

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Ex. F.A. No.7/2008**

Decided on: 6th January, 2016

ASIAN GRANITES PVT. LTD. Appellant
Through: Mr. Harish Malhotra, Senior Advocate
with Mr. R.K. Modi, Advocate.

Versus

DEEN DAYAL AGGARWAL Respondent
Through: Mr. K.K. Jha, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is an execution appeal filed by the appellant against the order dated 2.6.2007 passed by the learned ADJ by virtue of which the objections which were filed by M/s. Asian Granites Pvt. Limited were dismissed with a cost amounting to Rs.25,000/-.
2. Briefly stated the facts of the case are that a suit bearing No.150/2000 for recovery of Rs.5 lacs was filed on 6.9.2000 under Order 37 CPC by Deen Dayal Aggarwal, the respondent herein (since deceased) against M/s. Balaji Wheat Products Pvt. Ltd. and

its two directors, namely, Sanwar Mal, Managing Director and Sunder Lal, Director. Out of these defendants M/s. Balaji Wheat Products & Sanwar Mal are respondent No.2 and 3 respectively in the present execution appeal. The aforesaid suit was decreed *ex parte* against respondent Nos.2 and 3 Sunder Lal on 8.11.2000 with an interest @ 15 per cent per annum and a cost of Rs.14,483/-.

3. On 11.1.2001, Deen Dayal Aggarwal, decree-holder, filed an execution bearing No.2/2001 for recovery of Rs.5,27,399/- but respondent Nos.2 to 4 filed an application under Order 37 Rule 4 CPC for setting aside *ex parte* decree and the same was also dismissed on 27.9.2002. A Local Commissioner was appointed by the executing court to sell the property No.A-2/67, Warehousing Scheme, Kirti Nagar, New Delhi owned by appellant M/s. Asian Granites Pvt. Ltd. for the satisfaction of the decree passed in favour of Deen Dayal Aggarwal. The aforesaid property was put to auction and one Naresh Kumar Aggarwal, who is shown as one of the legal heirs of deceased Deen Dayal as respondent No.1 (f), was declared as a highest bidder. On 19.10.2002, Surender Kumar Aggarwal, judgment debtor No.3, who is respondent No.4 in the

present appeal, filed an affidavit that property No.A-2/67, Kirti Nagar, New Delhi, was his absolute property. On 19.10.2002, objections were filed by one of the directors of M/s. Asian Granite Private Ltd. to the effect that sale be not confirmed during the pendency of decision on their objections and the objector company had approached the High Court and filed a petition bearing No.1156/2002 against order dated 19.10.2002 which was also dismissed on 1.11.2002 itself. Thereafter, an application under Section 47 CPC was filed by the legal heirs of the decree-holder, Deen Dayal Agarwal, who were impleaded as party and an application under Order 21 Rule 58 and 59 read with Section 151 CPC was also filed by the objector/appellant herein M/s. Asian Granite Pvt. Ltd. for release of property No.A-2/67, WHS, Kirti Nagar, New Delhi, from attachment. In the application, it was stated that the property belonged to M/s. Asian Granite Pvt. Ltd., a company registered under Companies Act and one Mr. Tarun Aggarwal, being the director of the company had filed the objections on behalf of the said company that it had nothing to do with the judgment debtor. As a matter of fact, the plot measuring

208.94 square meters was leased out perpetually in favour of M/s. Asian Granites by the DDA on 8.9.1989. The building on the said plot of land was raised and it was let out to M/s. Balaji Wheat Products Pvt. Ltd., the judgment debtor. Therefore, it was contended that the building is owned by M/s. Asian Granites Pvt. Ltd. and not by M/s. Balaji Wheat Products Pvt. Ltd. and could not be the subject-matter of attachment.

