

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION (L.) NO.33 OF 2015
IN
EXECUTION APPLICATION NO.240 OF 2011
IN
FOREIGN AWARD DATED 17th JANUARY, 2011

Vitol S A	...	Petitioner
Vs.		
Asian Natural Resources (I) Ltd. & Anr.	...	Contemnors

Mr. Zal Andhyarujina, Adv. a/w. Mr. Aditya Krishnamurthy, Adv. a/w.
Aloy Nandandas Mahapatra, Av. a/w. Abraham Varughese, Adv. i/b.
Bose & Mitra & Co. Original respondent / award holder.
Rajkumar K Shukla, Adv. for UCO Bank.
Satpal Singh, Adv. a/w. Hemang Enginner, Adv. i/b. Gordhandas &
Fozdar for claimant / award debtor.
Rakesh L Singh, Adv. i/b. M V Kini & Co. for respondent No.2.
T N Singh, Adv. for Asian Natural Resources (I) present in Court.
L K Thanvi, Adv. for Bhatia Global Trading Ltd., Contemnor No.2
present in Court.
Suhas M., for Contemnor No.1 present in Court.
Ajay Basutkar, Adv. for contemnor No.2.

CORAM : MRS. ROSHAN DALVI, J.

DATE OF RESERVING THE ORDER : 8th June, 2015

DATE OF PRONOUNCING THE ORDER : 17th July, 2015

ORDER

1. The petitioner is the award creditor who has sought and obtained enforcement of the above award dated 17th January, 2011. The petitioner has obtained several precepts of this Court for attachment of consignments of coal in various Courts of India which

came to be imported by the award debtor, who is contemnor No.1. Contemnor Nos.1 and 2 are two limited companies having their registered office at the same address and under the same management.

2. Several judge's orders came to be passed on 18th December, 2014 issuing precepts in respect of various consignments of coal and various such precepts came to be renewed under several separate judges orders in respect of those various consignments by an order dated 18th February, 2015.

3. Hence the precepts issued on 18th December, 2014 which were to remain in force for two months and which would expire thereafter came to be renewed on 18th February, 2015.

4. It is the order of 18th February, 2015, which is stated to be breached. The petitioner has, therefore, taken out this contempt petition to summon the directors of the contemnors to purge their contempt and to issue NBW for arrest of the directors of contemnor company. Though there were various judges orders passed on 18th December, 2014 as also 18th February, 2015 the breach alleged in this contempt petition is only with regard to Judge's Order No.213 of 2014, which deals with the renewal of the precept with regard to the import of the consignment of 53,700 MT of coal at Magdalla Port, Surat in Gujarat.

5. A precept is issued under Section 46 of the CPC for attaching the property outside the jurisdiction of the Court for which

Court passed the decree upon the Court which would execute the decree. Section 46 runs thus :

46. Precepts. –

(1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

6. Hence under Section 46(1) of the CPC a precept may be issued by a Court upon the application of the decree holder if the Court so thought fit.

Under Section 46(2) the Court to which the precept is sent would attach the property in execution of the decree.

Under the proviso to the section the attachment would remain in force for a period of two months unless the attachment is extended by the Court which passed the decree.

7. The precept having been issued on 18th December, 2014, was required to be extended by this Court (which is the Court which passed the decree) if the attachment was to continue. The petitioner made an application in that behalf under J.O. No.213 of 2014. The petitioner's advocate gave notice of the fact of the application to the

advocate for award debtor. It may be mentioned that such a notice is neither required nor contemplated under Section 46 of the CPC. Like any other attachment of the property which would be within the territorial limits of the jurisdiction of the Court which passed the decree the precept would be issued. Upon such issue the property would be attached by the other Court where the property is situate. Upon such attachment the judgment-debtor or any other party claiming title to the property may apply for raising attachment. If that is not done the attachment would be extended until the property is sold in execution of the decree or award. Similarly the extension of the precept can be made upon the application of the decree-holder to the Court which passed the decree. The Court which passed the decree would extend the precept if it thought fit.

8. For whatever reason the notice which was not even contemplated in law was given. This notice was sent under the letter of the advocate for the award debtor dated 16th February, 2015 on 17th February, 2015 and so received by the advocate for the award debtor. The award debtor had specific knowledge of this fact. It is argued by contemnor No.1 that the renewal application was not supplied to the contemnor No.1 and that only notice of the application to be made was given under the letter of the advocates of award holder to it. It may be mentioned no renewal application is required to be made except by the JO and no notice in that behalf is contemplated under Section 46(1) of the CPC.

9. The award debtor is contemnor No.1. Contemnor No.2 is another company at the same address. When the application was

made as per the notice on 18th February, 2015, the award debtor as also the other company were represented by their respective advocates. This is reflected in the impugned order itself. It is, therefore, clear that both contemnors had notice of that application.

