

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.187 OF 2017**

1. M/s. Trimurti Exports,
C/F 1 and 3, J. B. Apartments,
Near Pandav Church,
Aquem Alto, Margao, Salcete
Goa 403601
2. Mr. Rashid Khan Partner,
Trimurti Exports,
Major of age,
Indian National
C/F-1 and 3, J. B. Apartments,
Near Pandav Church,
Aquem Alto, Margao, Salcete
Goa 403601
3. Mr. Devendra N. Kamat, Partner
Trimurti Exports,
Major of age,
Indian National,
C/F1 and 3, J. B. Apartments,
Near Pandav Church
Aquem Alto, Margao, Salcete
Goa 403 601.
3. Mr. Balchandra S. Bakhle Partner
Trimurti Exports,
Major of age, Indian National,
C/F1 and 3, J. B. Apartments,
Near Pandav Church
Aquem Alto, Margao, Salcete
Goa 403 601 .. Petitioners

Vs

M/s. Modelama Exports Limited,
at B-57, Okhla Industrial Area, Phase-I,
New Delhi 110 020 Also at
184- Udyog Vihar, Phase-I, Gurgaon,
Haryana, .. Respondents

Mr. Virendra Goswami, Ms. Sony Singh, Ms. Swati Goswami and Mr. Jitendra Supekar, Advocates for the petitioners.

Mr. Rajat Vadhwa and Mr. B. Khandeparkar, Advocates for the respondent.

Coram :- M. S. SONAK, J.

Reserved on :- 10th April,, 2017

Pronounced on :- 12th April, 2017

ORDER :

Heard Mr. Goswami, for the petitioners and Mr. Vadhwa, for the respondent.

2. The challenge in this petition is to the order dated 13/12/2016, by which the Executing Court has issued arrest warrant in exercise of powers conferred under Order XXI Rule 37 of C.P.C., in the pending Execution Proceedings.

3. Mr. Goswami, the learned Counsel for the petitioners submits that the learned Executing Court has completely ignored the provisions of Section 51 and Order XXI, Rule 37 of C.P.C. He submits that before ordering arrest of the petitioners/ judgment debtors, the Executing Court was not only required to afford an opportunity to the petitioners of showing cause, but further the

learned Executing Court, was required to be satisfied that the petitioners, despite having means to pay, are avoiding the payment dishonestly or *malafide*. Mr. Goswami submits that every time, the decree holder applies for issuance of arrest warrant, the predicates of Section 51 and Order XXI, Rule 37 of C.P.C. have to be fulfilled and unless the same are fulfilled, the Executing Court gets no jurisdiction to issue any arrest warrant for enforcement of money decree. Mr. Goswami places reliance upon the following decisions :-

- (i) ***Jolly Goerge Varghese Vs. The Bank of Cochin***; AIR 1980 SC 470;
- (ii) ***Kanhaiyalal Prabhudas Maru and Ors Vs. Regional Provident Fund Commissioner and Ors***; 2009(91)FLR 914
- (iii) ***Pundik s/o Mahadu Nazire Vs. Maharashtra State Farming Corporation***; AIR 1992 Bom 48.

4. Mr. Goswami submits that merely because on the earlier occasion, arrest warrant had been issued against the petitioners/ judgment debtors, does not mean that the Executing Court is absolved of the duty to examine whether the predicates of Section 51 and Order XXI, Rule 37 of C.P.C. have been fulfilled or not, before issuing a fresh warrant of arrest against the

petitioners/ judgment debtors. He submits that it is a duty of the Executing Court to satisfy itself as to whether on account of changed circumstances, the predicates of Section 51 and Order XXI, Rule 37 of C.P.C., remained unfulfilled, and if so, to refrain from exercising jurisdiction of ordering arrest for inability to satisfy the decree.

5. Mr. Goswami submits that in this case, the properties of the petitioners/ judgment debtors are already under attachment. In respect of some of the properties, even proclamations have been issued. He submits that the decree holder is always at liberty to proceed against the petitioners' properties for satisfaction of the decretal amount. However, there is no point in insisting upon issuance of any arrest warrant. Mr. Goswami submits that ultimately, the decree holder is not going to recover its money by way of requiring the judgment debtors to undergo civil detention. Mr. Goswami points out that the decree holder had, in fact, instituted Writ Petition before this Court, seeking for issue of arrest warrant against the petitioners/ judgment debtors. However, this Court refrained from issuing any such warrant of arrest. The Executing Court failed to appreciate the impact of order dated 08/06/2016 in W.P.No.295/2016, before issuing the impugned order. For all these reasons, Mr. Goswami

submits that the impugned order maybe interfered with by this Court in exercise of its extraordinary jurisdiction.