4. In reply to the application, the judgment debtor admitted that the property belonged to M/s. Asian Granite Pvt. Ltd. and it was also admitted that the judgment debtor company had a director, who was also the director of M/s Asian Granite Pvt. Ltd. but both the companies were separate entities. The application was signed by Sanwar Mal Aggarwal s/o Hanuman Parshad. Two issues were framed by the executing court:-

*“(1) whether the property in question, namely, A-2/67, WHS, Kirti Nagar, could not be attached and sold in auction in execution proceedings, if so its effect and
(2) Relief.”*

5. On the basis of the evidence adduced by the parties, the learned executing court observed as under :-

“8. The Objector Tarun Agarwal, Director has examined himself as OW1 stating to be the director of M/s. Asian Granites Pvt. Ltd. along with other directors viz. Sh. Nath Mull Kejriwal, Sh. R.S. Kejriwal and Sh. Sanwar Mal Aggarwal. Through Board Resolution dated 20.2.2002 Ex. OW 1/2, the director has deposed that the industrial property bearing No.A-2/67, W.H.S., Kirti Nagar, New Delhi stands in the name of M/s. Asian Granite Pvt. Ltd. The land measuring 208.94 sq. meter was allotted in the name of M/s. Asian Granite Pvt. Ltd. by the Delhi Development Authority in 1996. Subsequently, a perpetual lease deed was executed on 08.02.1989 in favour of M/s. Asian Granite Pvt. Ltd. The photocopy of the said lease deed is Ex. OW 1/3.

9. The property on the said plot is two and half storeyed building standing in the name of M/s. Asian Granite Pvt. Ltd., in the records of Municipal Corporation of Delhi since 1987. Electrical as well as water connections are also in the name of M/s. Asian Granite Pvt. Ltd., so also the telephone connection. The Objector is running marble cutting a the site for sale of granites, marbles, stones, etc. The bills of the sales have been shown as Ex. OW 1/11 to Ex. OW 1/19.

10. The witness has also deposed that in the entire proceedings in case of Deen Dayal Aggarwal vs. Balaji Wheat Products Pvt. Ltd., the objector M/s. Asian Granite Pvt. Ltd. was never impleaded as party nor was concerned or connected with any transaction with Deen Dayal Aggarwal and M/s. Balaji Wheat Products Pvt. Ltd. The directors of the said company are Sh. Sanwar Mal Aggarwal and Smt. POUshpa Devi Aggarwal.

11. It has been deposed that the property was valued at Rs.1 Crore and proclamation was for lesser amount. The only contention that has been raised by the witness is that

there is no privity of contract between the Decree Holder and the Objector.

12. In the cross examination, Tarun Kumar Aggarwal has admitted that he is son of Sh. Sanwar Mal Aggarwal and he has never been the director in the JD company. However, the witness is unsure whether he has filed annual returns of M/s. Balaji Wheat Products Pvt. Ltd. for the period 30.9.99 to 30.9.2002. Witness has admitted that the signatures at point B on the said returns seems to be similar to his signatures. On the second thought, the witness has denied that the signatures are his. The witness further admitted that Sh. S.M. Aggarwal is managing director of both the companies viz. M/s. Balaji Wheat Products Pvt. Ltd. and Asian Granite Pvt. Ltd. The witness was also not aware whether the shares of M/s. Asian Granite Pvt. Ltd. owns substantial shares of M/s. Balaji Wheat Products Pvt. Ltd. The witness has admitted that the share of M/s. Asian Granite Pvt. Ltd. are owned by his family members. The witness has also admitted that he has shares of M/s. Asian Granite Pvt. Ltd. but he is not sure how many shares he owns. On the date of the deposition, the witness has admitted that he was 26 years of the age and the Company was incorporated more than 20 years before and he became the director in 2002.

13. The witness has also admitted that the perpetual lease of the Objector had been executed by his father Sh. S.M. Aggarwal as the director of the Objector Company. The witness further stated that the registered office of the JD is in the same precinct as the Objector.

14. In the entirety of the evidence adduced by the Objector, the only evidence adduced by Sh. Tarun Aggarwal who by way of deposition has tried to show that the two companies were infact distinct and separate from each other

and it is by coincidence that Sh. S.M. Aggarwal is director in both the companies.

