

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 870 OF 2012

SUMITLAL FULCHAND CHODIYA AND ANR
VERSUS
MAHARASHTRA STATE DISTRIBUTION CO. LTD. AND ANR

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Advocate for Petitioners : Shri Palod L.B.
Advocate for Respondent 1 : Shri Godsay Satish M.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 24, 2015

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PER COURT :-

1. I have heard the learned Advocates for the respective sides for quite sometime.
2. The whole issue / controversy raised in this petition turns upon the judgment and decree delivered by the trial Court, dated 23.8.2007 against M/s Adeshwar Steel Private Limited in Special Civil Suit No.11 of 2004.
3. The respondent No.1 has preferred Special Execution Petition No.20 of 2008 for seeking execution of the decree against M/s Adeshwar Steel Private Limited. It is pointed out from page No.11 that the decree dated 17.1.2008 indicates that the respondent No.1 is entitled to recover Rs.40,21,007/- from the defendant company - M/s Adeshwar Steel Private Limited, along with interest at the rate of 18% p.a. from 6.1.2004.

4. In the column of judgment debtors, M/s Adeshwar Steel Private Limited is indicated at Sr. No.1 and the petitioner Nos.1 and 2 are mentioned at Sr. Nos.2 and 3. Grievance of the petitioners is that the decree is against M/s Adeshwar Steel Private Limited and the petitioners are merely Directors of the company as per the contention of the respondent No.1.

5. It is nobody's case that the petitioners were wrongly arrayed in Special Civil Suit No.11 of 2004 as Directors of M/s Adeshwar Steel Private Limited. It is also not the petitioners case that they had refuted/denied their status as Directors of M/s Adeshwar Steel Private Limited before the trial Court. Written Statement was filed for M/s Adeshwar Steel Private Limited, through the petitioners.

6. The petitioners, therefore, submit that they moved an application Exhibit 14, before the executing Court on 23.3.2010 for deleting their names from the array of judgment debtors. Same has been rejected by the impugned order dated 15.9.2011. It is, therefore, submitted that the names of the petitioners cannot be and need not be shown in the array of judgment debtors in their individual capacity.

7. Shri Godsay, learned Advocate appearing on behalf of respondent No.1 - Company submits that the execution proceedings are still pending. The respondent - Company desires to have the decree executed. The cause

title in the execution proceedings could be suitably amended to indicate that the judgment debtor - M/s Adeshwar Steel Private Limited is represented through its Directors, who are the petitioners. In short, it is submitted that the cause title, as appearing in the trial Court in Special Civil Suit No.11 of 2004 would be reflected in the Special Execution Petition No.20 of 2008.

8. In the light of the above, this petition need not be kept pending, since more than three years have lapsed and the execution proceedings are not progressing and especially when the grievance of the petitioners is redressed.

9. The Writ Petition is, therefore, disposed off by granting liberty to the respondent to indicate the petitioners as persons representing M/s Adeshwar Steel Private Limited, in their capacity as Directors in the cause title of Special Execution Petition No.20 of 2008. The said amendment shall be carried out within a period of two weeks from today.

10. Shri Godsay, learned Advocate makes a request that the execution proceedings be expedited, which request is opposed by the petitioners.

11. Keeping in view that the execution proceedings are pending for the last seven years, the executing Court is directed to decide Special Execution Petition No. 20 of 2008, as expeditiously as possible and

preferably on/or before 31.12.2015. Prayer for adjournment on frivolous grounds by any of the litigating parties, shall be rejected by the executing Court.

(RAVINDRA V. GHUGE, J.)

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