

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

APPEAL (L) No.652 OF 2015
IN
NOTICE OF MOTION (L) No.2092 OF 2015
IN
EXECUTION APPLICATION No. 166 OF 2015
IN
CHAMBER SUMMONS No. 848 OF 2014
IN
ARBITRATION PETITION No. 649 OF 2014

Kandla Port Trust ...Appellant
Vs.
Doosan Heavy Industries and Ors. ...Respondents

Mr.Kevi Setalvad, Senior Counsel a/w. Mr. Anupam Surve a/w.
Mr.Subhash Bhalwal a/w. Ms. Hemali Kurne i/b. Vyas and Bhalwal for
Appellant

Mr.D.D. Madon,Senior Counsel a/w. Mr. Udit Mendivatta a/w. Priyank Ladoia i/b. Tri Legal for Respondent No.1

Mr. Shyam Mehta, Senior Counsel a/w. Mr. Mihir Mody a/w. Mr. Jayesh Ashar a/w. Mr. Nikhil Chanderia i/b. K. Ashar & Co. for Axis Bank and Uco Bank – Intervenor.

CORAM : V. M. KANADE &
Dr. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : SEPTEMBER 2, 2015

P.C. :

1. Heard the learned counsel appearing on behalf of the Appellant,
the learned counsel for the Respondents and the learned counsel for

Axis Bank and Uco Bank, who seeks to intervene in the matter, but has not yet filed the Intervention Application.

2. The Appellant being aggrieved by the impugned order passed by the Learned Single Judge dated 10th August, 2015 has taken out a Notice of Motion (L) No. 2092 of 2015 in Execution Application No.166 of 2015, which was dismissed on the ground that it has been filed prematurely. It is an admitted position that an award has been passed in favour of the Appellant and this award is sought to be executed in the execution application. The contention of the Appellant - Kandla Port Trust is that the property in question is in their possession and certain directions were given by the Division Bench of the Gujarat High Court. In view of the observation made in the impugned order of the Gujarat High Court, the property cannot be attached in execution. In the Notice of Motion, the following reliefs are claimed:

“(a) That the Execution Application No. 166 of 2015, in Arbitration Award dated 31.07.2014, filed with the Additional/dist. Judge, at Gandhidham, Gujarat allowed in chamber Summons NO. 848 of 2014 in the above Arbitration Petition No. 649 of 2014 for attachment and sale of container handling equipments at or in Berth No.11 & 12

alongwith the Associated assets and structures for container yard lying and situated at Kandla Port at Kandla, Gujarat, and more particularly described in the Schedule therein, be set-aside and quashed.

(b) That pending the hearing and final disposal of this Notice of Motion the Operation and implementation of Execution Application No.166 of 2015 filed with Additional Distt. Judge Gandhidham, Gujarat, in Arbitration Award dated 31.07.2014 passed in Chamber Summons No. 848 of 2014 in Arbitration Petition No. 649 of 2014 for attachment and sale of container handling equipments at or in Berth No.11 & 12 alongwith the Associated assets and structures for container yard lying and situated at Kandla Port at Kandla, Gujarat, and more particularly described in the schedule therein be stayed.”

3. It is submitted that the Learned Single Judge was pleased to observe that since the property has not been attached so far, the application is filed prematurely. The Appellant is also aggrieved by the observation made by the Learned Single Judge contending that the provisions of Order 21 Rule 58 of CPC would become applicable only

when any claim or objection is made to the attachment of the property. It is submitted that on a plain reading of the Order 21 Rule 58 of CPC, the Learned Single Judge has made an observation that the said rule would come into play when any claim or an objection is made to the attachment of the property. Since the attachment is not made no claim or objection can be filed. The application is premature and hence dismissed.

4. On the other hand, Shri Madon, learned Senior Counsel for the Respondents submits that this Notice of Motion (L) No. 2092 of 2015 could not have been filed in Execution Application No. 166 of 2015 since the said application has been filed in the Gandhidham Court after the execution of decree was transferred by this Court to Gandhidham Court since the goods are lying there. It is submitted that on this ground alone the notice of motion has been dismissed. The Learned Single Judge has rightly observed that Order 21 Rule 58 of CPC would come into play after the property is attached. He has also submitted that the reliefs as claimed by the Appellant may not be granted.

5. The Learned counsel appearing on behalf of the Appellant submits that in view of Order 21 Rule 26 of CPC, the Executing Court

can grant limited stay and that the jurisdiction of the court which passed the decree is unlimited. In support of the said submissions, the learned counsel for the Appellant has relied on various judgments viz. (i) **Surendranath Mohanty and another Vs. Harihar Das and another [AIR 1971 Ori.77]**;

(ii) **Shaukat Hussain alias Ali Akram and Ors. Vs. Smt.Bhuneshwari Devi (dead) by L.rs. And Ors. [(1972) 2 Supreme Court Cases 731]**

(iii) **Raghvender Rao Vs. Botlagunta Laxminarasayya [AIR 1962 MYS. 89].**

It is submitted that the Appellant would be rendered without remedy and this Court, which passed the decree and transferred it for execution to the Gandhidham Court, can still retain the jurisdiction to consider the Appellant's application under Order 21 rule 26.

6. After having heard all the counsel at length, it appears that since the movable property is situated at Gandhidham, this Court had transferred the decree to the Gandhidham Court where the execution application was filed by the Respondents vide Execution Application No. 166 of 2015 and in the said execution application, a show cause notice was issued asking the Judgment Debtor viz. Kandla Container

Terminal Private Ltd. to show cause as to why the execution should not be granted. When the Appellant came to know about the notice, it promptly filed the notice of motion.

7. In our view, since the execution application is transferred to the Gandhidham Court, the Appellant is at liberty to file his objections either under Order 21 Rule 58 or any other proceedings under CPC in accordance with law, seeking appropriate order as prayed by them in the notice of motion and, if such application is made, the Executing Court shall decide the same in accordance with law. The Executing Court shall not be influenced by any of the observations made by the Learned Single Judge while disposing of the application taken out by the Appellant. All contentions raised by both the parties are kept open. Needless to state that if the Appellant has any right to file an application under any of the provisions of law in this Court it may do so. Any other claimant including Axis and Uco Bank can always make an application before the Executing Court. Appeal is accordingly disposed of in the aforesaid terms.

[Dr. SHALINI PHANSALKAR-JOSHI, J.]

[V. M. KANADE, J.]

Vaishali Tikam

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CERTIFICATE

Certified to be true and correct copy of the original signed Order.