

(2011) 03 DEL CK 0386**Delhi High Court****Case No:** EFA (OS) No. 2 of 2010 and CM No. 1040 of 2010

Y.P. Khanna and Others

APPELLANT

Vs

P.P. Khanna and Others

RESPONDENT

Date of Decision: March 30, 2011**Citation:** (2011) 2 ARBLR 143 : (2011) 5 ILR Delhi 563**Hon'ble Judges:** Vikramajit Sen, J; Siddharth Mridul, J**Bench:** Division Bench**Advocate:** Deepak Tyagi, for the Appellant; Sanjeev Anand, Kajal Chandra and Prachi Gupta for P.P. Khanna and Group "E" and Ashwani Khanna, for Group "D", for the Respondent**Final Decision:** Dismissed**Judgement**

Siddharth Mridul, J

1. The present appeal assails the order dated 13th January, 2010 passed by the learned Single Judge in Execution Petition No. 233/2009, whereby the learned Single Judge allowed release of an amount of Rs. 1,06,26,000 to the Respondent No. 1 (i) to (iii).

2. The only grievance raised by the Appellants is that the learned Single Judge ought not to have released the aforementioned amount to the said Respondents without adjudicating the inter se claims of the Appellants and Group "E".

3. The facts as are necessary for disposal of the present appeal are that:

(a) A family arbitration award was passed on 1st January, 1999. The award settled the shares and claims between five brothers forming Group "A", Group "B", Group "C", Group "D" and Group "E" respectively. The award has since been upheld by the Hon'ble Supreme Court vide order dated 15th May, 2009 subject to the amendment of the final award by the Division Bench of this Court vide order dated 1st August, 2008.

(b) As per the award, Group "E" (Respondent No. 1 (i) to (iii) herein) was to hand over vacant possession of a portion of the property bearing No. D-1, Okhla Industrial Area, Phase-I, Delhi (hereinafter referred to as "Okhla Property") to Group "C" (Appellants herein) within 45 days of passing of the award and thereafter a sum of Rs. 1,06,26,000 was to be released in favour of Group "E". However, subsequently, objections were filed by members of Group "A" and Group "B" (Respondent Nos. 2 and 3 herein) against the family award dated 1st January, 1999 which were later on dismissed by the Hon'ble Supreme Court. Group "E" remained in possession of Okhla Property even after 45 days of passing of the award inasmuch as owing to the objections filed by the Respondent Nos. 2 and 3 the family award became unexecutable.

(c) It is the claim of the Appellants that Group "E" was illegally withholding the possession of Okhla Property since 1997, when during the course of the family arbitration the Appellants, i.e. Group "C" had already handed over the factory premises No. C-7 and 8 to Group "E", i.e. Respondent No. 1 (i) to (iii) herein.

(d) The Appellants herein filed an Execution Petition No. 398/2008 before this Court for execution of the family award dated 1st January, 1999. In the Execution Petition No. 398/2008 the Appellants had sought for various claims against Group "E" including claim of proportionate house tax and ground rent in respect of Okhla Property which was occupied by Group "E" since 1997. The house tax liability has been paid by Group "E" under the directions given by this Court for the period from 1974 to 1984.

(e) In a separate Execution Petition No. 233/2009 filed by Group "E", it has been prayed that an amount of Rs. 1,06,26,000 be released to them keeping in view the outstanding liabilities.

(f) Vide the impugned order dated 13th January, 2010 the learned Single Judge came to the view, inter alia, that the amount payable under award to Group "E" should not be withheld. Consequently, the impugned order directed the Registry of this Court to prepare a cheque of Rs. 1,06,26,000 in favour of the Respondent No. 1 (i) to (iii) herein and hand over the same to the learned Counsel for the respective group. At the same time, it was made clear in the impugned order that all the rights and contentions including the issue of interest payable to the parties would be adjudicated upon subsequently.

(g) Simultaneously, in Execution Petition No. 398/2008 by an order of the same date, i.e. 13th January, 2010, the learned Single Judge directed that the issue of inter se liabilities would be examined and adjudicated after all statutory dues are paid to the respective banks and financial institutions.

