



2026:DHC:8756-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment reserved on: 17.09.2026*
Judgment pronounced on: 06.10.2026
Judgment uploaded on: 06.10.2026

CNR No. DLHC010442742026

+ EFA(COMM) 28/2026, CM APPL. 63697/2026, CM APPL. 63698/2026, CM APPL. 63699/2026, CM APPL. 63700/2026, CM APPL. 63701/2026, CM APPL. 63702/2026

SMT NISHA SHARMAAppellant
Through: Mr. S. K. Srivastava, Ms. Shubhi Srivastava, Advs.

versus

M/S INTEC CAPITAL LIMITED AND ORSRespondents
Through: Mr. Pranav Goyal, Ms. Pooja Chaudhary, Mr. Vishant Singh, Ms. Mreeganka Goyal, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present Execution First Appeal arises from the Order dated 03.06.2026 (the 'Impugned Order ') passed by the Executing Court in execution of the Arbitral Award. Judgment Debtor No.5, Smt. Manju Sharma, transferred her one-half share to her sister-in-law, the Appellant herein, Smt. Nisha Sharma, after service of notice in the Execution Petition but before a formal order of attachment. The Appellant was already a co-owner of the property and a member of the family residing in the same house.

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EFA(COMM) 28/2026



2026:DHC:8756-DB



2. The Appellant contends that, by the date of attachment, Judgment Debtor No.5 no longer held the share in the property and it was therefore unavailable for execution. The sequence of events is, however, significant. The property had already been identified in the Execution Petition and its attachment and sale had been sought. Judgment Debtor No.5 was thereafter served with notice of the Execution Petition and subsequently transferred the share to the Appellant. The question is whether that transfer took the share outside the reach of the pending execution or otherwise furnishes a ground to interfere with the auction sale. In the considered view of this Court, and for the reasons that follow, it did not.

FACTUAL MATRIX

3. On 06.11.2021, an Arbitral award was passed in favour of the Respondent No.1/INTEC Capital Limited ('Decree Holder') against M/s SPA Engineering Services and the other Judgment Debtors for a sum of ₹50,34,888/-, together with interest and costs. The Decree Holder thereafter instituted Execution Petition No.37/2022 on 13.05.2022 for execution of the Award.

4. In the Execution Petition, the Decree Holder identified House No.161, Gali No.4, Durgapuri Extension, Shahdara, Delhi as an immovable property of Judgment Debtor No.5 and sought attachment and sale of the properties so identified towards satisfaction of the Award.

5. On 08.06.2022, the Executing Court declined to proceed against Judgment Debtor Nos.3, 6 and 7 for the reasons recorded in that order.

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EFA(COMM) 28/2026



2026:DHC:8756-DB



Notice of the Execution Petition was thereafter served upon Judgment Debtor Nos.1 and 5 on 30.07.2022.

6. After service of notice in the Execution Petition, Judgment Debtor No.5 conveyed her undivided share in the property to the Appellant. The conveyance followed service upon Judgment Debtor No.5 on 30.07.2022 and preceded the formal attachment. The Sale Deed records a consideration of ₹32,50,000/-.

7. On 14.11.2022, the Decree Holder filed an application under Order XXI Rule 54 of the Code of Civil Procedure, 1908 ('CPC') seeking attachment of the property. Attachment was ordered on 24.11.2022 and was effected on 17.12.2022. The order dated 24.11.2022 noted from the title documents that Judgment Debtor No.5 and the Appellant were co-owners of the property.

8. On 20.02.2023, the Appellant filed objections under Order XXI Rule 58 CPC. Her case was that Judgment Debtor No.5 had already transferred her share to the Appellant before attachment and, therefore, no interest of Judgment Debtor No.5 remained available for execution. The Appellant stated that she came to know of the execution proceedings only when the attachment order was affixed at the property in December 2022. She also pleaded that possession had been delivered to her under the Sale Deed. No reference was made in those objections to any earlier Agreement to Sell.

9. The objections were heard and dismissed on 24.04.2023. The Executing Court recorded that Judgment Debtor No.5 had transferred the share to her sister-in-law during pendency of the execution

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EFA(COMM) 28/2026

Page 3 of 16



2026:DHC:8756-DB



proceedings and that both were residing at the same address. The Appellant did not challenge that Order.

