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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 15.10.2014
Date of decision:04.02.2015

\+ CM(M) 840/2014 and CM No.16276/2014 & 15110/2014

PREETI CHANDRA ..... Petitioner
Through Mr.Sanjeev Sindhwani, Sr.Advocate with Mr.Shivinder Chopra, Mr.Pushpendra Singh and Mr.Uday Joshi, Advocates

versus

M/S KAUTAN KRAFT & ANR ..... Respondents
Through Mr.Harish Malhotra, Sr.Advocate with Mr.Manish Mukhija, Advocate.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present petition is filed seeking to impugn the order dated 8.9.2014. The brief facts leading to the present petition are that respondent No.1/Ms.Kautan Kraft filed a suit against respondent No.2/M/s.Ikon Clothing INC and other entities for recovery of Rs.10,72,071/-. The suit was decreed on 6.10.2008 in favour of respondent No.1 for a sum of USD 18781.92 and against respondent No.2. Respondent No.1 filed the present Execution Petition.

2. Petitioner is said to be a director of respondent No.2/Judgment Debtor (JD). On 2.5.2013 the trial court directed the petitioner to appear in person on 10.5.2013. The petitioner thereafter filed two applications. After hearing these applications on 10.5.2013, an order was passed directing the petitioner to

appear on 24.5.2013. Against the said order dated 10.5.2013 the petitioner filed CM(M)549/2013 before this Court which was disposed of on 20.5.2013. The petitioner sought permission to withdraw the said petition before this Court and stated that in terms of the impugned order passed by the trial court, the petitioner shall file an affidavit and inform the court about the legal status of the Judgment Debtor. The order directing the personal presence of the petitioner was modified by this Court.

3. Pursuant to the above order, the petitioner filed an affidavit pointing out that Judgment Debtor IKON Cloth INC is a corporation incorporated under the State Laws of New York, USA and a distinct legal entity akin to a private limited company incorporated under the Companies Act, 1956. It was further stated that the said Judgment Debtor is not a sole proprietorship concern of the petitioner.

4. On 1.2.2014, the trial court after hearing detailed arguments directed that a fresh affidavit be filed disclosing (a)the number of shares of Judgment Debtor on the date of the decree (b) the assets of Judgment Debtor within India and USA including details of bank account in USA (c) details of certificate of incorporation of Judgment Debtor (d) and disclose in how many countries a similar registration of incorporation of Judgment Debtor is there.

5. The petitioner pursuant to the said order dated 1.2.2014 filed an affidavit. It was clarified that JD/Respondent No.2 has two shareholders. She further stated that she has last visited New York, USA in February 2005 and at that time Judgment Debtor had no assets and/or bank account in India or elsewhere including USA except one bank account in New York (USA) with HSBC Bank. She further stated that since February 2005 she has not been involved in

any manner with the affairs of JD.

6. On 5.4.2014 an order was passed by the trial court directing the petitioner to disclose the balance sheet of JD for the last three years. It was also pointed out that though the petitioner has pointed out in her affidavit about a bank account with HSBC Bank, New York but neither the Branch nor account No. has been disclosed. The petitioner was directed to submit statement of account for the last five years (i.e. Bank Statement). It was also stated that details of certificate of incorporation of JD-1 have not been disclosed.

7. In compliance with the above order, the petitioner filed a fresh affidavit stating the account No. of HSBC Bank and the address of the bank. She also stated that she is not aware of the balance standing in the said bank account. She reiterated that the Judgment Debtor has not conducted any business activities roughly for the last nine years and that she has made enquiries and cross-checked from one of its ex employee Mr.Kush Malhotra and also from the Accountant firm of the Judgment Debtor, namely, M/s Prajapati Associates, LLP. She was informed that no balance-sheet of the JD for the relevant period has been prepared since no business was being carried out by the JD during this period. Certificate of incorporation of JD was filed with the affidavit.

8. The trial court has now vide impugned order dated 8.9.2014 directed the petitioner to appear in person for the purpose of examination. The trial court concluded that the petitioner has not stated complete facts pertaining to her and the JD and has not disclosed details of certificate of incorporation of the JD and about all the assets of JD out of India and USA and has not complied with the

order of the Court. The Court concluded that both her affidavits are not in accordance with the directions passed by this Court and is also an attempt to conceal the maximum information from the Court rather to facilitate the court so that the decree can be executed against the JD. The court concluded that it is not possible to conclude based on the affidavits whether the JD is incorporated or a distinct legal entity and the contents of the affidavit are vague. The trial court also concluded whether the petitioner who is CEO of the JD is a shareholder or Director is not explained by her in her affidavits.

