

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.994 of 2016 (O&M)
Decided on: 29.03.2016**

M/s. Dhampur Sugar Mills Limited

....Petitioner

Versus

M/s. Kay Kay Industries

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Suvir Sehgal, Advocate
for the petitioner.

REKHA MITTAL J.

The present petition has been directed against orders dated 25.02.2015 (Annexure P-12) and dated 23.09.2015 (Annexure P-17) passed by the Civil Judge (Senior Division), Jalandhar, in execution petition bearing case No.30057 of 2013 titled “*M/s. Kay Kay Industries vs M/s. D.S.M. Sugar Mills Limited.*”

Counsel for the petitioner would contend that the petitioner-M/s. Dhampur Sugar Mills Limited (a company incorporated under the Companies Act, 1956) (hereinafter to be referred as 'the company') is not a party in the civil suit filed by M/s. Kay Kay Industries titled “*M/s. Kay Kay Industries vs M/s D.S.M. Sugar Mills Limited, Mansurpur, District Muzaffarnagar through its Managing Director.*” It is further contended that as the petitioner-company is not a party to the suit in which an *ex parte* decree for recovery of an amount running into several lacs has been passed, the bank accounts of the

petitioner-company cannot be attached for realization of the decretal amount. For this purpose, counsel has referred to the judgment of Hon'ble the Supreme Court of India “*M/s. Century Textiles Industries Limited vs Deepak Jain and another*”, 2009(2) RCR (Civil) 614.

Another submission made by counsel is that M/s. Kay Kay Industries filed another suit for recovery against M/s. D.S.M. Sugar Mills Limited, Asmoli, VPO Asmoli, Tehsil Sambhal, District Moradabad (U.P.) through its Managing Director, for recovery of Rs.35,73,787.70 paisa and in the said case, an application was filed by M/s D.S.M. Sugar Mills Limited (a unit of Dhampur Sugar Mills Limited), Mansurpur, District Muzaffarnagar and the Additional Civil Judge (Senior Division), Jalandhar while disposing of an application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure (in short 'CPC') for setting-aside the *ex parte* judgment and decree dated 13.04.2011 in para 16 of the order dated 20.08.2014 (Annexure P-19) has held that as the applicant was not a party in the suit, the decree in question is not binding on the applicant. It was further held that the decree in question can only be executed against the JD-Company and not against any other partnership or proprietorship concern or any other company. It is vehemently argued that the petitioner would be satisfied if the present petition is disposed of with similar observations that the decree in question can only be executed against the JD and not against any other concern/company.

I have heard counsel for the petitioner, perused the records but find that the petition is not meritorious and deserves to be

dismissed.

Counsel for the petitioner has not disputed or denied that the JD-M/s. D.S.M. Sugar Mills Limited, Mansurpur, District Muzaffarnagar, is one of the units of the parent company-M/s. Dhampur Sugar Mills Limited. The question whether the JD-M/s. D.S.M. Sugar Mills Limited, Mansurpur, District Muzaffarnagar was sued with a correct name/nomenclature or was served properly or otherwise is not the subject-matter of the present petition and the same is pending consideration before the Appellate Court as the application filed by the JD under Order 9 Rule 13 CPC has been dismissed by the learned trial Court. As the petitioner is the parent company of M/s. D.S.M. Sugar Mills Limited, Mansurpur, District Muzaffarnagar, it cannot be heard to say that the decree passed against one of its units cannot be executed by attachment of accounts of the parent company. The judgment relied upon by counsel for the petitioner *M/s. Century Textiles Industries Limited's case (supra)* has got no bearing on the facts of the case in hand as the question for adjudication in those proceedings was totally alien to the controversy raised before the Executing Court or in the present petition. In this view of the matter, the petitioner cannot derive any advantage to its contention from what has been held in *M/s. Century Textiles Industries Limited's case (supra)* in view of its peculiar facts and circumstances.

With regard to contentions by referring to certain observations made by the trial Court while disposing of an application filed under Order 9 Rule 13 CPC at the behest of M/s. D.S.M. Sugar

Mills Limited (a unit of Dhampur Sugar Mills Limited), Mansurpur, District Muzaffarnagar, the same would not enure to benefit of the petitioner in view of the discussion made hereinbefore. This apart, in the said case the decree was passed against M/s. D.S.M. Sugar Mills Limited, Asmoli, VPO Asmoli, Tehsil Sambhal, District Moradabad (U.P.) but the application under Order 9 Rule 13 CPC was filed by M/s. D.S.M. Sugar Mills Limited (a unit of Dhampur Sugar Mills Limited), Mansurpur, District Muzaffarnagar and in those circumstances, the Court held that the decree in question can only be executed against the JD-Company and not against any other company or partnership or proprietorship concern. The Court in the said case was not dealing with the issue, if the decree passed against M/s. D.S.M. Sugar Mills Limited, Asmoli, VPO Asmoli, Tehsil Sambhal, District Moradabad (U.P.) is executable against the petitioner being the parent company of the said sugar mill. Analyzed from any angle, I find myself unable to accept plea of the petitioner that the orders impugned suffer from any error much less being perverse or absurd, warranting intervention in exercise of supervisory jurisdiction of this Court.

For the foregoing reasons, the petition is dismissed *in limine*. No order as to costs.

(REKHA MITTAL)
JUDGE

29.03.2016
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