(h) The grievance raised by the Appellants is to the effect that contrary to the family award, Group "E" continued qua their possession of Okhla Property during all these years and vacated the same only on 8th June, 2009 and on the other hand raised

massive construction on C-7 and 8, Okhla Industrial Area, Delhi, being vacated and handed over by Group "C" to them and predicated on this the Appellants had asked for damages/rent in respect of 6,780 square feet approximately.

4. On behalf of the Appellants it is contended that the impugned order fell into error inasmuch as it released the sum of Rs. 1,06,26,000 to Group "E" without adjudicating the inter se claims and liabilities between Group "C" and Group "E" and failing to appreciate the liability of Group "E" to compensate Group "C" for illegal and unauthorized occupation of part of premises of Okhla Property from 15th February, 1999 to 7th June, 2009.

5. In the present case, it is seen that the possession of Okhla Property was handed over to Group "C" on 8th June, 2009. Therefore, the issue for which damages/rent are being claimed relates to the period beyond the period of 45 days from the date of the family settlement dated 1st January, 1999, i.e. 15th February, 1999. The Appellants claim compensation for the illegal and unauthorized occupation of Okhla Property by Group "E" during all these years. In this behalf, it must be noticed that the order dated 13th January, 2010 in Execution Petition No. 398/2008 itself states that the issue of inter se liabilities would be examined and adjudicated after all statutory dues are paid to respective banks and financial institutions. Therefore, the contention on behalf of the Appellants that the Single Judge virtually dismissed the claims of Group "C" qua Group "E" without adjudicating the same are untenable.

6. It is seen from the impugned order dated 13th January, 2010 that, in the first instance, the learned Single Judge addressed issues of payment of the outstanding liabilities arising from the said family award and the amounts to be paid towards all the said liabilities. Having come to the conclusion that the said liabilities in aggregate would not exceed Rs. 1 crore, whereas the amount lying deposited in the court by the parties to the award was about Rs. 3.5 crores, the learned Single Judge directed that the liabilities be discharged in the first instance. Thereafter, the learned Single Judge addressed the issue of releasing Rs. 1,06,26,000 to Group "E" under the family award. At this stage counsel appearing on behalf of the Appellants herein requested that the issue of outstanding rent between Group "C" and Group "E" in respect of Okhla Property be referred to mediation. Mr. Sandeep Sethi, Senior Advocate was requested by the learned Single Judge to act as mediator with regard to the aforesaid dispute and see if the same can be resolved amicably between Group "C" and Group "E". However, the learned Single Judge was of the view that the amount payable under the award to Group "E" should not be withheld in the meantime and in that view of the matter directed the Registry to release the aforesaid sum of Rs. 1,06,26,000 in favour of Group "E". Simultaneously, the learned Single Judge made it very clear in the order dated 13th January, 2010 that the issue of inter se liabilities would be examined and adjudicated after all statutory dues were paid to respective banks and financial institutions.

7. We find no infirmity in the impugned order for the following reasons:

Firstly, the view taken by the learned Single Judge is a possible view in the facts and circumstances of the case and a view which could legally have been taken in the matter. Secondly, it has not been shown that the order of the learned Single Judge is in any manner perverse or that the view taken by him was not a possible view [reference can be made on this proposition to the decision of the Supreme Court in [Wander Ltd. and Another Vs. Antox India P. Ltd.](#), Thirdly, the learned Single Judge did not reject the claim of the Appellants qua the Respondent No. 1 (i) to (iii) and only deferred the adjudication to beyond the payment of all the statutory dues under the family award. Thus, the claim of the Appellants for compensation from Group "E" for illegal and unauthorized occupation of Okhla Property has yet to be adjudicated.

8. In this view of the matter, we find no infirmity or perversity in the impugned order so as to warrant interference in appeal. In view of the above, we find no force in the appeal which is hereby dismissed leaving the parties to bear their respective costs.