IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6024 of 2015(O&M)

Date of decision:19.5.2016

M/s Rana Mahindra Paper Mills and another ….Petitioners

VERSUS

M/s Arkaya Minerals and Chemicals .....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Harish Chhabra, Advocate for the petitioners.

Mr. Pankaj Jain, Advocate for the respondent.

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REKHA MITTAL, J.

The present petition has been directed against orders dated 05.10.2012 (Annexure P-1) passed by the executing Court at Rupnagar, dated 27.07.2015 (Annexure P-2), dated 30.07.2015 (Annexure P-3) and dated 18.08.2015 (Annexure P-4) passed by the transferee Court of Civil Judge (Junior Division) Chandigarh.

Counsel for the petitioner has assailed the impugned orders primarily on two counts. The first submission made by counsel is that proceedings for execution of the judgment and decree dated 05.10.2004 cannot be permitted to proceed with in view of the fact that M/s Rana Mahindra Paper Mills (in short 'the paper mill') – JD No.1 has approached the Board of Industrial and Financial Reconstruction (for brevity 'BIFR') under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short 'the Act of 1985') and execution proceedings against the paper mill have been stayed by the Court. According to counsel, as soon as execution of a money decree has been stayed against the company, no proceedings for execution of such a decree can be carried into effect against the guarantors or the Directors of the company. In support of his contention, he has referred to judgment of this Court D.K. Chemicals (P) Ltd. Vs. M/s Rana Mahendra Paper Mills Ltd. and others, 2010 (5) RCR (Civil) 968. Reference has also been made to judgment of Hon'ble the Supreme Court of India M/s Patheja Bros. Forgings & Stampings and another Vs. I.C.I.C.I. and others, 2000(3) R.C.R. (Civil) 609.

Counsel has argued with vehemence that as the respondent filed a suit for recovery in respect of alleged supplies made to the paper mill, Sh. Prabhdeep Singh - petitioner No.2 being the Managing Director of the paper mill cannot be held personally liable for payment of amount outstanding against the paper mill. Further dilating, it is argued that the judgment and decree dated 05.10.2004 holding Sh. Prabhdeep Singh – petitioner No.2 liable to pay the decreetal amount is liable to be set aside as manifest injustice has been done to petitioner No.2. For this, he has relied upon judgment of the Andhra Pradesh High Court Kedarisethi Atmaram vs. N. Seetharamaraju, 2011 (3) ICC 385 and judgment of the Madras High Court Shivsu Canadian Clear International Limited Shivsu Towers vs. Freightcan Global Logistics Private Limited, 2013(3) CTC 305.

To assail order dated 18.08.2015 (Annexure P-4) an additional argument has been raised that as surety in the shape of Fixed Deposit Receipts (in short 'FDRs') in the name of Mahekveer Singh Sandhu issued by the Canara Bank, referred to in the order dated 30.07.2015 (Annexure P-3) was furnished only to ensure presence of petitioner No.2 against whom conditional warrant of arrest was issued and was actually executed but later released on bail vide order dated 27.07.2015 (Annexure P-2), the said FDRs cannot be encashed by forfeiting the surety bond for realization of decreetal amount as has been held in order dated 18.08.2015 (Annexure P-4).

Counsel for the respondents has submitted that the present petition filed by M/s Rana Mahendra Paper Mills- petitioner No.1, is not maintainable as execution proceedings against the paper mill have been stayed due to pendency of proceedings under the Act of 1985. It is further argued that petitioner No.2 cannot escape his liability to pay the decreetal amount under the guise of proceedings under the Act of 1985 being pending qua the paper mill or protection of Section 22 of the Act of 1985 being available to the company/ paper mill. It is further argued that petitioner No.2 could take shelter of Section 22 of the Act of 1985 only if the company alone had been held liable to pay the decreetal amount and the same was sought to be recovered from petitioner No.2 being Managing Director of the company. The judgments relied upon by counsel for petitioner No.2 with regard to implications of Section 22 of the Act of 1985 are of no consequence in the circumstances of the present case that decree for recovery has been passed both against the company and petitioner No.2. In support of his contention, he has referred to judgment of the Karnataka High Court BPL Engineering Ltd. Vs. VNS Industries Pvt. Ltd., AIR 2010 (Karnataka) 190 and judgment of the Delhi High Court M/s Hindustan Cables Ltd. and others vs. State Govt. of NCT of Delhi and others, 2008(2) RCR (Criminal) 878.