10. On 18.10.2023, the Executing Court directed sale of the undivided share of Judgment Debtor No.5. Judgment Debtor No.5 thereafter moved applications on 09.11.2023 and sought stay of the sale. Notice was issued on those applications, but immediate stay was declined. The auction was conducted on 11.12.2023.

11. The successful bidder was Respondent No.9/Rahul Sharma, the son-in-law of the Appellant. The Impugned Order records that he deposited the auction amount of ₹84,50,000/-. What was brought to auction was only the one-half undivided share attributed to Judgment Debtor No.5. The Appellant's original one-half share was not sold.

12. The Appellant thereafter filed another application under Order XXI Rule 58 CPC on 03.09.2024, raising objections extending beyond her claim of title. By the Impugned Order dated 03.06.2026, the Executing Court dismissed the applications filed by Judgment Debtor No.5 as well as the objections of the Appellant and confirmed the auction sale under Order XXI Rule 92 CPC.

CONTENTIONS AND SCOPE

13. The Appellant relies principally upon the Sale Deed and an Agreement to Sell dated 03.10.2020. She submits that the transfer preceded attachment and that the property was not the subject matter of the arbitration. She also invokes Section 60(1)(ccc) CPC and questions the sale of an undivided share in a family dwelling house.



2026:DHC:8756-DB



14. The Appellant also questions the enforceability of the Award. She challenges the constitution of the Arbitral Tribunal and contends that a signed copy of the Award was never delivered to Judgment Debtor No.5 in terms of Section 31(5) of the Arbitration and Conciliation Act, 1996 ('1996 Act').

15. The present Appeal arises from adjudication of objections in execution. It is not a challenge to the Award. The objections directed against the Award must therefore be examined within the limited jurisdiction available in execution, while the Appellant's proprietary claim must be considered in light of the September 2022 transfer and the earlier adjudication under Order XXI Rule 58 CPC.

ANALYSIS AND FINDINGS

EFFECT OF THE TRANSFER

16. Section 64 CPC does not invalidate the transfer. The Sale Deed preceded the order of attachment dated 24.11.2022. A subsequent attachment cannot render an earlier transfer void under Section 64 CPC.

17. Section 52 of the Transfer of Property Act, 1882 ('TPA') operates on a different principle. It applies where, during the pendency of a suit or proceeding, a right to identified immovable property is directly and specifically in question. A transfer made during such pendency does not become void, but remains subject to the rights determined or enforced in that proceeding.

18. This principle cannot be extended to every property owned by a



2026:DHC:8756-DB



judgment debtor in a proceeding for recovery of money. In the present case, however, before the Sale Deed was executed, this particular property had already been identified in the Execution Petition as an immovable property belonging to Judgment Debtor No.5 and its attachment and sale had been sought.

19. In **Danesh Singh & Ors. v. Har Pyari (Dead) through LRs. and Ors.**¹, the Supreme Court emphasised that the applicability of Section 52 depends upon whether a right to the immovable property was directly and specifically in question. In the course of its discussion, the Court referred with approval to **Annakkili v. Murugan & Anr.**², which concerned a suit for recovery of money in which identified properties had been brought within the proceedings through a prayer for security and attachment. In **Annakkili (supra)**, it was held that the doctrine could not be excluded simply because the principal relief was recovery of money.

20. A closer analogy is found in **R. Savithri Naidu v. Cotton Corporation of India Ltd. and Anr.**³. There, a purchaser who had acquired property from the Judgment Debtor after the making of an arbitral award filed objections under Order XXI Rule 58 CPC seeking release of the property from attachment. The Supreme Court held that a post-Award transferee *pendente lite* could not resist execution and was subject to the bar recognised under Order XXI Rule 102 CPC. The present case goes further. The transfer was made not only after the Award, but after institution of the Execution Petition and service

¹ 2025 INSC 1434

² 2021 SCC OnLine Mad 1673

³ 2026 INSC 150



2026:DHC:8756-DB



thereof upon Judgment Debtor No.5.

