

**After Hearing Learned Counsel for Vs. Weeks. the**

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**Court :** Delhi

**Decided On :** Jan-13-2012

**Appellant :** After Hearing Learned Counsel for

**Respondent :** Weeks. the

**Judgement :**

IN THE HIGH COURT OF DELHI AT NEW DELHI (Reportable) EX.P. 403/2010 and EA Nos. 734/2010, 735/2010, 353/2011. Reserved on: January 11, 2012 Decision on: January 13, 2012 KLEN and MARSHALLS MANUFACTURERS AND EXPORTERS LTD. .... Decree Holder Through Mr. Abhinav Vashisht, Senior Advocate with Ms. Mohna M. Lal, Advocate. versus POWER GRID CORPORATION INDIA LTD ..... Judgment Debtor Through Mr. S.B. Upadhyay, Senior Advocate with Mr. P.K. Mishra, Advocate. CORAM: JUSTICE S. MURALIDHAR JUDGMENT 13.01.2012.

1. Execution Petition No.

403. of 2010 has been filed by the Decree Holder ('DH'), M/s. Klen and Marshalls Manufacturers and Exporters Limited, seeking a direction to the Judgment Debtor ('JD'), Power Grid Corporation of India Limited, to pay a sum of Rs. 5,99,21,018/- in terms of the arbitral Award dated 9th May 2003 ('Award') and an order dated 8th April 2010 of this Court..

2. The background to the present execution petition is that in terms of the aforementioned Award the JD was to pay the DH US\$ 14,35,006 as well as Rs. 45,10,798 within two months from the date of the Award failing which simple interest @ 12% per annum on the aforesaid amount, after Ex.P No. 403/2010 *Page 1 of 11* converting the dollars into Indian currency on the date of the Award would be payable with effect from 9th July 2003 till the date of payment..

3. On 14th December 2005 the learned Arbitrator in an application filed under Section 33 of the Arbitration and Conciliation Act, 1996 ('Act') passed a further order. The JD filed OMP No.

262. of 2003 challenging the Award dated 9th May 2003 and OMP No.

88. of 2006 challenging the order dated 14th December 2005 passed by the learned Arbitrator. During the pendency of the OMPs, the JD deposited a sum of Rs. 7,14,96,878/- in this Court. Thereafter, by an order dated 8th April 2010 this Court disposed of OMP Nos.

262. of 2003 and 88 of 2006 modifying the Award in the following manner: (a) the JD was to refund to the DH liquidated damages in the sum of Rs. 6,33,39,912/-; (b) the JD was allowed to retain a sum of Rs. 6,36,09,161/- in respect of the performance guarantee that was encashed in September 1998; and (c) Consequently, the JD was entitled to receive a sum of Rs. 7,12,27,629/- from the JD..

4. The JD did not file an appeal against the order dated 8th April 2010. The DH filed an appeal against the said order which, according to the DH, has no bearing on the present execution petition. The DH filed Execution Petition No.

122. of 2010 which came to be disposed of by this Court on 5th August 2010 by the following order: "The Judgment Debtor deposited an amount of Rs. 7,14,96,878/- in the Registry of this Court as per order dated 8th July 2003 passed in OMP No.

262. of 2003 and IA No. 6845 of 2003. Thereafter, the objections of the Ex.P No. 403/2010 *Page 2 of 11* parties were disposed of by this Court on 8th April 2010.

The effect of the said judgment, which has attained finality, is that the awarded amount stands reduced to Rs. 7,12,27,629/-. The Registry is directed to prepare a pay order for the amount of Rs. 7,12,27,629/- plus interest accrued thereon in favour of the decree holder and to deliver the same to the decree holder forthwith. The difference of Rs. 2,69,249/- [Rs. 7,14,96,878/- minus Rs. 7,12,27,629/-] along with interest accrued thereon shall be released to the Judgment Debtor forthwith. With the release of the aforesaid amounts to the Decree Holder, the decree shall stand satisfied. Execution petition stands disposed of."

5. Pursuant to the above order, on 3rd October 2010 the DH received a sum of Rs. 10,38,71,077/- (after tax deducted at source) from the Registry of this Court..

