

A.F.R.

Court No. - 19

Case :- WRIT - C No. - 1000528 of 2010

Petitioner :- Steel Authority Of India Ltd. Sultanpur

Respondent :- District Judge Lucknow And Another

Counsel for Petitioner :- Shraddha Agarwal, Anshuman Singh, Radhika Singh

Counsel for Respondent :- C.S.C., Amita Srivastava, Anil Srivastava, Ashwani Kumar Singh, Asit K. Chaturvedi, Brijesh Kumar Shukla, Manik Sinha, Pratul Kr. Srivastava, Pratyush Chaube

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Prashant Chandra, the learned Senior Advocate, assisted by Ms. Radhika Singh Advocate, the learned counsel for the petitioner, Sri Ashwani Kumar Singh Advocate, the learned counsel for the opposite party no.2 and perused the record.
2. By means of the instant writ petition filed under Article 226 of the Constitution of India, the petitioner-Steel Authority of India Ltd. has challenged the validity of an order dated 20.08.2008 passed by the District Judge, Lucknow in Execution Case No.22 of 2006, General Manager, Northern Railway versus M/s Malvika Steels and others, whereby while allowing the application (C-31) filed by the opposite party no. 2 – decree holder for impleadment of the petitioner - Steel Authority of India Ltd. as a judgment debtor, the District Judge has ordered that the petitioner-Steel Authority of India Ltd. be substituted in place of the original judgment debtor M/s Malvika Steels.
3. The petitioner has also challenged the validity of an order dated 02.01.2010 passed by the District Judge, Lucknow in the aforesaid execution case whereby the application (C-36) filed by the petitioner for recall of the aforesaid *ex-parte* order dated 20.08.2009 has been rejected.

4. Briefly stated, facts of the case are that the opposite party no.2- General Manager, Northern Railway had filed Execution Case No.22 of 2006 against M/s Malvika Steels and others. On 07.05.2009, the opposite party no.2 filed an application for impleadment of the petitioner-Steel Authority of India as judgment debtor no.11 stating that it had come to know through daily newspaper as well as through internet that judgment debtor M/s Malvika Steels had sold away its property to the petitioner without satisfaction of the decree/arbitration award and therefore, the petitioner should be arrayed as judgment debtor in Execution Case as judgment debtor no.11.
5. By means of an order dated 11.03.2024 passed in this case, the parties were granted time to file a supplementary affidavit bringing on record a copy of the order-sheet of the Execution Case No.22 of 2006. Learned counsel for the opposite party no.2 has supplied a certified copy of the order-sheet, although the same has not been filed along with the supplementary affidavit. The learned counsel for the petitioner does not object the certified copy of the order-sheet of Execution Case No.22 of 2006 being taken on record without any supplementary affidavit, as it being a certified copy, there is no doubt regarding its genuineness.
6. A perusal of the certified copy of the order-sheet of the execution case reveals that the opposite party no. 2 had filed the application dated 07.05.2009 for impleadment of the petitioner on 16.05.2009. The Court had passed an order for sending a copy of the application to the petitioner through both ways, and had fixed 07.08.2009 for disposal of the application. On 07.08.2009, counsel for the petitioner-Steel Authority of India filed an application (C-33) for obtaining copies of the documents. The Vakalatnama (C-34) executed in favour of the learned counsel for the petitioner was also filed. The District Judge passed an order that Steel Authority of India Ltd. was not a party to the execution case and necessary steps be taken for making it a party and the matter was ordered to be put up on 20.08.2009 for further orders.

7. On 20.08.2009, the District Judge passed the impugned order allowing the application (C-31). It is recorded in the order dated 20.08.2009 that the decree holder had filed an application (C-31) for impleadment of the petitioner-Steel Authority of India as judgment debtor in place of Malvika Steels and this application was supported by an affidavit. The order states that the opposite party no. 2 had filed extracts from internet showing that M/s Malvika Steels had been purchased by the petitioner - Steel Authority of India Ltd. and this fact had not been denied by the petitioner who had appeared through counsel on previous date. Considering the aforesaid facts, the District Judge allowed the impleadment application (C-31) by referring to it as 'the substitution application' and ordered the decree holder to make necessary amendments forthwith and give copies of the entire record to the learned counsel for the petitioner within ten days. The matter was posted for 21.10.2009 and the petitioner was given opportunity to file its objections within twenty days from the receipt of the copies of the record.
8. On 22.09.2009, the petitioner filed an application under Order XXI Rule 106 read with section 151 of C.P.C. for setting aside the order dated 20.08.2009. The Court passed an order directing the petitioner to take requisite steps for filing the application in proper format within a week. The petitioner filed the application for recall of the order dated 20.08.2009 (C-36) on the proper format on 29.09.2009, i.e. within the time of one week granted by means of the earlier order dated 22.09.2009. As this application had been filed beyond the period of thirty days mentioned in Rule 106 (3) and the petitioner filed an application (C-39) under Section 5 of the Limitation Act for condonation of delay in filing the application for recall of the order, which was supported by an affidavit (C-40). On 19.11.2011 three days time were granted for filing objections against the petitioner's application. The objections C-41 was filed on 26.11.2009. The petitioner filed its reply to the objections (C-43) against the objection on 01.12.2009 and the application for recall of the *ex-parte* order was

rejected by means of the order dated 02.01.2010, which has also been assailed in this writ petition.