21. In the present case, the transfer therefore did not take the share of Judgment Debtor No.5 outside the pending execution. This does not mean that the Sale Deed was void or that no title passed between the parties. The Appellant acquired whatever interest Judgment Debtor No.5 could transfer, subject to the rights enforceable in the pending proceedings. The observation of the Executing Court in the order dated 24.04.2023 that no title was conferred upon the Appellant is, to that extent, wider than necessary. Its rejection of the Appellant's claim to release the share from execution can nevertheless be sustained.

EARLIER ADJUDICATION UNDER ORDER XXI RULE 58 CPC

22. There is an independent reason why the Appellant cannot reopen the same proprietary claim. In her first objection under Order XXI Rule 58 CPC, she asserted that Judgment Debtor No.5 had ceased to own the share before attachment because it had already been sold to the Appellant. That was the very basis on which she sought release of the property from execution.

23. The objection was adjudicated on 24.04.2023 after hearing the Appellant and her counsel. Under Order XXI Rule 58(4) CPC, such an adjudication has the same force and is subject to the same conditions of appeal as a decree. The Appellant did not challenge that order. The same claim cannot thereafter be presented for a second adjudication under Order XXI Rule 58 CPC.

24. The alleged Agreement to Sell dated 03.10.2020 does not



2026:DHC:8756-DB



permit the proprietary claim to be reopened. It was available to the Appellant when the first objection was filed, but was not relied upon. In *Asgar & Ors. v. Mohan Varma & Ors.*⁴, the Supreme Court explained that a ground which could and ought to have been raised in an earlier execution proceeding cannot subsequently be used to reopen the same controversy. The Agreement bears a direct connection with the title asserted in the first objection and ought to have been placed before the Executing Court at that stage.

SECTION 53 TPA AND THE CIRCUMSTANCES OF THE TRANSFER

25. The circumstances in which the transfer was made are also relevant in light of Section 53(1) TPA. The provision makes a transfer of immovable property made with intent to defeat or delay the creditors of the transferor voidable at the option of a creditor so affected. At the same time, it protects the rights of a transferee in good faith and for consideration.

26. Payment of consideration does not conclude the enquiry under Section 53. In *C. Abdul Shukoor Saheb v. Arji Papa Rao*⁵, the Supreme Court considered a transfer which was real and supported by consideration, but separately examined whether it had been made to place the property beyond the reach of creditors and whether the purchaser had acted in good faith. The intention underlying the transfer and the good faith of the transferee are therefore distinct questions.

⁴ (2020) 16 SCC 230



2026:DHC:8756-DB



27. The facts here go beyond the relationship between the parties. An Award had already been passed. Execution had been instituted. Judgment Debtor No.5 was served with notice of the Execution Petition on 30.07.2022. Thereafter, almost the entire consideration under the asserted family transaction was stated to have been paid between 20.09.2022 and 22.09.2022, and her undivided share was conveyed to the Appellant, who already owned the remaining half of the same house.

28. The alleged Agreement to Sell dated 03.10.2020 records payment of ₹11,000/- as earnest money against a total consideration of ₹32,50,000/-, leaving ₹32,39,000/- payable at conveyance. Thus, even on the Appellant's account, substantially the whole consideration was stipulated to remain payable until conveyance, which occurred only after service of the Execution Petition. The Agreement was not mentioned in her first objection under Order XXI Rule 58 CPC. These circumstances are relevant to the explanation advanced for the transfer.

29. Nor did the transfer result in any material change in possession or use of the property. The Appellant herself states in her later objection that Judgment Debtor No.5 and her immediate family were permitted to continue residing in the house as a family arrangement and that the arrangement continued. Thus, while title to the share was transferred to the Appellant, the family continued to occupy the property as before.

⁵ AIR 1963 SC 1150



2026:DHC:8756-DB



30. The subsequent auction also forms part of the factual setting. When the undivided share was brought to Court auction, the successful bidder was the Appellant's son-in-law. The Appellant states that she approached her daughter and son-in-law for assistance in saving the house, following which her son-in-law purchased the share at auction. No impropriety in the conduct of the auction is established on that account, and no further conclusion is drawn from this circumstance.