6. Thereafter, the present execution petition was filed on 7th December 2010 by the DH claiming that in terms of the Award the DH was entitled to receive interest @ 12% per annum on the Award amount if the JD did not make payment thereof within two months from the date of the Award. The JD did not pay the amount within two months and instead filed objections. The amount deposited by the JD in this Court was kept in a fixed deposit and thereafter the amount together with the interest accrued was paid to the DH. This was far less than the interest that the DH was entitled to in terms of the Award. The order passed by this Court in Execution Petition No.

122. of 2010 was limited to the extent of requiring the Registry of this Court to pay to the DH the amount kept in the fixed deposit together with interest in terms of the order dated 5th August 2010 of this Court. It is stated that the DH is now entitled to receive the balance amount of interest Ex.P No. 403/2010 *Page 3 of 11* in terms of the Award..

7. Notice was issued in the present execution petition on 24th December 2010. On 21st April 2011 when the JD entered appearance, it was directed to make payment of the decretal amount within four weeks. Thereafter, the DH filed EA No.

353. of 2011 seeking attachment of the bank accounts of the JD since it had not complied with the order dated 21st April 2011. On 30th May 2011 this Court passed the following order: "EA No. 353/2011 This application has been moved by

the Decree Holder to seek attachment of the bank accounts of the Judgment Debtor as the Judgment Debtor has not complied with the directions dated 21st April 2011, whereby the Judgment Debtor was required to make payment of the decretal amount within four weeks. Consequently, the bank accounts of the Judgment Debtor with the following banks are attached to the extent of Rs.

50. lakhs each: (i) Indian Overseas Bank, Jeevan Deep Building, 10 Parliament Street, New Delhi - 110 001; (ii) Punjab National Bank, ECE House, 28-A, K.G. Marg, New Delhi - 110 001; (iii) IDBI Bank, Corporate Banking, 12th Floor, IFCI Tower, 61, Nehru Place, New Delhi - 110 019; (iv) Bank of Baroda, Madhuban, 55, Nehru Place, New Delhi - 110 019; (v) Indian Bank, Mehrauli Institutional Area Branch, No. 7, Shaheed Singh Marg, New Delhi - 110 016; (vi) State Bank of Hyderabad, 16, Kundan House, Nehru Place, New Delhi - 110 019. The concerned bank managers are directed to remit to the extent Ex.P No. 403/2010  
*Page 4 of 11 of Rs.*

50. lakhs each to this Court before the next date. List on 29th July 2011. Dasti."

8. Aggrieved by the above order, the JD filed EFA (OS) No.

24. of 2011 in which an interim order was passed by the Division Bench on 8th June 2011 as under: "EFA (OS) No. 24/2011 and CM No. 11714/2011 (stay) Issue notice. Mr. Mohan M. Lal, Advocate accepts notice on behalf of the Respondent. After hearing learned counsel for the parties, the Court is of the opinion that the interim order sought, can be conditionally granted. The amount of Rs. 3,05,52,042/- said to be due and payable on account of balance liability arising out of the decree drawn pursuant to the judgment of the Court, shall be paid to the Respondent/Decree Holder by the Appellant within two weeks. The Respondent shall simultaneously secure the amount released to it through a bank guarantee payable in favour of the Appellant, within four weeks which shall be kept alive till the pendency of the present appeal. Subject to the compliance with these conditions, the operation of the impugned order shall remain suspended. The Court would balance the equities regarding interest and other amounts having regard to the outcome of the Appeal. List for hearing on 25th July 2011. Copy of the order be given dasti."

9. The above amount of Rs. 3,05,52,042/- was arrived at by calculating the simple interest at 12% on the decretal amount for the period 9th May 2003 till 30th September 2010 less the sum already received by the DH. The said calculation has not been objected to by the JD. Thereafter by way of a Ex.P No. 403/2010 *Page 5 of 11* demand draft dated 20th June 2011 the JD paid to the DH a sum of Rs. 3,05,52,042/-. The DH also furnished a bank guarantee for the said sum in favour of the JD. Taking note of the above development on 29th July 2011 this Court adjourned the Execution Petition No.

403. of 2010 sine die with liberty to the parties to revive the same after disposal of EFA (OS) No.

24. of 2011..