9. The learned Counsel for the petitioner Shri Prashant Chandra Senior Advocate submitted that the execution case in which the petitioner has been substituted as the judgment debtor, has been filed for execution of an arbitration award passed in arbitration proceedings to which the petitioner was not a party. The arbitration proceedings had been instituted by the opposite party no.2 - General Manager, Northern Railways, Baroda House, New Delhi against the judgment debtor M/s Malvika Steels and its directors etc., and the arbitration award dated 26.12.2012 was passed against M/s Malvika Steels. Therefore, the petitioner, who was not a party to the arbitration proceedings or the arbitration award, could not have been impleaded in the execution proceedings. In any case, while allowing the application for impleadment, the District Judge could not have ordered substitution of the petitioner in place of the judgment debtors and deleting the names of the judgment debtors from the array of the parties.
10. The learned Counsel for the petitioner further submitted that the application for impleadment was filed on the basis of newspaper reports and information taken from the internet, without disclosing the website from which the information was allegedly taken. A mere newspaper report or information taken from an undisclosed website on the internet cannot form the basis of an order for impleadment/substitution of any party to an execution case.
11. The learned counsel for the petitioner also submitted that the averments made in the application for impleadment that M/s Malvika Steels has been purchased by the petitioner Steel Authority of India Ltd., is an incomplete and misleading statement as the petitioner-Steel Authority of India Ltd. has purchased some assets of M/s Malvika Steels in an auction held by the Debts Recovery Tribunal, New Delhi in furtherance of R.C. No.121/2005 issued for enforcement of an

order passed in O.A. No.145 of 2002, and it is wrong to say that the petitioner has purchased M/s Malvika Steels Ltd. company itself.

12. The learned counsel for the petitioner further submitted that the order dated 20.08.2009 was passed in absence of the petitioner or its counsel and therefore, it was an *ex-parte* order and the District Judge has committed an error while rejecting the application for setting aside the order dated 20.08.2009 holding that the order is not *ex-parte*. The District Judge further held that even if the order was *ex-parte*, application for recall of the order ought to have been filed on the same day or the following day and the application filed beyond the prescribed limitation period of 30 days belies the contention that the order dated 20.08.2009 is *ex-parte*.
13. The learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of **Southern Power Distribution Co. of Telangana Ltd. v. Gopal Agarwal**: (2018) 12 SCC 644 in which the Hon'ble Supreme Court had held that an auction-purchaser in an auction-sale conducted by the Official Liquidator on "as-is-where-is" and "whatever-there-is" basis was not liable for payment of arrears of the previous owner of the property.
14. Opposing the writ petition, Shri Ashwani Kumar Singh, learned counsel for the opposite party no.2-General Manager, Norther Railway, has submitted that the order dated 20.08.2009 was not an *ex-parte* order, as the petitioner has already put in appearance before the District Judge on 07.08.2009 by filing Vakalatnama in favour of its counsel. He has further submitted that even if the order was *ex-parte*, since the petitioner had knowledge of the proceedings, he ought to have filed an application for recall of the order promptly and the application filed beyond the prescribed period of limitation of 30 days, has rightly been rejected by the trial court.
15. I have heard the submissions of the learned counsel for the parties and gone through the record.

16. The facts, which emerge from the pleadings and submissions of the parties are that the opposite party no.2 - General Manager, Northern Railways had instituted an arbitration claim against M/s Malvika Steels Ltd. The Arbitrator passed an arbitration award dated 26.12.2005 in favour of the opposite party no. 2. The opposite party no.2 filed Execution Case No.22 of 2006 for enforcement of the aforesaid arbitration award in the Court of District Judge, Lucknow and the opposite party nos.1 to 10 arrayed in that execution application were the judgment debtor M/s Malvika Steels Ltd. and its Director/Officers.
17. The opposite party no.2 filed an application for impleadment of the petitioner as judgment debtor no.11, stating that it came to know through daily newspaper as well as through internet that the judgment debtor M/s Malvika Steels Ltd. had sold the property in dispute without satisfaction of decree/arbitration award to the petitioner-Steel Authority of India Ltd. and therefore, Steel Authority of India Ltd. has become a necessary party. It was prayed that Steel Authority of India Ltd., who has purchased the assets, share and other movable and immovable properties of M/s Malvika Steels Ltd., may be arrayed as judgment debtor no.11.
18. The application (C-31) prepared on 07.05.2009 and it was filed on 16.05.2009, on which date, the District Judge passed an order that a copy of the application to be sent to the petitioner through both ways and fixed 07.08.2009 for its disposal. The petitioner had put in appearance before the District Judge through its counsel on 07.08.2009 and without the application for impleadment having been considered by the District Judge stated in the order dated 07.08.2009 that necessary steps be taken for impleading the Steel Authority of India Ltd.
19. The District Judge has allowed the impleadment application by means of the impugned order dated 20.08.2009 treating the same to be an application for substitution. Although the application merely stated

that the petitioner had purchased some properties of the judgment debtor M/s Malvika Steels Ltd., the District Judge stated in the order that the company M/s Malvika Steels itself had been purchased by the petitioner-Steel Authority of India Ltd.