31. These facts, when considered together, cannot be viewed in isolation. The transfer was effected after execution had commenced and after Judgment Debtor No.5 had been served with notice of the Execution Petition. Substantially the entire consideration under the asserted family transaction was paid only thereafter, while the possession and enjoyment of the property continued within the family. On a preponderance of probabilities, these circumstances establish that the transfer was made with the intent to defeat or delay the enforcement of the Decree Holder's rights against Judgment Debtor No.5. The circumstances also do not support the Appellant's claim to the protection available to a transferee in good faith under Section 53(1) TPA.

OBJECTIONS TO THE ARBITRAL AWARD

32. The Appellant also seeks to resist execution by questioning the constitution and authority of the Arbitral Tribunal. The scope of such an objection in execution is limited. In **Vasudev Dhanjibhai Modi v.**



2026:DHC:8756-DB



Rajabhai Abdul Rehman⁶, the Supreme Court held that an Executing Court may interfere where the decree is a nullity for an inherent want of jurisdiction apparent on the face of the record. It cannot, however, reopen disputed questions which require examination of evidence.

33. The objection founded upon Section 12(5) read with the Seventh Schedule of the 1996 Act does not disclose such a defect. The notice invoking arbitration is dated 06.05.2015, and the Arbitrator entered upon the reference on 21.05.2015, before the amendment introducing Section 12(5) came into force on 23.10.2015. In **Rajasthan Small Industries Corporation Ltd. v. Ganesh Containers Movers Syndicate**⁷, the Supreme Court held that Section 12(5), as introduced by the 2015 Amendment, does not apply to arbitral proceedings commenced before 23.10.2015 unless the parties agree otherwise. Nothing placed before this Court shows any such agreement.

34. The further contention that the Arbitrator was not appointed by the authority contemplated in the arbitration clause also does not establish a patent nullity on the present record. The communication dated 21.05.2015 states that the Arbitrator received a notice from M/s K. Datta & Associates appointing her in terms of the arbitration clause. The material showing the underlying nomination or authority for that communication is not contained in the appellate record. It would therefore be unsafe either to treat that communication as conclusive proof of a valid appointment or to infer from it that counsel

⁶ (1970) 1 SCC 670

⁷ (2019) 3 SCC 282



2026:DHC:8756-DB



had independently exercised the contractual power of appointment. What is material for present purposes is that an inherent absence of arbitral authority is not apparent on the face of the record.

35. The remaining objections concerning the loan transaction, restructuring, guarantee and participation of Judgment Debtor No.5 in the arbitral proceedings depend upon disputed questions of fact. Their determination would require an enquiry going beyond the limited jurisdiction of an Executing Court. They cannot be examined in the present Appeal as though this Court were deciding a challenge to the Award under Section 34 of the 1996 Act.

DELIVERY OF THE AWARD

36. The objection regarding delivery of the Award requires separate consideration. Section 31(5) of the 1996 Act requires a signed copy of the Award to be delivered to each party. In ***State of Maharashtra v. ARK Builders (P) Ltd.***⁸, the Supreme Court held that the period prescribed under Section 34(3) commences only upon delivery of a signed copy in the manner contemplated by Section 31(5). Knowledge of the Award from another source does not substitute for such delivery.

37. Paragraph 106 of the Award records that copies bearing the Arbitrator's original signature were being sent to the parties. The copy reproduced at page 227 of the paper-book in this Appeal also bears the Arbitrator's signature and endorsements certifying its authenticity. On

⁸ (2011) 4 SCC 616



2026:DHC:8756-DB



this material, however, this Court does not return a finding on whether statutory delivery under Section 31(5) stood completed.

38. The Executing Court also noticed that Judgment Debtor No.5 had received notice of the Execution Petition, subsequently appeared through counsel and did not institute proceedings under Section 34 of the Arbitration and Conciliation Act, 1996.

