

Application No.4576 of 2014
in
E.P.No.18 of 2012

R.SUBBIAH, J.,

This application has been filled praying to set aside the order dated 05.03.2014 passed by the learned Master in Application 1612 of 2014 in E.P.No.18 of 2012.

2.The brief facts of the case, which are necessary to decide this application, are as follows__

2-1.The 1st respondent herein / decree holder and the applicant herein / Judgment Debtor-2 / principal borrower had entered into an agreement of loan on 30.04.2001 for a sum of Rs.15 crores. For the said loan, the 2nd respondent herein / Judgment Debtor-1 / guarantor has given its property situated at No.79, TTK Road, in mortgage as a security and the original title deeds in respect of the said property were also deposited with the 1st respondent/Decree holder. However, admittedly, a loan of Rs.8,50,00,000/- only was advanced by the 1st respondent to the applicant herein. The 1st respondent, without having advanced the entire loan amount of Rs.15 crores and even before the expiry of the period of repayment of the loan as prescribed in the said agreement, on or around 20th August 2001 filed a suit being Civil Suit No.420 of 2001 on the file of the Calcutta High Court, seeking *inter alia* a decree for Rs.8,81,99,342/- on account of repayment of loan with interest as accumulated on the date

of filing of the suit as well as interim interest and interest on judgment. But, subsequent negotiations between the parties resulted in a settlement, in terms of which consent decree dated 23.11.2001 was passed by the Calcutta High Court and the suit was accordingly disposed of.

2-2. In terms of the said consent decree, the applicant herein / Judgment Debtor-2/Principal Borrower was to repay the loan amount of Rs.8.5 crores with applicable interest, as per the payment schedule prescribed therein. However, due to various reasons the same could not be paid within the time schedule. However, as on the date stipulated, admittedly a sum of Rs.4,05,29,935/- had already been paid back to the 1st respondent.

2-3. Accordingly, a second consent decree dated 16.05.2002, in modification of the earlier decree dated 23.11.2001, came to be passed whereby the following terms of repayment came to be agreed upon:

(i) a sum of Rs.5,52,99,357.92 and Rs.1,11,64,699/- were to be repaid towards principal sum and interest respectively;

(ii) the aforesaid sums were to be repaid by September 30, 2003.

Under the second consent decree dated 16.05.2002, in the event of default in repayment, the 1st respondent was entitled for interest. Thereafter, payments were made in part and there was an outstanding of Rs.2,50,04,211/-. In order to arrive at an amicable settlement for a full and final discharge of all claims arising out of the loan transaction, on

15.11.2003 the following terms were agreed between the applicant and the 1st respondent_

(a)total outstanding to be frozen at Rs.2,25,00,000/- instead of the sum of Rs.2,50,04,211/- subject to the condition that the entire payment would be made on or before January 15, 2004;

(b)upon payment of the aforesaid sum of Rs.2.25 crores, the dues would stand satisfied and the decree dated 16.05.2002 would stand satisfied and the 1st respondent would have no claim or demand against the property mortgaged by the 2nd respondent.

(c)the 1st respondent would hand over the title documents of the properties mortgaged back to the 2nd respondent and file a discharge of the decree upon receipt of the sum of Rs.2.25 crores;

Accordingly, the applicant has paid a sum of Rs.2,25,00,000/- by cheque to the 1st respondent by one M/s.Vinayaka Infrastructure Private Limited. Thereafter, repeated reminders were given by the applicant to discharge the loan and release the property documents. However, on 01.03.2007, the 1st respondent addressed a legal notice to the applicant claiming the amount to be still due and payable against the subject loan transaction and threatening to put the schedule property to sale after 60 days from the date of the notice purportedly in terms of the decree.

2-4.Under such circumstances, the 1st respondent had filed an application, being G.A.No.985 of 2010 in C.S.No.420 of 2001 before the

Calcutta High Court seeking transfer of decree dated 23.11.2001, as modified on 16.05.2002, for execution to this Court, where the schedule property is situated. Thereafter, by order dated 22.12.2010 the Calcutta High Court allowed the said transfer application. Thus, the Execution Petition came to be filed before this Court.

2-5. In the Execution Petition, the 2nd respondent herein/Judgment Debtor-1 has filed counter; but, the applicant herein/Judgment Debtor-2 has not filed any counter. On 27.11.2013, when the matter was taken up by the learned Master, it was represented by the applicant herein/Judgment Debtor-2 that there was negotiation for settlement; but, it was opposed by the counsel for the 1st respondent herein/decreed holder; on the said objection, the learned Master has closed the evidence on the side of the Judgment Debtors and posted the matter for enquiry. According to the applicant, the applicant/judgment Debtor-2 is ready with the witness and records, to let in evidence. Hence, the applicant has filed an application being A.No.1612 of 2014 before the learned Master seeking to re-call the order dated 27.11.2013 and to allow the applicant herein/Judgment Debtor-2 to let in evidence. But, by the impugned order dated 05.03.2014, the said application was dismissed by the learned Master stating that without filing counter by the applicant herein/Judgment Debtor-2, the application is absolutely not maintainable and that the Judgment Debtor-2 may not claim as a matter of right to let oral evidence on his side without filing counter. Aggrieved over the same,

the present application has been filed by the applicant for the relief as stated supra.

3.Today, when the matter was taken for hearing, the learned counsel for the applicant, by relying upon Order 21 Rule 22 of CPC, submitted that where an application for execution is made after more than two years from the date of the decree, notice has to be issued to the judgment debtors. It is further submitted by the learned counsel for the applicant that the judgment debtors can raise objection to the execution of the decree and the Court shall consider such objection and it is not necessary that the objection should be in the form of a counter. The learned counsel for the applicant/JD-2 submitted that the applicant is adopting the counter filed by the Judgment Debtor-1 and further, the learned counsel undertakes to file a memo to that effect and prayed for a direction to learned Master to record the evidence of the applicant/Judgment Debtor-2.

4.But, the learned counsel for the 1st respondent/Decree Holder opposed the above application.

5.Heard both sides and perused the materials available on record.

6.Irrespective of the submissions made on either side, I am of the

opinion that in the interest of justice, since the applicant/Judgment Debtor-2 is ready to adopt the counter filed by the Judgment Debtor-1, this application could be allowed, so that they can have a chance to contest the execution petition on merits. In view of the same, this Court is constrained to pass the following order_

The impugned order dated 05.03.2014 made in A.No.1612 of 2014 in E.P.No.18 of 2012 is set aside and the applicant is directed to file a memo to the effect that the applicant is adopting the counter of the second respondent and on filing such a memo, the learned Master is directed to permit the applicant herein to adduce oral evidence. The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

This application is ordered accordingly.

06.02.2015

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