10. The appeal being EFA (OS) No.

24. of 2011 came to be finally disposed of by the Division Bench of this Court on 29th July 2011 by the following order: "C.M. Appl. 13707/2011 Learned counsel for the parties submit that the relief sought in the present application have been rendered infructuous except to the extent of the prayer made by the Applicant/Appellant for being handed over the bank guarantee as referred to in Prayer Clause (iv). The Appellant has paid the amount directed by the Court - a fact confirmed by the latter's Senior counsel. The bank guarantee in terms of the Court's order has been filed in the Court on 15.07.2011. Since there has been compliance with the order, nothing needs to be recorded except a direction to the Registrar of this Court to hand over the bank guarantee. It is ordered accordingly. The application is disposed of in the above terms. EFA (OS) 24/2011 Learned counsel for the parties submit that since the objections of the Respondents to the execution are to be decided by the learned Single Judge, no further orders are required in the present appeal. It is clarified that in view of the orders made on 08.06.2011, the attachment directed by the learned Single Judge is hereby vacated. The appeal is disposed of in the above terms; nothing stated in the order shall be construed as comments on the merits of the execution proceeding pending before the Single Judge, who shall decide the same on merits and make restitutionary orders, having Ex.P No. 403/2010 *Page 6 of 11* regard to the final

directions in the execution proceedings. Order dasti."

11. Thereafter, the present petition was revived by an order dated 19th August 2011. Also, the DH has kept the bank guarantee furnished by it renewed for a sum of Rs. 3,05,52,042/- in favour of the JD..

12. Mr. Abhinav Vashisht, learned Senior counsel appearing for the DH submitted that the present execution petition is maintainable notwithstanding the fact that earlier Execution Petition No.

122. of 2010 was disposed of by this Court by order dated 5th August 2010. It is submitted that the executing Court could not have altered the Award which, as modified by the order dated 8th April 2010 in OMP Nos.

262. of 2003 and 88 of 2006, became final. That portion of the Award which required the JD to pay interest at 12% per annum if the JD did not make payment of the awarded amount within two months remained unaltered. The mere fact that the amount deposited in this Court together with interest accrued thereon was directed to be paid to the DH by an order dated 5th August 2010 did not mean that the DH had waived its right to receive the full interest amount in terms of the Award. In support of his plea that a second execution petition to realise the balance amount under the decree was maintainable, Mr. Vashisht relied on the decision of the Madras High Court in Ponnuru Satyanarayana v. Bolisetti Nagabushanam AIR (38) 1951 Madras 429, and of this Court in Delhi Development Authority v. Bhai Sardar Singh 158 (2009) DLT 8 (DB). He clarified that although the DH had in the present execution petition calculated compound interest @ 12% per annum on the decretal amount and had, therefore, claimed Rs. 5,99,21,018/-, it had subsequently limited its claim to that of simple interest @ 12% per annum for the period between 9th May 2003 and 30th Ex.P No. 403/2010 Page 7 of 11 September 2010 which worked out to Rs. 6,31,95,490/-. The total decretal amount (principal + interest) worked out to Rs. 13,44,23,119. After deducting the sum of Rs. 10,38,71,077 received by the DH from the Registry of this Court, the balance amount payable by the DH was Rs. 3,05,52,042. The said amount, as noticed hereinbefore, has since been paid by the JD to the DH subject to the DH furnishing a bank guarantee for the said amount in favour of the JD..

13. Mr. S.B. Upadhyay, learned Senior counsel appearing for the JD submitted that the order passed by this Court on 5th August 2010 in Execution Petition No.

122. of 2010 was final as far as satisfaction of the decree in terms of the Award was concerned. He further submitted that inasmuch as in Execution Petition No.

122. of 2010 the DH had claimed interest at 12% per annum on the awarded amount, the principle of res judicata would apply and the present execution petition was not maintainable. Further, the DH had chosen not to appeal against the order dated 5th August 2010 which clearly stated that with the release of the amount of Rs. 7,12,27,629/- plus interest in favour of the DH, "the decree shall stand satisfied". The said order had become final and no further claim in respect of the decree was maintainable. He relied on the decision of the Supreme Court in Greater Cochin Development Authority v. Leelamma Valson (2002) 2 SCC.

573. 14. Having considered the above submissions, this Court is of the view that the plea of the DH should succeed. It is settled law that the executing Court cannot go behind the decree or seek to modify or alter the decree. As far as the Award in the instant case is concerned, it was modified to a limited extent by the order passed by this Court on 8th April 2010 while disposing Ex.P No. 403/2010 *Page 8 of 11* of OMP Nos.