The present petition has been filed by M/s Rana Mahendra Paper Mills – petitioner No.1 through Prabhdeep Singh – petitioner No.2. Concededly, the proceedings for execution of the decree for recovery of Rs.5,64,364/- along with costs and interest against the paper mill stands stayed in the light of the provisions of Section 22 of the Act of 1985. As no execution proceedings are being carried into effect against petitioner No.1 nor any adverse order has been passed against the said petitioner, present petition on behalf of petitioner No.1 is liable to be dismissed being not maintainable and ordered accordingly.

Sh. Prabhdeep Singh – petitioner No.2 filed an application before the executing Court at Rupnagar to stall the process of execution with the plea that protection of Section 22 of the Act of 1985 is also available to him. The application was disposed of by the Civil Judge (Senior Division) Rupnagar vide order dated 05.10.2012 wherein it has been held, reads thus:-

> "9…………After going through Section 22 of the Act, I find that it bars any proceedings against the property of company and its guarantor. But I find that it does not bar the proceedings against individual properties of director. The decree has been passed against the company and the director. Hon'ble Karnataka High Court has also held that Section 22 of the Act does not bar any other mode of execution or proceedings against the person other than company and its properties, in above said M/s BPL Engineering's case. So when Section 22 of the Act does not restrict or prevent the decree holder to proceed against the directors in their individual capacity, then execution can be executed against the director with regard to his individual property."

The application filed by petitioner No.2 before the executing Court at Rupnagar was dismissed in October, 2012 but the same was not challenged by petitioner No.2 till filing of the present petition in September, 2015. The very fact that the petitioner did not challenge the order for a period of 3 years is sufficient to say that he was satisfied that he cannot seek protection under Section 22 of the Act of 1985 merely because some proceedings initiated by the paper mill/company are pending before BIFR or AAIFR. Even otherwise, as has been rightly held by the executing Court by relying upon judgment of the Karnataka High Court in M/s BPL Engineering's case (supra), the petitioner being the Managing Director of the paper mill cannot seek protection of Section 22 of the Act of 1985 in the circumstances that a decree against the company is not sought to be executed against its Director or Managing Director. On the contrary, a decree which was passed both against the company and its Managing Director in his individual capacity can be executed against the Managing Director even if the company has initiated proceeding under the Act of 1985 and are pending.

Counsel for the petitioners has failed to cite any contrary law holding that a decree passed against a Managing Director or Director of a company in his individual capacity, cannot be executed against him merely because the company has approached BIFR by invoking the provisions of the Act of 1985. In none of the judgments relied upon by counsel for the petitioner, any such proposition of law favourable to petitioner No.2 has been laid. In this view of the matter, I do not find any error much less infirmity in the order dated 05.10.2012.

Counsel for the petitioner has made an attempt to argue that the judgment and decree passed by the trial Court holding petitioner No.2 liable to pay the decreetal amount are liable to be set aside in exercise of jurisdiction under Article 227 of the Constitution of India. For this purpose, he has referred to judgment of the Andhra Pradesh High Court in

