on precious judicial time. In view of the past conduct of the Bombay Group and Kanpur Group in engaging the Calcutta Group in contesting litigations which also had a strong bearing in the Court's time, this is one of those cases where substantial costs have to be imposed on the Bombay Group and Kanpur Group.

46 Therefore, the notice is made absolute. The matter to proceed for execution. The Bombay Group (with the exception of Madhupati Singhania) and the Kanpur Group (each group) to pay a sum of Rs. 10 lakhs each as costs to the Calcutta Group by way of

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cheque drawn in favour of the advocates on record for the Calcutta Group. The Bombay Group (with the exception of Madhupati Singhania) and the Kanpur Group (each group) also to pay a sum of Rs.10 lakhs each to Maharashtra Legal Aid Services Authority. These amounts to be paid within six weeks from today.

47 The Calcutta Group within six weeks to deposit the amounts payable to the Bombay Group and the Kanpur Group with the Prothonotary and Senior Master, High Court, Bombay, as permitted under Order 21, Rule 1 of the Code of Civil Procedure. The Prothonotary and Senior Master to invest these amounts in fixed deposit with a nationalised bank for a minimum period of one year at a time. Within eight weeks of the Calcutta Group depositing these amounts with the Prothonotary and Senior Master, High Court, Bombay, the Bombay Group to vacate the Juhu property. If the Bombay Group fails to vacate, on the expiry of eight weeks period, the Court Receiver to take actual physical possession of the Juhu property and hand over the same to the Calcutta Group. He may, should the need arise, even take police assistance to comply with these directions.

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48 As regards notice no.1653 of 2015, the same is deferred until the applicants' share out of the Rs.23.40 crores payable to Bombay Group is determined independently.

49 At this stage, the counsel for the Bombay Group seeks stay of this order by a period of eight weeks.

50 I am not inclined to grant the stay as requested because the Calcutta Group has been given six weeks to deposit and Bombay Group has been given eight weeks to vacate the Bungalow after the amount is deposited by the Calcutta Group.

51 It is clarified that if the Bombay Group gets a stay from the Appeal Court, then in that case, liberty to the Calcutta Group to apply for return of the amount deposited with the Prothonotary and Senior Master, High Court, Bombay.

(K.R.SHRIRAM,J)