262. of 2003 and 88 of 2006. However, that portion of the Award under which the DH was entitled to receive interest at 12% per annum in the event the awarded amount was not paid by the JD within two months of the date of the Award was left unaltered. This Court could not have, and in fact did not, in Execution Petition No.122 of 2010 modify that portion of the Award. It is not in dispute that when the Court ordered on 5th August 2010 in Execution Petition No.

122. of 2010 that the Registry should release to the DH a sum of Rs. 7,12,27,629/- plus interest accrued thereon, what was paid to the DH was only the interest accrued on the aforementioned sum placed in a fixed deposit with the UCO Bank. This amount was admittedly much lower than the amount constituting interest at 12% per annum in terms of the Award. Therefore, even while this Court in its order dated 5th August 2010 noted that with the payment of the sum of Rs.

7,12,27,629/- plus interest accrued thereon in the fixed deposit the decree would stand satisfied, it did not extinguish the right of the DH to receive the full decretal amount i.e. the interest at 12% on Award amount (as modified by the order dated 8th April 2010) till the date of payment..

15. In Ponnuru Satyanarayana v. Bolisetti Nayabushanami the Madras High Court observed as under (AIR, p.430): "(4)...Many rulings of this Court, including the Full Bench ruling quoted above, have held that, where an execution petition has been closed erroneously by a Court either for statistical purposes or under an error, as here, and the Decree Holder is free from blame, the injured Decree Holder has got a right to have that old execution petition revived and proceeded with from the stage immediately before the error, and that a subsequent execution petition filed by him is only to be treated as a reminder to the Court to revive the old execution petition irregularly and erroneously closed by it." (emphasis supplied) Ex.P No. 403/2010 Page 9 of 11.

16. This Court in Delhi Development Authority v. Bhai Sardar Singh also clarified that the mere deposit of the decretal amount in a Court other than an executing Court can never amount to 'payment'. In para 17 of the judgment it was observed as under (DLT, p.15): "17. In our view, the act of making payment to the decree holder under Rule 1 of Order 21 CPC would require a positive act on the part of the judgment debtor of either depositing "into the Court whose duty it is to execute the decree" or to make payment out of Court to the decree holder through a postal money or through a bank or by any other mode "wherein payment is evidenced in writing" unless the Court which made the decree otherwise directs. The payment made under a decree, to fall within the ambit of Order 21 Rule 1 CPC has therefore, necessarily, to be an unconditional payment by the judgment debtor to the decree holder either directly, or indirectly through the medium of the Court whose duty is to execute the decree. Mere deposit of the decretal amount in a Court, other than executing Court can never amount to "payment" and even where the decretal amount is deposited in the executing Court the judgment debtor's liability to pay interest does not cease until notice contemplated by Sub- rule (2) of Rule 1 of Order 21 is given. This is evident from Sub- rule (4) above. Order 21 Rule 1 CPC does not contemplate the decree holder having to chase the judgment

debtor to realize the decretal amount by seeking attachment of one or the other accounts of the judgment debtor or the properties of the judgment debtor. If resort to the execution does not of the Court is required to be made by the decree holder, and the decretal amount is recovered in pursuance of the order of attachment of the accounts of the judgment debtor and/or sale of assets of the judgment debtor, such realization of the decretal amount would not amount to payment of the decretal amount under Rule 1 of Order 21."

17. The facts in Greater Cochin Development Authority v. Leelamma Valson are distinguishable. In the said case the question of entitlement of the Respondents therein to interest on the decretal amount had been resolved finally by an order passed by the High Court in a petition challenging the Award by making it clear that no future interest was Ex.P No. 403/2010 *Page 10 of 11* payable on the decree. In the said circumstances the further claim of interest was held to be impermissible. In the present case the order passed by this Court on 8th April 2010 in the petitions under Section 34 of the Act did not modify or alter the requirement of the JD to pay interest at

12. % per annum to the DH for the period of delay beyond two months after the date of the Award up to the date of payment..

18. For the aforementioned reasons the present execution petition is disposed of by holding that the JD is liable to pay DH the sum of Rs. 3,05,52,042 which already stands paid by the JD to the DH during the pendency of the present petition. Consequently, the bank guarantee furnished by the DH in favour of the JD for the aforementioned amount is discharged and directed to be returned to the DH forthwith..

19. The petition and the pending applications are disposed of in the above terms. S. MURALIDHAR, J. JANUARY 13, 2012 rk Ex.P No. 403/2010 Page 11 of 11