Kedarisethi Atmaram's case (supra) and of the Madras High Court in Shivsu Canadian Clear International Limited Shivsu Towers's case (supra). The decree against the company and Sh. Prabhdeep Singh in his individual capacity was passed way back in October, 2004. Perusal of the judgment passed by the trial Court would make it evident that in the written statement filed by both the defendants, they have not denied supply of materials but tried to avoid their liability on the plea that the materials were not of good quality. It is also an admitted fact that the judgment passed by the trial Court was not challenged in appeal, meaning thereby that petitioner No.2 was satisfied with the judgment of the trial Court. As the judgment and decree passed by the trial Court has attained finality between the parties, I find myself unable to accept submissions of petitioner No.2 that the judgment and decree is liable to be set aside in the present proceedings filed in the year 2015 to challenge certain orders passed in the execution proceedings, more particularly in the circumstances that it is none of the plea of the petitioner that the decree was obtained by misrepresentation much less by playing fraud. The Andhra Pradesh High Court in Kedarisethi Atmaram's case (supra) has held that where it appears that manifest injustice has been done, the High Court can interfere under Article 227 of the Constitution of India if a decree has been obtained by misrepresentation or by playing fraud. There cannot be any dispute about the settled position in law that a judgment and decree obtained by playing fraud upon the Court can be set aside even in collateral proceedings as has been held by Hon'ble the Supreme Court of India in Gram Panchayat of village Naulakha Vs. Ujagar Singh and others, 2000(2) PLJ 596.

Counsel for the petitioners has not pointed out any error in the orders dated 27.07.2015 (Annexure P-2) and 30.07.2015 (Annexure P-3) whereby the petitioner was called upon to furnish the surety bond for his release from custody and Manager of Canara bank was directed not to allow withdrawal or discharge of the FDRs detailed in order dated 30.07.2015 (Annexure P-3), produced before the Court by way of security for release of petitioner No.2. It appears that these orders were also sought to be challenged in view of first two submissions discussed hereinbefore and rejected. That being so, there is no reason to interfere in the order dated 27.07.2015 (Annexure P-2) and 30.07.2015 (Annexure P-3).

So far as the order dated 18.08.2015 (Annexure P-4) is concerned, the executing Court allowed last and final opportunity to the JD for complying with the decree on or before 11.09.2015 failing which the surety bond furnished on his behalf is liable to be forfeited. It is an undisputed position of the case that the surety bond in the sum of Rs.10,00,000/- was furnished for seeking release of petitioner No.2 from civil custody as he was taken into custody in pursuance of conditional warrants of arrest issued by the Court. There is also no dispute that three FDRs valuing Rs.10,00,000/- were submitted in lieu of execution of surety bond to be furnished by a local surety. As the surety bond was executed for release of Prabhdeep Singh and further to ensure his presence in the execution proceedings, the said surety bond or FDRs produced cannot be encashed for realisation of the decreetal amount. I would hasten to add that counsel for the respondent has raised an argument that as the surety has not approached this Court to challenge the order dated 18.08.2015, petitioner No.2 cannot challenge the same because it does not cause any prejudice to him. Firstly, an order passed by the Court subordinate to this Court can be examined suo motu, in exercise of jurisdiction under Article 227 of the Constitution of India. As the executing Court has committed an illegality to order encashment of FDRs for satisfaction of the decree when admittedly the surety bond was furnished only for release of JD-Prabhdeep Singh from custody of the Court, the surety cannot be called upon to pay the decreetal amount in the circumstances of the present case. In this view of the matter, I find merit in contention of the petitioner that order dated 18.08.2015 (Annexure P-4) to the extent of forfeiture of the surety bond for realisation of the decreetal amount cannot be allowed to sustain and liable to be set aside.

In view of what has been discussed hereinabove, the petition on behalf of petitioner No.2 qua challenge to the orders dated 05.10.2012 (Annexure P-1), 27.07.2015 (Annexure P-2) and 30.07.2015 (Annexure P-3) fails and is accordingly dismissed. However, the petition in respect of order dated 18.08.2015 (Annexure P-4) is allowed in the aforesaid terms. The parties are left to bear their own costs.

MAY 19, 2016 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**