15. In the cross examination the witness despite being evasive has prevaricated on number of occasions. The fact that has evolved from the deposition is that Objector is nothing less than the company owned by the director of M/s. Balaji Wheat Products Pvt. Ltd. viz. Sh. S.M. Aggarwal and the holdings are shown in favour of his family members.

16. Even though the objector on one occasion has contended that his father Sh. S.M. Aggarwal is managing director of both the companies and share holdings of the objector are basically of his family, the witness has failed to show that the said company viz. the Objector M/s. Asian Granite Pvt. Ltd. and Judgment Debtor M/s. Balaji Wheat Products Pvt. Ltd. are two distinct and unattached companies but infact they are nothing but two heads under which Sh. S.M. Aggarwal and his family members are doing business. The evidence adduced is not only evasive and untrustworthy but also contradictory. No credence can be given to such evidence.

17. In view of the said fact, it cannot be said that Sh. S.M. Aggarwal being the director of the JD can evade the liability of payment by taking refuge that JD has no assets to fulfill its obligation to pay the Decree Holder and escape the liability under the shroud of corporate entity. In this regard, the Hon'ble Supreme Court has more often than not lifted and penetrated the corporate veil and in judgment titled as Delhi Development Authority vs. Skipper Construction Co. (P) Ltd. & Another in (1996) 4 Supreme Court Cases 622 the Hon'ble Supreme Court has held that:-

“The concept of corporate entity was evolved to encourage and promote trade and commerce and not to commit illegalities or to defraud people.

Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejawant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejawant Singh and family if it is found that these corporate bodies are clearly cloaks behind which lurks Tejawant Singh and/or members of his family and that the device of incorporate was really a ploy adopted for committing illegalities and/or to defraud people”.

18. The evidence adduced in the present case is totally insufficient in as much as the prevarication of the objector through Tarun Aggarwal is writ large on the face of the record. Infact M/s. Balaji Wheat Products Pvt. Ltd. and M/s Asian Granite are two corporate heads controlled by the same family and one corporate entity cannot be allowed enrichment while under the other head the same set of directors claim impecuniousness, while functioning fruitfully in the other. The JD’s corporate status cannot allow it to be absolved of the liability while the other corporate entity owned by the same family flourishes. This was not the intention of Legislature nor equitable to the judicial conscience. The law of the land cannot be mute spectator to such defrauding. In this regard, I hold that M/s. Balaji Wheat Products Pvt. Ltd. and M/s Asian Granites Pvt. Ltd. as one and the same with the holdings of the same family viz. Sh. S.M. Aggarwal and the liability of the JD cannot be escaped by taking refuge of being a corporate entity.”

6. The learned executing court dismissed the objections holding that it was entitled to lift the corporate veil of M/s Asian Granites Pvt. Ltd. and held that the corporate entities that is M/s. Balaji Wheat Products Pvt. Ltd. and M/s. Asian Granite Pvt. Ltd. are controlled by the same family. One corporate entity cannot be permitted to have unjustified enrichment while the other is absolved of its liability. It has been observed that Court cannot be a mute spectator while as judgment debtor escapes the liability. Reliance has been placed on case titled *DDA vs. Skipper Construction Co. (P) Ltd. & Anr.; (1996) 4 SCC 622*. Feeling aggrieved by the dismissal of objections of Asian Granite Pvt. Ltd., the present appeal has been filed.
7. The learned trial Court on one hand observes that evidence produced by Mr. Tarun Aggarwal is insufficient and on the other hand presumes that one corporate entity is making unjust enrichment and the other corporate entity, i.e. judgment debtor is being absolved of its liability. It is not correct to presume for the reason that the respondent/decreed holder has not only made judgment debtor/corporate entity as a party in a suit for recovery

but its Directors. The decree for recovery has been passed jointly and severally against the company and its Directors. The personal assets of the Directors can be attached and if they have no assets they can be detained in civil prison which is the sanction provided under Section 56 of the CPC.