10. This assumes importance in view of the fact that both the contemnors made another application being Civil Misc. Application No.506 of 2014 on that day itself before the 2nd Additional District Judge, Surat for a direction that the cargo of 53,700 MT of coal lying in Magdalla port, Surat, Gujarat stood released from attachment as the two months period of the precept under Section 46 of the CPC had expired. This was despite the notice received by the award debtor for extension of the precept. This was without notice to the award holder. This was suppressing the fact of the notice from the District Court in Surat. The learned 2nd Additional Judge, Surat has passed an order on 18th February, 2015 reciting that precept was issued under Section 46 of the CPC in the above execution application for the cargo of 53,700 MT coal lying at Magdalla Port, Surat, Gujarat, which would continue for two months. The learned Judge directed that since the period of two months had expired on 17th February, 2015 and there was no further direction of this Court to attach the property, it was clarified that the cargo of 53,700 MT of coal lying at Magdalla Port, Surat, Gujarat stood released from attachment.

11. In fact, on 29th January, 2015 the award debtor / contemnor No.1 had applied for lifting the attachment issued on 18th December, 2014 by the District Court, Surat pursuant to the precept

of this Court. This would show that the consignment of 53700 MT of coal was lying at Magdalla port on the date of the attachment. The attachment was not lifted on 29th January, 2015 when the application was made. The application was adjourned to 2nd February, 2015. Thereafter no order of lifting the attachment upon the application of the award debtor / contemnor No.1 has been shown.

12. As per the notice given by the award holder to the award debtor the application for extension of the precept came to be made by the award holder by way of various JOs in respect of various consignments of coal which arrived at various ports including the JO No213 of 2014 for the aforesaid consignment of 53,700 MT of coal at Magdalla Port, Surat, Gujarat. The JO came to be granted on 18th February, 2015 extending the attachment.

13. Nevertheless the consignment of coal has not remained attached at the said port. It is not known where the said coal is. Information in that behalf sought by the award holder and the query in that behalf made by the Court has yielded a surprising answer.

14. Varied figures of the sale of coal as high seas sale has been sought to be shown. Copies of high seas sale agreement and bills of entries have been produced. The figures of various quantities of coal thus sold have not matched the initial consignment of 53,700 MT. The initial defence of contemnor No.2 in its affidavit in reply to the contempt petition is that only 9391 MT of coal was lying at Magdalla Port, Surat, Gujarat on the date of the attachment order. The attachment order was passed pursuant to the initial precept. It was

passed upon the application of the award holder made before the Court of the Principal District Judge, Surat, Gujarat. The order of attachment was passed on 18th December, 2014.

15. If on 18th December, 2014, the date of the attachment, only 9391 MT of coal was lying at Magdalla Port, Surat, Gujarat, it is not understood why the award debtor as well as the other company, contemnor No.2, made a joint application to the same Court being Civil Misc. Application No.506 of 2014 to release a cargo of **53,700 MT of coal “ lying at Magdalla Port, Surat, Gujarat”** from attachment.

16. In the additional affidavit in reply of contemnor No.2 it is stated that contemnor No.2 imported 54,999 MT of coal out of which 38,499 MT was sold under various high seas sale agreements dated 24th November, 2014 to various regular current account High Seas sale purchasers of cargo. This would leave 16,500 MT of coal at Magdalla Port, Surat, Gujarat on the day of the attachment. This additional affidavit is, therefore, is at variance with the initial affidavit showing 9,391 MT of coal lying at Magdalla Port, Surat, Gujarat. Even if 16,550 MT were lying at the port it would not be understood why both the contemnors made application for clarification that the attachment stood released **for 53,700 MT of coal two months after the date of the attachment.**

17. Consequently the breach of the order dated 18th February, 2015 is made out and not controverted.

18. In fact in a further additional affidavit in reply of contemnor No.2 it has given a statement of the sale / dispatch of specified quantity of coal. It seeks to show that 9,391.83 MT remained in the port of Magdalla after several high seas sale agreements. From 9,391.83 MT of coal on 18th February, 2015 itself 6,717.90 MT is shown to be further dispatched. Thereafter on 19th February, 2015, 20th February, 2015 and 21st February, 2015 further 881.290 MT, 574.690 MT and 26.47 MT have been shown to be dispatched. Hence totally 8,200 MT are shown to be dispatched on and after the date of the extension of the precept. Hence contemnor No.2 has expressly admitted breach of the order dated 18th February, 2015 at least for sale and dispatch about 1,400 MT of coal.

19. As aforesaid and as shown in the order itself contemnor No.2 was represented by its advocate. It, therefore, had notice of the application sought to be made by the award holder. It had admittedly instructed its advocate to appear. It would claim now that the advocate did not inform it of the order passed. That statement is made much too late in the day. That statement is not corroborated by the affidavit of the advocate himself. A new advocate has now represented contemnor No.2. That statement of contemnor No.2 deserves to be wholly rejected.

