

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM (M) 1130/2009 & CM No.14476/2009 (u/s 151 CPC for stay)

% **Date of decision: 6th November 2009**

M/s RAMNORD RESEARCH LAB PVT. LTD. Petitioner

Through: Ms. Mala Goel, Advocate.

Versus

SHRI RANVIR KUMAR & ORS. Respondents

Through: Mr. Harish Malhotra, Sr. Advocate with Mr
Rajinder Aggarwal, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

CAVEAT No.156/2009

The counsel for the caveator has appeared and has been heard. The caveat stands discharged.

CM (M) 1130/2009

1. This petition under Article 227 of the Constitution of India is preferred with respect to the order dated 4th September, 2009 of the Executing Court directing the petitioner/judgment debtor to produce the complete negatives of six films before the Executing Court against the respondent/decreed holder paying a sum of Rs.2,95,250/- by demand draft in the name of the petitioner/judgment debtor on the said date. The counsel for the parties were heard on 14th October, 2009, however since the

pronouncement of the order was taking time and it was informed that the proceedings were listed before the Executing Court, the senior counsel for the respondent/decreed holder had agreed not to insist upon any coercive action against the petitioner/judgment debtor before the Executing Court till the pronouncement of the order in this petition.

2. The respondent/decreed holder instituted the suit pleading that one Sh. Arabind Sen was the producer *inter alia* of six films; that he had died leaving the defendants no.1 & 2 in the suit (who are not parties to this petition) as his only natural heirs; that the said Sh. Arabind Sen had kept the negatives of the said six films in the custody of defendant no.3 in the suit (petitioner herein) which is a laboratory and where the producers of various films keep their negatives for preservation; that after the death of Sh. Arabind Sen, the defendants no.1 and 2 being his legal heirs had become the owners *inter alia* of the aforesaid six films and their negatives kept in the custody of the petitioner herein and had vide agreement sold the same to the respondent/plaintiff; that the respondent/plaintiff had as such become entitled to the negatives of the films in the custody of the petitioner herein and had become entitled thereto and had written to the petitioner in this regard but the petitioner had refused to transfer the negatives in the name of the respondent/plaintiff. The respondent/plaintiff in the suit sought the relief of permanent and mandatory injunction with respect to the said negatives of the six films. The defendants 1 & 2 being the heirs of Sh. Arabind Sen did not contest the suit. The petitioner herein filed a written statement admitting that Sh. Arabind Sen had kept the negatives of the six films with the petitioner laboratory and stated that the said negatives could be given to whoever is the legal successor of Sh. Arabind Sen and against payment of Rs.6,05,451/- as on October, 1997 due to the petitioner towards charges for keeping the said negatives. Several issues were framed in the suit and of which the issue No.8 was as to whether the amount of Rs.6,05,451/- as on October, 1997 was due to the petitioner in respect of the negatives lying with the petitioner. The petitioner however failed to lead any evidence in the suit. The suit was decreed vide judgment dated 1st July, 2005. It was *inter alia* held that the respondent/plaintiff/decreed holder is entitled to the relief claimed in the suit; that the petitioner was only a trustee or agent of the owner of the negatives of the films and was required to preserve the same in proper condition

subject to payment of appropriate charges; that the respondent/plaintiff thus though held entitled to the relief but subject to the payment of appropriate charges for preserving and keeping of the said six negatives to the petitioner; the respondent plaintiff had also admitted that the charges are payable to the petitioner. A decree for mandatory injunction was passed in favour of the respondent/plaintiff/deGREE holder and against the petitioner and the petitioner was directed to transfer in its record the negatives of the said pictures/films in favour of the respondent/plaintiff and to allow the respondent/plaintiff to remove the negatives from the laboratory of the petitioner; the decree for mandatory injunction was however subject to the payment of the appropriate charges of the upkeep and maintenance of the negatives to the petitioner by the plaintiff from the date of the agreement i.e. 26th February, 1994 (Exhibit PW1/1) by the legal heirs of Sh. Arabind Sen in favour of the respondent/plaintiff. The petitioner was however not held entitled to any interest on the arrears so found to be due.

3. At this stage, it may be stated that the issue no.8 aforesaid was decided against the petitioner since the petitioner failed to lead any evidence.