20. In the impugned order dated 20.08.2009, the District Judge has recorded that *“J.D. (Sic. D.H) has also filed extracts from internet which shows that Malvika Steels has been purchased by the Steel Authority of India Ltd. This fact is not being denied by the Steel Authority of India Ltd., who had also appeared on last date.”* The District Judge has held that in view of the aforesaid fact, it was proper that substitution application (C-31) moved by D.H. be allowed. In the preceding paragraph of the same order, the application has been mentioned to be an application for impleadment of Steel Authority of India Ltd.
21. The application for impleadment filed by the opposite party no.2 did not make a mention of the provision under which it was filed. Learned counsel for the opposite party no.2 has submitted that the application had been filed under the provisions contained in under Order I Rule 10 (2) of the CPC. Order 1 of the CPC deals with “Parties to Suits”. The application for impleadment was filed in execution proceedings and not in a suit. The execution proceedings has also not been filed for execution of any decree passed in a suit, rather it was for execution of an arbitration award. The procedure governing the executions proceedings is contained in Order XXI of CPC which in itself is a self contained code. There is no provision in Order XXI of the CPC which empowers the court to order impleadment of any new party in execution proceedings, which party was not there in the arbitration proceedings in which the arbitration award was passed.
22. The application was filed for impleadment of the petitioner as opposite party no.11, in addition to the originally arrayed opposite parties no.1 to 10. There was no prayer for substitution of the petitioner in place of originally impleaded judgment debtor but while

allowing the application for impleadment, the District Judge has ordered substitution of the judgment debtor by the petitioner.

23. The petitioner has been substituted on the ground that it has purchased Malvika Steels Ltd., which is a juristic person and which person has not been purchased by the petitioner. Malvika Steels Ltd. still continues to exist as per the submissions made by the learned counsel for the petitioner
24. The arbitration award in favour of the opposite party no.2 was passed way back on 26.12.2005. After closure of the arbitration proceedings and passing of the award, the Debt Recovery Tribunal – I, Delhi had held a public auction of some properties of M/s Malvika Steels Ltd. held on 22.12.2006 in furtherance of R.C. No. 121/2005 issued in O.A. No. 145/02, in which the petitioner has purchased those assets of Malvika Steels Ltd. on “AS IS WHERE IS” basis.
25. The provision for substitution of parties in the proceedings of suit are contained in Order XXII C.P.C. Rule 10 whereof provides for substitution of the transferee in case of assignment, creation or devolution of any interest during pendency of the suit but in the present case, the transfer was not made during pendency of the arbitration proceedings and it was made long after passing of the arbitration award.
26. The opposite party no. 2 filed the application for execution of the arbitration award on 25.07.2006, but it did not file any application for attachment of the properties of the judgment debtor M/s Malvika Steels Ltd. under the provisions of Order XXI C.P.C. Therefore, there was no bar against the properties of Malvika Steels Ltd. being sold by the Debt Recovery Tribunal by holding an auction. The petitioner has purchased the properties in an auction held by the Debt Recovery Tribunal without any encumbrance on ‘AS IS WHERE IS’ basis. Therefore, the petitioner got absolute rights in the property of Malvika Steels Ltd. purchased in an auction held by the Debt Recovery Tribunal.

27. In these circumstances the petitioner cannot be held liable to satisfy the arbitration award that was passed against the Malvika Steels Ltd. and it can neither be impleaded nor be substituted in the execution proceedings.
28. In view of the aforesaid discussion, the impugned order dated 20.08.2009 passed by the District Judge, Lucknow, in Execution Case No.22/2006 ordering substitution of the petitioner in place of judgment debtor Malvika Steels Ltd. is unsustainable in law.
29. As the order dated 20.08.2009 has been held to be unsustainable in law, there is no need to examine the legality of the subsequent order dated 02.01.2010, passed by the learned District Judge, Lucknow rejecting the application for recall of the order dated 20.08.2009.
30. Accordingly, the Writ Petition is **allowed** and the impugned order dated 20.08.2009 passed by the District Judge, Lucknow, in Execution Case No.22/2006 ordering substitution of the petitioner in place of judgment debtor Malvika Steels Ltd., is quashed.
31. The parties to bear their own costs of the litigation.

(Subhash Vidyarthi J)

Order Date : 01.05.2024
akhilesh/-