39. The Appellant, however, was not a party to the arbitration or a Judgment Debtor under the Award. She acquired the disputed share from Judgment Debtor No.5 after the Award had been made, after execution had been instituted and after Judgment Debtor No.5 had been served with the Execution Petition. As held in **R. Savithri Naidu** (*supra*), a post-Award transferee *pendente lite* cannot rely upon the subsequently acquired interest to resist execution under Order XXI Rule 58 CPC.

40. It is therefore unnecessary, for disposal of the present Appeal, to return a finding as to whether or when a signed copy of the Award was delivered to Judgment Debtor No.5. She has not preferred an Appeal against the Impugned Order. The Appellant, whose interest was acquired *pendente lite* and remains subject to the pending execution, cannot, on the strength of that derivative interest, invoke the question of delivery to Judgment Debtor No.5 as an independent ground to set aside the auction sale. Nothing stated herein shall be understood as treating knowledge of the Award as a substitute for delivery under Section 31(5), or as expressing any opinion on any remedy of Judgment Debtor No.5, if otherwise available to her in law.



2026:DHC:8756-DB



SECTION 60(1)(ccc) CPC AND THE UNDIVIDED SHARE

41. The Appellant cannot claim the benefit of Section 60(1)(ccc) CPC in respect of the share transferred to her. In ***Sheela Gehlot v. Mohini Hardayal Singh***⁹, the Supreme Court held that the protection afforded by Section 60(1)(ccc), as applicable to Delhi, is personal to the Judgment Debtor and is confined to the residential house belonging to and occupied by such Judgment Debtor. The Court further held that the protection does not extend even to the legal representatives of a Judgment Debtor. The Appellant is not a Judgment Debtor under the Award and claims the share in her own right as a transferee. She cannot therefore invoke the personal exemption available to Judgment Debtor No.5.

42. The sale is also not invalid because the interest of Judgment Debtor No.5 was undivided. In ***Ramdas v. Sitabai & Ors.***¹⁰, the Supreme Court recognised that an undivided share may be transferred, though the purchaser does not thereby acquire a right to exclusive possession of any identified portion until partition. The auction purchaser in the present case therefore acquired only the undivided interest of Judgment Debtor No.5.

CONCLUSION

43. The Appellant's principal claim is that the Sale Deed executed before attachment removed the share of Judgment Debtor No.5 from the reach of execution. That claim cannot succeed. The property had

⁹ 2026 INSC 863

¹⁰ (2009) 7 SCC 444



2026:DHC:8756-DB



already been identified in the pending Execution Petition and its attachment and sale had been sought before the conveyance. The transfer remained subject to the rights enforceable in those proceedings under Section 52 TPA.

44. The same proprietary claim had, in any event, been rejected on 24.04.2023 in the Appellant's first objection under Order XXI Rule 58 CPC. That adjudication was not challenged. The Agreement to Sell dated 03.10.2020, which was available but not relied upon in the first objection, does not permit the same claim to be reopened.

45. The circumstances surrounding the transfer, considered cumulatively, also establish that the transfer was made with the intent to defeat or delay enforcement of the Decree Holder's rights against Judgment Debtor No.5. The Appellant's proprietary claim, in any event, independently fails on the grounds stated in paragraphs 43 and 44 above.

46. The objections directed against the Arbitral Award also do not justify interference. The record before this Court does not disclose any inherent jurisdictional defect rendering the Award a nullity and capable of examination at the stage of execution. As regards Section 31(5), this Court has not treated subsequent knowledge of the Award as a substitute for statutory delivery. The Appellant is a post-Award transferee *pendente lite* who acquired the disputed share after commencement of execution and cannot invoke the question of delivery to Judgment Debtor No.5 as a ground to resist execution or undo the auction sale. No ground for interference is therefore made



2026:DHC:8756-DB



out on this account.

47. The Appellant can neither invoke the personal exemption under Section 60(1)(ccc) CPC nor resist the sale on the ground that the share of Judgment Debtor No.5 was undivided. This Court consequently finds no ground to interfere with the Order dated 03.06.2026 dismissing the Appellant's objections and confirming the auction sale of the one-half undivided share formerly held by Judgment Debtor No.5.

48. The Appeal is accordingly dismissed. Pending applications stand disposed of.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

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FA(COMM) 28/2026

Page 16 of 16