9. Learned senior counsel appearing for the petitioner has vehemently submitted that the entire foundation of the impugned order is erroneous as respondent No.1 has in the Execution Petition filed submitted that the JD is a proprietorship concern of the petitioner whereas this is not even the case of Decree Holder in the suit filed. Hence, the execution as filed is erroneous at the threshold. It is further urged that respondent No.1 has even sought attachment of the personal bank account of the petitioner ignoring that the petitioner is a distinct legal entity from respondent No.2/JD. It is further urged that the Decree Holder/Respondent No.1 is deliberately and mischievously mixing up the entity of Respondent No.2 and sometimes calling it a proprietorship concern, sometimes a partnership and sometimes a corporate entity. Reliance is placed on an application filed by respondent No.1 under Order 21 Rule 41 where these submissions are made. It is lastly urged that the impugned order has wrongly come to the conclusions, namely, that details of certificate of incorporation of JD has not been placed on record whereas the same has been clearly placed on record with the affidavit of the petitioner. The trial court also wrongly concluded it is urged that it is unable to reach to a conclusion whether JD is an

incorporated or a distinct legal entity or not. It is stated that along with the affidavit filed in May 2014, the petitioner has placed on record copy of the certificate of incorporation issued on 18.6.1996 by the state of New York. Hence, it is urged that directions to summon the petitioner are completely erroneous.

10. Learned senior counsel appearing for respondent No.1 has relied upon order 21 Rule 41 to contend that it is necessary to examine the petitioner as she is being evasive and being an officer of the JD she is entitled to be examined. He further submits that there is no intent to attach any personal accounts or properties of the petitioner. He further submits that the petitioner has been repeatedly suppressing facts and the impugned order is valid.

11. There is merit in some of the submissions of the learned counsel for the petitioner. The impugned order makes observations which are not borne from the record i.e. that the court cannot reach a conclusion whether JD is an incorporated or distinct legal entity. The status of JD being an incorporated company under the laws of the State of New York is apparent from the affidavit filed in May 2014 pursuant to order of the trial court dated 5.4.2014. The certificate of incorporation dated 18.6.1996 issued by Department of State, State of New York is on record. Hence, to that extent the conclusions of the impugned orders are contrary to record.

12. However, the other conclusions arrived at by the impugned order regarding the conduct of the petitioner are in order and require no interference. The record shows that the petitioner appears to be in complete control of respondent No.2/JD. In an affidavit which is filed in March 2014 in response to order of the trial court dated 1.2.2014 she has clearly said that she was a

director of the JD at the time of institution of the suit. The affidavit does not elaborate the names of the two shareholders. The affidavit further states that JD has no assets and/or bank account in India or elsewhere including USA except one bank account in New York with HSBC Bank. However, it has come on record during the course of arguments that the two shareholders of JD are the petitioner and her husband Mr.Sanjay Chandra.

13. One cannot help noticing that the trial court has passed two orders dated 1.2.2014 and 5.4.2014 directing the petitioner to disclose various details on facts pertaining to the Judgment Debtor. This court has also on 20.5.2013 directed the petitioner to file appropriate affidavit. In the first affidavit filed in May 2013 petitioner only mentions that JD is a distinct corporate entity. Certificate of Incorporation was not filed. This resulted in order dated 01.02.2014 of the trial court to file a fresh affidavit. In this affidavit petitioner states she was a director of JD when the suit was filed. She mentions about the JD having one bank account in HSBC Bank. Again no details are given as to what is her current status regarding directorship. The bank account is mentioned, but no details are given. This necessitated order dated 05.04.2014 by the trial court which is already elaborated above. The affidavits do show that the petitioner is giving information in bits and pieces and is not giving full and complete information. This has resulted in needless and prolonged litigation.

14. In view of the fact that the impugned order is partly based on some incorrect conclusions and, keeping in view that the petitioner is a lady a final opportunity is granted to the petitioner to file an affidavit giving full details of the assets of the JD. This opportunity is given as a final opportunity to give full

details and facts.

15. I dispose of the petition with a direction to the petitioner to place on record an affidavit within four weeks from today giving full details of the following:-

(i) Full details of the assets of the JD in India for the last 10 years.
(ii) Full details of assets of the JD in USA for the last 10 years.
(iii) Statement of bank account of HSBC Bank account of the JD for five years prior to 2005.
(iv) Balance sheet of the JD for the period they have been prepared.
(v) All other information available with the petitioner pertaining to the assets and finances of JD.

16. For the time being the petitioner need not appear before the trial court. The trial court is free to take steps after the affidavit is filed as per law.

17. With the above directions, the petition stands disposed of.

JAYANT NATH, J

FEBRUARY 04, 2015
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