20. Hence the contention of contemnor No.2 that it was not part to the execution application and, therefore, no contempt proceeding can be initiated against it would have no substance. It knew all the precepts having been issued. It knew all the applications for extension which were made by the award holder. Though the

application was sought to be made against award debtor and notice in that respect was given to the advocate of the award debtor a day before the application was to be made, the fact that contemnor No.2, who is the other company, was also represented shows its knowledge of the application. If the cargo is dispatched / sold / disposed off even of a part of the consignment for which the precept was extended and for which the attachment was also extended, it is seen to have aided and abetted the award debtor to breach the order by dispatching in part of the said cargo.

21. Mr. Andhyarujina has relied upon the full bench judgment of the Madras High Court in the case of *Vidya Charan Shukla Vs. Tamil Nadu Olympic Association and Anr.*, SCC 1991-2-LW 295 following the case of *Seaward V Paterson, Court of Appeal Chancery Division, (1897) 1 Ch 545* with regard to such contempt by such abettor. The relevant part of the judgment at the end of paragraph 45 shows the reference to *Halsbury's Laws of England, 3 Edition, Volume 8 part I S.3 Sub section 39* which runs thus :

A stranger to an action who aids and abets the breach of a prohibitory order obstructs the course of justice and this contempt is punishable by committal or attachment.

22. Contemnor No.2 would also contend that it is not a party to the execution proceeding and that the award holder has deliberately chosen not to implead it as a party. It may be mentioned that the execution proceeding is only against judgment debtor or the award debtor. The movable or immovable property of a judgment debtor / award debtor is liable to be attached. It may be attached by

the award holder / decree holder. Upon such attachment if the property otherwise belongs to another party and not the award holder or decree holder, such party may apply to the Court for raising the attachment. If the executing Court or the Court which passed the decree sees that the property belongs to a party other than the judgment debtor, attachment would be raised. Such party is not a party to the execution proceeding and is not required to be impleaded therein.

23. Contemnor No.2 has not shown or substantiated that the said consignment belongs exclusively to contemnor No.2 though it would so contend. As aforesaid, the offices of both the contemnors are at the same place. The award debtor was initially Bhatia International Ltd., which is later been changed to Asian Natural Resources (I) Ltd. Contemnor No.2 is the Bhatia Global Trading Ltd. They are stated to be a group of companies. However, it is contended that they are separate and distinct from one another. That has not been shown to this Court in respect of consignment of 53,700 MT of coal at Magdalla Port, Surat, Gujarat with which alone this Court is concerned in the above contempt petition. The name, management and the address of the two companies stare the Court in the face.

24. Besides if the consignment belonged to a separate third party or stranger such as contemnor No.2, it is not understood why both the contemnors would apply to the District Court, Surat for clarification that the consignment of 53,700 MT of coal lying in Magdalla Port, Surat, Gujarat be released from attachment. It would then have been the business only of contemnor No.2 with which

contemnor No.1 would have no concern or interest. Similarly it is not explained why the award debtor / contemnor No.1 also applied before the same Court separately for lifting the attachment on 29th January, 2015 against the property of a stranger if contemnor No.2 was one such.

25. The fact that the contemnor No.1 initially applied for lifting the entire consignment of coal on 29th January, 2015 and later both the contemnors jointly applied for clarification that the said cargo of 53,700 MT of coal stood released from attachment on 18th February, 2015 show two clear facts :-

(1) that the cargo which was lying was of 53,700 MT of coal at Magdalla port, Surat, Gujarat.

(2) both the contemnors were sister concerns and had communication with one another and both were equally interested in having the attachment released / lifted so that the contemnor No.2 is not a separate independent legal entity from contemnor No.1 and are both acting in collusion.

26. It is interesting to note that contemnor Nos.1 and 2 have both produced two separate certificates of the Gujarat Maritime Board. The certificate obtained by contemnor No.2, Exh.E in its additional affidavit in reply, shows the balance quantity of coal on 19th December, 2014 to be approximately 9,391 MT. The certificate obtained by contemnor No.1 of the Gujarat Maritime Board dated 16th February, 2015 to its affidavit in reply shows the balance cargo to be NIL.

27. It is also contended that the order of this Court dated 5th December, 2014 has been stayed by the Division Bench on 15th December, 2014 and hence the precept itself could not be issued on 18th December, 2014. This contention on facts itself is incorrect. The order dated 5th December, 2014 is in respect of a completely different consignment. It is in an application taken out by a third party, one Sharp Corporation Ltd. It was in respect of a cargo at Navlaki port, Gujarat. It had nothing to do with coal at Magdalla port, Gujarat. Stay granted by the Division Bench of this Court is, therefore, in respect of completely different coal under the precept for a completely different cargo.

28. Breach of the order of extension of precept dated 18th February, 2015 in respect of the cargo of coal at Magdalla Port, Gujarat is seen. Orders under the Contempt of Courts Act, 1971 would be merited. However, it is seen that the petitioner has not prayed for any specific relief desired by the petitioner under the Act.

29. Hence there shall be no order on this petition and no order as to costs.

(ROSHAN DALVI, J.)