

THE HIGH COURT OF TRIPURA
AGARTALA

CRP.No. 73 of 2014

Tripura Industrial Development Corp. Ltd.,
represented by its General Manager,
having its registered office at Shipa Nigam Bhawan,
Khejur Bagan, Kunjaban, Agartala:799006,
P.S. East Agartala, District: West Tripura

.....Petitioner

- V E R S U S -

Shri Prabir Bhowmik,
son of late Mukunda Kumar Bhowmik
resident of Jolaibari, P.O. Jolaibari,
PIN:799141, P.S. Bikhora,
District: South Tripura

.....Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. D. Chakraborty, Sr. Advocate, Mr. H. Laskar, Advocate
For the respondents	: Mr. Samarjit Bhattacharjee, Advocate
Date of hearing & judgment and order	: 02.07.2015
Whether fit for reporting	: Yes

Judgment and Order (Oral)

Heard Mr. D. Chakraborty, learned senior counsel
assisted by Mr. H. Laskar, learned counsel appearing for the
petitioner and Mr. Samarjit Bhattacharjee, learned counsel appearing
for the respondent.

[2] This is a petition under Section 115 of the Cr.P.C.
questioning the legality of the orders dated 19.06.2014 delivered in

Civil Misc. No. 15 of 2014 and 16.06.2014 delivered in Civil Misc. No. 16 of 2014. Even though, the impugned orders have been delivered separately but in the same execution proceeding. The context and the reasoning are identical. Civil Misc. No. 15 of 2014 has emerged from the proceeding filed under Section 47 of the C.P.C., whereas, Civil Misc. No. 16 of 2014 has emerged out of the application filed under Order XXI Rule 2 of the C.P.C. for recording the adjustment against the decretal amount realizable from the judgment-debtor, the petitioner herein. Waiving the technicality, this petition has been taken for consideration on merit. The objection raised for not recording of adjustment by filing a petition under Section 47 of the C.P.C., and an application filed under Order XXI Rule 2 of the Code of Civil Procedure for recording the adjustment against the decretal amount has been rejected on holding that:

"I have gone through the judgment passed by my Predecessor of this Court whereby this Court decreed in favour of the plaintiff to get compensation of Rs. 10,00,000/- (Rupees ten lakhs) from the defendant No. 1 along with cost of the suit. Their Lordship in RFA Case No. 01 of 2002 modified the judgment and decree passed by this Court and partly allowed the appeal filed by the present petitioner to the extent that the present opposite party is entitled to get compensation of total amounting to Rs. 1,42,562/- as damages for freezing the plaintiff's Bank Account and the T.I.D.C. and the T.G.B. are to pay the same jointly and severally. So, to this extent 50% amount already paid by T.G.B. So, in such a situation, I am also of the view that the present petitioner has not scope for adjustment of the said amount as they prayed for".

[3] Mr. Chakraborty, learned senior counsel appearing for the petitioner has submitted that even after filing of the petition

under Section 47 of the CPC for recording the adjustment, no notice was issued to the decree holder in terms of Order XXI Rule 2(2) of the CPC. For purpose of reference, provisions of Order XXI, Rule 2 of the C.P.C. is reproduced:

"2 . Payment out of Court to decree-holder— (1) Where any money payable under a decree of any kind is paid out of Court. [238][or decree of any kind is otherwise adjusted] in whole or in part to the satisfaction of the decree-holder, the decree- holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor 2[or any person who has become surety for the judgment-debtor] also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court record the same accordingly.

3(2A) No payment or adjustment shall be recorded at the instance of the judgment- debtor unless—

(a) the payment is made in the manner provided in rule 1; or

(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of rule 1, on before the Court.]

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree".

Mr. Chakraborty, learned senior counsel has further submitted that when the judgment-debtor has informed the court that the payment which has been made by him is liable to be termed as adjustment and it is the duty of the court to issue a notice to the decree holder to show cause why such payment or adjustment should not be recorded as certified. It has been further provided in Rule 2(2) of Order XXI of the CPC that after service of notice, if the decree-holder fails to show cause why the payment should not be recorded as the adjustment certified, the court shall record the same accordingly.

[4] Mr. Chakraborty, learned senior counsel has succinctly submitted that for non-issuance of the notice, the judgment debtor-petition is going to suffer jeopardy inasmuch as the court is under obligation to issue such notice, when such claim is raised by none other than the judgment-debtor.

[5] From the other side Mr. Samarjit Bhattacharjee, learned counsel appearing for the respondent has raised serious objection to such submission contending that there is no question of recording of adjustment as the same issue has been adjudicated in the suit and the decree which is under execution is the culmination of such adjudication.

[6] Be that as it may, whether the issue was substantially determined in the suit or not would only come for consideration after the notice as contemplated under Rule 2(2) of Order XXI of the CPC is issued to the decree-holder for purpose of recording the adjustment as certified, inasmuch as in absence of the formal

certification from the decree holder, the amount has been sought to be adjusted against the decretal amount.

[7] Thus, this Court is inclined to interfere with the impugned orders dated 19.06.2014 delivered in Civil Misc. No. 15 of 2014 and Civil Misc.No. 16 of 2014. Both the impugned orders dated 19.06.2014 are quashed and set aside.

[8] In the further consideration of this Court, the Executing Court, the Civil Judge, Sr. Division, South Tripura, Udaipur, is not required to pass any order in the Civil Misc. No. 15 of 2014 separately. He would take both the Civil Misc No. 15 of 2014 and Civil Misc No. 16 of 2014 and those proceedings be disposed of by a common order as the matter is being remitted back to the Executing Court to follow the procedure as laid down in Order 21 of Rule 2(2) of the CPC. Accordingly, it is ordered.

[9] The Executing Court shall issue notice to the decree holder as to why such payment as claimed to have been paid to the decree-holder shall not be recorded as the adjustment as certified. The Executing Court shall issue necessary notice within 7 days from the receipt of this order and within 3 days thereafter the judgment-debtor shall take necessary steps for service without fail.

[10] The said notice shall be made returnable immediately after 30 days. In the notice, it should be mentioned that in the event of the service, if the decree holder does not show cause why the payment as claimed to have been made to the decree-holder should not be recorded as the adjustment as certified, the court shall record the adjustment as certified.

[11] As the Execution Proceeding is still pending, the service may be completed through the counsel of the decree holder appearing in the execution proceeding without taking recourse to the formal means of service. Whether the payment as claimed by the judgment debtor can be treated as the adjustment or not, be decided by the Executing Court within 3 months from the date of receipt of the records from this Court.

[12] With this observation and direction this petition stands allowed to the extent as indicated above. There shall be no order as to costs.

[13] Send down the LCRs forthwith.

JUDGE

A. Ghosh