6. Mr. Wadhwa, who defends the impugned order, submits that the petitioners/ judgment debtors are bent upon abusing the judicial process and, therefore, this petition may be dismissed with exemplary costs. He submits that the arrest warrants earlier issued, were challenged on the very same grounds now urged in support of the present petition. Such challenges were rejected by the Executing Court in its order dated 17/02/2016 and this Court, by its order dated 08/06/2016 in W.P.No.295/2016. He submits that the order dated 17/02/2016 made by the Executing Court had not only directed the arrest and detention of the petitioners/ judgment debtors in civil prison, but also, had required the presence of the petitioners/ judgment debtors in the Court for their examination on oath in terms of Order XXI, Rule 41 of C.P.C. He submits that the petitioners have refused to comply with the orders made by the Executing Court. He submits that ultimately by orders dated 25/02/2016 and 03/03/2016, the arrest warrants were issued. However, the petitioners/ judgment debtors, physically prevented the execution of the arrest warrants. Mr. Wadhawa further points out that after the challenge to the order dated 17/02/2016 failed, the petitioners

applied for interim relief, stating that they wish to seek recourse against the judgment and order dated 08/06/2016 in W.P.No.295/2016 before the Hon'ble Apex Court. The interim relief was granted for a period of six weeks. However, till date, no interim relief has been obtained from the Hon'ble Apex Court in the matter. Accordingly, the decree holder pointed out to the Executing Court that since there is no interim relief from the Hon'ble Apex Court, the order dated 17/02/2016, which has been upheld by this Court vide order dated 08/06/2016, be complied with. The impugned order merely directed the compliance of the earlier orders, which as of date, have attained finality. Mr. Wadhawa, therefore, submits that the very institution of the present petition, is nothing but an abuse of the judicial process and, therefore, this petition may be dismissed with exemplary costs.

7. The rival contentions now fall for determination.

8. In this case, there is no dispute whatsoever, that the petitioners/ judgment debtors are liable to pay to the respondent/ decree holder, a sum of approximately Rs.13 Crores, in pursuance of the decree / award, which has attained finality. The record indicates that since neither payments were forthcoming nor was

there true and full disclosure of the assets, bank accounts, etc. the Executing Court, after affording of opportunity to the petitioners/ judgment debtors of showing cause and further, after satisfying itself that the predicates of Section 51 and Order XXI, Rule 37 of the C.P.C., have been duly fulfilled, vide order dated 17/02/2016, directed the following -

“a) that the judgment debtors be detained in civil prison

b) the judgment debtors be directed to state on oath the details of their property etc. in terms of Order XXI, Rule 41 of C.P.C.”

9. The Executing Court, in its detailed order dated 17/02/2016, has examined virtually the identical submissions, now raised in this petition in the matter of alleged non-compliance with the provisions of Section 51 and Order XXI, Rule 37 of C.P.C. The learned Executing Court took note of the fact that the petitioners/ judgment debtors, despite being afforded an opportunity of showing cause, had virtually failed to show any meaningful cause, as to why their detention be not ordered in civil prison. The learned Executing Court also considered the impact of the decision of the Hon'ble Supreme Court in the case of **Jolly**

Varghese (supra) in paras 29, 30 and 31 of the judgment and order dated 17/02/2016. This judgment was distinguished by holding that this is not at all a case, where the judgment debtors have no means to pay the amount due under the award and rather, this is a case where the judgment debtors despite means, are avoiding such payments. Finally, in paragraph 43 of judgment and order dated 17/02/2016, the Executing Court observed and directed the following :

“43. It has been borne out from the records that the judgment debtors have been playing on words to avoid the execution of the award in favour of the decree holders by raising one objection or the other. It is apparent therefore that the judgment debtors have the means and are still refusing to pay entitling therefore the decree holders to the relief seeking their arrest and detention in civil prison. The judgment debtors have also not come clear in their reply to the application under Order XXI, Rule 41 C.P.C. in as much as they have made evasive statements referring to the properties as purported list of properties. Moreover, the judgment debtors were called upon by the PDJ North to appear in person which order has not been wiped off the record.

The judgment debtors have failed to show cause in terms of Order XXI, Rule 37 C.P.C. against their detention in prison and therefore the decree holders would be entitled to an order for their

detention in civil prison. The decree holders would also be entitled to seek for the examination of the judgment debtors on their property on oath failing which the judgment debtors would face the consequence of detention in civil prison in terms of Order XXI Rule 41 sub-rule (3) C.P.C. In these terms, the applications at Exhs. 4 and 5 stand disposed off."