8. Reliance by the trial Court on *Skipper's* case is not correct. The facts of the *Skipper case (supra)* are totally different. That was not a suit for recovery simplicitor. That was a case where number of cases were registered against the company Skipper Construction and its Directors Tejwanjt Singh and others for having defrauded the members of the public by selling the same flat in a proposed building to be raised in Jhandewalan, Delhi to as many as five/six times. It was in this context that the Court had observed that the corporate entity cannot be used as a shield to take a shelter against attaching of its/their properties for reparation. The Supreme Court has repeatedly observed that the ratio laid down in a particular case should not be applied without correlating the facts of the two cases. Reliance can be placed in this regard on a case titled *Haryana*

Financial Corporation v. Jagdamba Oil Mills & Anr., AIR 2002 SC 834.

9. Similarly, judgment of the Division Bench of this court in *PNB Finance Limited vs. Shital Prasad Jain & Others*; 19 (1981) DLT 368 to contend that the executing court was well within its right to lift the corporate veil not only to see the real intention of the parties but also to unravel the fraud which is sought to be played on the court is not applicable to the facts of the case because that was a case where corporate entity was being used to defraud the revenue by evasion of tax.
10. There is no dispute about the fact that the property in question stands leased perpetually in the name of the appellant/objector. According to the Registration Act as well as the Transfer of Property Act, a person whether it is juristic or an individual, in whose name the document of immovable property is duly registered, has to be treated as the owner of the property. It is also not in dispute that in law the private limited company like a natural person is a juristic entity and has an existence in law and merely because a director of a private limited company is also a director of

another private limited company, which incidentally is a judgment debtor, does not *ipso facto* makes the property of such private limited company, which is neither the judgment debtor nor a party to the suit proceedings in which such a decree has been passed to be the property of the judgment debtor and subject-matter of attachment. If this is sought to be done then practically the distinction between two juristic entities would be completely obliterated. The cases which have been relied upon by the learned counsel for the respondent to contend that corporate veil can be lifted and the real intention of the parties can be seen with a view to unravel the fraud, are not applicable to the facts of the present case.

11. So far as the *Skipper's* case (*supra*) is concerned, that was a case where the Supreme Court felt that the *karta dharta* or the managing director of the said company, who happened to be an individual having a property in its own name, was actually siphoning the property of the private limited company for her own benefit and therefore, his property was attached. A case of cheating cannot be equated with the case in hand which is a stray case where the suit for recovery of a paltry sum of Rs.5 lacs is filed which is decreed

against the private limited company, a juristic entity and in which two directors were also made as a party and yet the property of a different juristic entity is attached. If this is permitted to be done then practically, it will cause irreparable damage to the concept of separation of two different entities and piercing of corporate veil.

12. In *PNB Finance Ltd.* case (*supra*), the issue which was involved was the issue of tax evasion and it was in that context, i.e. deprivation of revenue by a private limited company that the corporate veil was lifted and the court observed that corporate personality itself may be discarded having regard to the exigencies of situation and the ends of justice. In the instant case, there are no exigencies of situation or ends of justice warranted to show that there is anything fraudulent being done by judgment debtor to defeat the decree passed in its favour. Therefore, I feel that the learned executing court was not right in observing that the property in question which was in the name of M/s. Asian Granite Pvt. Ltd. could be attached and auctioned by the executing court for the satisfaction of the decree which was passed in favour of the decree holder, namely, Deen Dayal Aggarwal.

13. I, accordingly, set aside the order dated 2.6.2007 passed by the executing court and allow the appeal upholding that the property in question which belongs to appellant, M/s. Asian Granites Pvt. Ltd. cannot be attached and auctioned for the satisfaction of the decree passed against respondent No.2 to 4. Needless to say that it does not mean that the decree holder is precluded from recovery of the decretal amount from the judgment debtor in any other manner whatsoever including seeking detention of the Directors under Section 55 CPC. With these observations, the appeal stands allowed.

V.K. SHALI, J.

JANUARY 06, 2016
‘AA/vk’