4. The respondent/plaintiff/deGREE holder applied for execution against the petitioner only. It was pleaded that the respondent/deGREE holder had approached the petitioner for transfer of the negatives of the films in his name and for delivery thereof but the petitioner had refused to deliver the same without the payment of Rs.6,05,451/- due till October, 1997 and further storage charges of Rs.2,29,250/- due from 1st November, 1997 to 31st July, 2006. Subsequently in response to another demand from the respondent/deGREE holder, total storage charges of Rs.9,04,701/- were claimed by the petitioner. The respondent/deGREE holder thus alleged petitioner to be in default of the compliance of the decree for permanent and mandatory injunction.

5. Notice of the execution was issued to the petitioner and by the impugned order as aforesaid, the petitioner was directed to produce the negatives in the Court against the payment of Rs.2,95,200/- only. Aggrieved by the said order, this petition has been preferred.

6. The counsel for the respondent at the outset challenged the very maintainability of this petition. However, he was unable to show as to why this petition is not maintainable and/or as to what other remedy, if any, is available to the petitioner against the order impugned herein. Subsequent to the hearing, he has filed copy of the judgment of the Full Bench of the Andhra Pradesh High Court in ***Gurram Seetharam Reddy Vs. Gunti Yashoda***, AIR 2005 AP 95. However, that is with respect to orders on objections in execution, under Order 21 Rule 58 or under Rules 98 & 100 of the CPC. The objections of the petitioner/judgment debtor in the present case are not as under Order 21 Rule 58 or under Rule 98 & 100. Thus, the judgment is not applicable. No other provision has been cited providing any other remedy being available. The objection of the petitioner/judgment debtor in the present case was under Section 47 of the CPC. This court recently in ***Yashpal Singh Vs. Bhagwana*** 156 (2009) DLT 513 has held that no appeal lies from an order under Section 47 of the CPC. Thus, this Court in the exercise of its supervisory jurisdiction under Article 227 is entitled to look into the matter.

7. From the reading of the order impugned in this petition, it cannot be made out as to on what basis the Executing Court has come to the conclusion that the sum of Rs.2,95,250/- is due to the petitioner/judgment debtor under the decree for upkeep and preservation of the negatives of the six films. There was no absolute mandate against the petitioner/judgment debtor to deliver the negatives of the six films to the respondent/plaintiff. The said mandate was qualified with the respondent/plaintiff paying “appropriate charges from the date of exhibit PW1/1 (i.e. 26th February, 1994)”.

8. In my view, in the face of the decree as aforesaid, in fact the execution itself did not lie. In terms of the decree, if the parties were not able to arrive at the appropriate charges then the only remedy available to the respondent/plaintiff/decreed holder was to approach the court again for determination of the said charges and only after such determination and on the failure of the petitioner/judgment debtor to release the negatives inspite of the respondent/plaintiff tendering the charges so determined could it be said that the petitioner/judgment debtor inspite of having opportunity to obey/comply

with the decree had failed to do so. Under Order 21 Rule 32 of the CPC, a decree for injunction is executable only on the same being established.

9. I had also wondered whether the decree was at all executable. However, I find that the Supreme Court in ***Pratibha Singh Vs. Shanti Devi Prasad***, AIR (2003) SC 643 has held that a decree of a competent court should not as far as applicable be allowed to be defeated and held that the provisions of Section 47 of the CPC should be invoked in this regard for making the decree executable. In the present case, I find that the conditional decree is no decree without the condition being satisfied. However, it cannot be held to be unexecutable for the said reason. The Supreme Court in ***Jai Narain Ram Lundhia Vs. Kedar Nath Khetan*** AIR 1956 SC 359 has held that when a decree imposes 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. If there is any dispute in this regard, the same has to be determined under Section 47 of the CPC.

10. Be that as it may, even if the execution petition is held to be maintainable, the Executing Court could not have passed the order impugned in this petition without determining the appropriate charges. The procedure for determination of such appropriate charges would *inter alia* be the same as in a suit in as much as the objections under Section 47 of the CPC are to be adjudicated in the same fashion as in a suit.