10. In pursuance of the judgment and order dated 25/02/2016, an arrest warrant was, in fact, issued against the petitioners/ judgment debtors. However, it appears that the petitioners/ judgment debtors physically prevented the execution of this warrant. Accordingly, the Executing Court was constrained to issue yet another warrant on 03/03/2016. In the meantime, on 08/03/2016, the petitioners/ judgment debtors obtained a stay on the execution of the judgment and order dated 17/02/2016 by instituting W.P.No.295/2016.

11. The aforesaid Writ Petition No.295/2016 was, however, dismissed by this Court by a detailed order dated 08/06/2016. It is pertinent to note that even in W.P.No.295/2016, the petitioners/ judgment debtors raised virtually identical contentions as are now raised in the present petition. All such submissions were considered by this Court in great details and the conclusions recorded by the learned Executing Court, were upheld. This

Court, in particular, upheld the findings recorded by the Executing Court with regard to compliance with the provisions contained in Section 51 of C.P.C. and Order XXI, Rule 37 of C.P.C. This Court also took note of the contention of the petitioners/ judgment debtors that certain properties were available and were attached in execution of the decree and, therefore, there was no necessity of detention of the petitioners/ judgment debtors in civil prison. This Court, on detailed analysis of the statutory provisions as well as the facts and circumstances as borne out from the record, held that there was absolutely no case made out to interfere with the judgment and order dated 17/02/2016, by which the powers under Section 51 read with Order XXI, Rule 37 of C.P.C. came to be exercised by the Executing Court.

12. After this Court, pronounced the judgment and order dated 08/06/2016, dismissing W.P.No.295/2016, the petitioners / judgment debtors applied for stay of the execution of the judgment and order dated 17/02/2016 for a period of six weeks, stating that they wish to approach Hon'ble Apex Court against the judgment and order dated 08/06/2016 in W.P.No.295/2016. The said stay was granted by this Court for a period of six weeks by a separate order dated 08/06/2016.

13. Despite expiry of almost nine months, there is no interim relief from the Hon'ble Apex Court. Accordingly, the decree holder applied for issuance of warrant in terms of the judgment and order dated 17/02/2016, made by the Executing Court earlier. It was pointed out that previously, the orders issuing warrants had in fact, been made. However, on one occasion, the execution of the warrant was physically obstructed and on the second occasion before the warrant could be actually executed, this Court, vide order dated 08/03/2016, made in W.P. No.295/2016, stayed the implementation of the judgment and order dated 17/02/2016. It was pointed out that the challenge to the judgment and order dated 17/02/2016 is since failed, therefore, it is only appropriate if the judgment and order dated 17/02/2016 is enforced.

14. The petitioners/ judgment debtors undeterred by the order made by this Court on 08/06/2016 in W.P.No.295/2016, once again, have attempted to raise the very same grounds to resist the warrant of arrest. There is absolutely no change of circumstances demonstrated. The reliance placed upon the decision in the case of **Jolly Varghese** (supra) is clearly misplaced. That was a case, where warrant of arrest was issued, without record of satisfaction that the decree holder really had means to pay, but was avoiding

the payment. Certain observations in the said decision, including the observations in paragraph 6, cannot be read out of context as suggested by Mr. Goswami, the learned Counsel for the petitioners/ judgment debtors. In this case, there is neither any change of circumstances pleaded nor established. The decision in the case of **Kanhaiyalal Maru** and **Pundik Nazire** (supra) are also not applicable to the fact situation of the present case. In both the cases, before warrant of arrest was issued, the Executing Authorities had failed to apply their mind to the predicates of concerned rules and it was in those circumstances that the observations were made as to the legality of issuance of such warrant.

15. In the case of **Shyam Singh Vs. Collector, District Hamirpur**; 1993 Supl. (1) SCC 693, the Hon'ble Supreme Court has held that under the C.P.C., there is no statutory provision against the number of execution proceedings continuing concurrently. Section 51 of the Code gives an option to the creditor, of enforcing the decree either against the person or the property of the debtor. Nowhere it has been held that the execution against the person and debtor shall not be allowed unless and until the decree holder is exhausted his remedy against the property. By virtue of Order XXI, Rule 30 of C.P.C. also

simultaneous execution, both against the property and person of the judgment debtor is allowed. Of Course, the discretion in the Court to order simultaneous execution, must be exercised in a judicious manner. In the present case, the exercise of discretion by the Executing Court was examined and upheld by this Court on the earlier instance. In such circumstances, it cannot be accepted that there is any jurisdictional error or unreasonableness in the making of the impugned order.

16. This is clearly not a case where the petitioners/ judgment debtors are in the same or even similar position as the judgment debtors in the case of **Jolly Varghese** (supra). Rather, this is a case, where the judgment debtors have the means to pay, but are determined to resist the execution process by repeatedly raising same or similar objections, despite rejection of the same on previous occasions.

17. It is true that the respondent/ decree holder, had instituted Writ Petition No.942/2016 in this Court, seeking for issuance of arrest warrant against the petitioners/ judgment debtors. This was in a context of applications made by the respondent/ decree holder before the Executing Court to implement the judgment and order dated 17/02/2016, the

challenge against which, had been dismissed by this Court, by its order dated 08/06/2016. It was the grievance of the respondent/decree holder that on account of frivolous objections and dilatory tactics adopted by the petitioners/ judgment debtors, the proceedings before the Executing Court were being unduly stalled or unduly prolonged. This Court, by its order dated 24/20/2016 in W.P.No.942/2016, did not itself issue any arrest warrant. However, after noting that application (Exh.24) taken out by the decree holder, was pending before the Executing Court, directed the Executing Court to dispose of the same as expeditiously as possible and in any case, on or before 13/12/2016. It is in pursuance of this order that the application at Exh.24 taken out by the decree holder, came to be disposed of by the impugned order dated 13/12/2016.

18. There is absolutely no merit in the contention of Mr. Goswami that over and over again, the Executing Court is required to record satisfaction that the predicates of Section 51 and Order XXI, Rule 37 of C.P.C., have been fulfilled. If, the contention of Mr. Goswami, to this effect, is to be accepted, then, the execution proceedings will be prolonged almost indefinitely.

19. As noted earlier, the predicates of the statutory

provisions have been duly fulfilled. The challenges, almost identical to the once now raised, had been rejected by the Executing Court by order dated 17/02/2016. This order was upheld, after detailed scrutiny by this Court vide order dated 08/06/2016 in W.P.No.295/2016. This order, at least as of date, holds the field. The petitioners applied for continuation of interim relief and interim relief was continued for six weeks, so as to enable the petitioners to move the Hon'ble Supreme Court and obtain interim orders. Despite expiry of either nine months, the petitioners have not been able to do so. In such circumstances, the persistence of the petitioners to raise very same challenges and resist the execution process, does sound in the arena of abuse of the judicial process.

20. In ***Satyawati Vs. Rajinder Singh***; (2013)9 SCC 491, though Hon'ble Supreme Court has taken cognizance of repeated and frivolous objections being raised by the judgment debtors to stall or to protract the execution proceedings, therein, the Hon'ble Apex Court has strongly expressed itself to say that there should be no unreasonable delay in the execution of decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of the successful litigant would be in vain. In paragraphs 12 to 17, the Hon'ble

Apex Court has observed thus :

“12. It is really agonising to learn that the appellant-decree holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant-plaintiff had finally succeeded in January, 1996. As stated hereinabove, the Privy Council in the case of The General Manager of the Raj Durbhnga under the Court of Wards vs. Maharajah Coomar Ramaput Sing;20 ER 912 had observed that the difficulties of a litigant in India begin when he has obtained a decree. Even in 1925, while quoting the aforestated judgment of the Privy Council in the case of Kuer Jang Bahadur vs. Bank of Upper India Ltd ; [AIR 1925 Oudh 448], the Court was constrained to observe that

“Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights.”

13. In spite of the aforestated observation made in 1925, this Court was again constrained to observe in Babu Lal vs. M/s. Hazari Lal Kishori Lal & Ors.; (1982) 1 SCC 525 in para 29 that

“29. Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections.....”

14. This Court, again in the case of *Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd. & Anr.*; (1999) 2 SCC 325 was constrained to observe in para 4 of the said judgment that

“.....it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes long time.....”

15. Once again in the case of *Shub Karan Bubna vs. Sita Saran Bubna and Ors.*; (2009) 9 SCC 689 at para 27 this Court observed as under :

“In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that

the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant."

16. As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

17. We are sure that the Executing Court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of the appellant is finally concluded and the appellant-plaintiff gets effective justice."

21. The writ jurisdiction of this Court is required to be exercised, in order to promote the justice and equity. The petitioners, however, seek to invoke such extraordinary jurisdiction to resist not only the orders made by the Executing Court, but also the orders made by this Court. The extraordinary

jurisdiction of this Court cannot be permitted to be abused for such purposes.

22. Accordingly, this petition fails and is hereby dismissed with costs of Rs.25,000/-. The interim order, if any, stands vacated.

M. S. SONAK, J.

SMA