11. Though as aforesaid from a reading of the order impugned, it is not clear as to how the Executing Court had arrived at a decree of Rs.2,95,250/-; the counsel for the judgment debtor during the hearing handed over copies of the letters dated 28th July, 2006 of the petitioner, dated 23rd May, 2006 of the respondent/plaintiff and legal notice dated 8th August, 2005 of the advocate for the respondent/plaintiff stated to be part of the file of the Executing Court. It was contended that the said sum of Rs.2,95,250/- has been arrived at after deducting Rs.6,05,451/- from the sum of Rs.9,04,701/- stated to be due from the statement of account for the period 1st November, 1996 to 31st July, 2006 of the petitioner itself. Even if that be so, I am unable to understand as to how the

executing Court could act on the said statement. The counsel for the decree holder has contended that since the issue no.8 in the suit was decided against the petitioner and the petitioner had failed to prove that the sum of Rs.6,05,451/- was due, the said sum is deductible from the amount claimed to be due as on 31st July, 2006.

12. I am unable to accept the aforesaid contention. Though the issue no.8 was decided against the petitioner and it thus has to be held to have been decided that the petitioner had failed to prove the sum of Rs.6,05,451/- to be due then, but the court nevertheless held the petitioner entitled to appropriate storage charges with effect from the date of Exhibit PW1/1 i.e. 26th February, 1994. Thus, in the determination of appropriate charges, the amount claimed for the period 26th February, 1994 onwards ought to be determined. The only effect of decision of issue no.8 against the petitioner would be that the decree holder is not bound by the claim of the petitioner for Rs.6,05,451/- and it would be open for determination as to what are the appropriate charges. I am also unable to understand as to how the Executing Court has on 4th September, 2009 directed the order for payment out of a statement of account showing payment due till 31st July, 2006 only. The payment upto date ought to have been directed.

13. The counsel for the decree holder has contended that the claim of the petitioner at the rates on the basis whereof the issue in the suit of entitlement of Rs.6,05,451/- had been arrived at has not been proved; that the petitioner is not thus entitled to make a claim now at the same rate as made earlier in the suit and which was not established and which issue conclusively stands settled against the petitioner.

14. Per contra, the counsel for the petitioner contended that the subsequent charges of Rs.2,95,250/- have also been arrived at the same rate and which the Executing Court has held the petitioner to be entitled to and qua which the decree holder has no objection. It is thus argued that the objection to the payment of charges for the earlier period at the same rate is misconceived.

15. There is merit in the said contention of the counsel for the petitioner. The decree holder does not appear to have any objection to payment of charges if calculated at the same rate for the subsequent period. The order dated 4th September, 2009 of the executing court is thus not found to be in accordance with law. The executing court has failed to read the decree or to determine the appropriate charges. The direction for bringing the films to the court for delivery to the respondent/plaintiff appears to have been made hurriedly. The order is thus set aside.

16. However, since sufficient loss of time has already been caused and in my opinion due to the decree having left the question ambiguous, some guidelines need to be laid down to avoid any further delay in execution.

- a) In terms of the decree, the petitioner is entitled to charges w.e.f. date of Exhibit PW1/1 i.e. 26th February, 1994. The said charges are payable till the determination thereof by the Executing Court and for a period of at least 30 days thereafter to give time to the parties to appeal/challenge the decision of the executing court in this regard.
- b) The petitioner would not be entitled to any charges for delay in delivery beyond the said period.
- c) If the parties are not able to arrive at a settlement with regard to the said charges, the Court to determine the same after framing an issue of “what appropriate charges are due in terms of decree”.
- d) In determining the said appropriate charges, the court would have regard to the evidence if any of the charges levied and recovered by the petitioner for similar services from others and in the past from Sh. Arabind Sen aforesaid and the evidence if any produced of charges if any being recovered by other parties rendering such services. Opportunity shall be given to the parties to lead evidence on this aspect.
- e) The petitioner would not be disentitled from claiming charges at the rate on the basis whereof the sum of Rs.6,05,451/- was stated to be due at the time of the suit, if the said charges are otherwise found to be appropriate in terms

of the evidence aforesaid. However, if the petitioner fails to lead any other evidence and the decree holder leads evidence of the charges being claimed by others providing similar services being lower, the petitioner would not be entitled to the rates merely because of having claimed so.

- f) The petitioner is not entitled to any interest on arrears, in terms of the decree.

With the aforesaid directions the petition is disposed of.

CM 14477/2009 (u/s 151 CPC for exemption)

Allowed subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

November 6, 2009

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