

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10126 OF 2015
(Vikas Sahakari Sakhar Karkhana Ltd., Vs. Labh Sales Corporation
and another)

Mr.V.D.Hon, Sr.Counsel h/f Mr.A.V.Hon, Advocate for the petitioner.
Mr.G.D.Kale, Advocate for respondent No.1.
Mr.S.B.Ghatol Patil, Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 14/12/2018

PER COURT :

1. This matter has been heard extensively. In view of the order that I am passing by consent of the parties, it would be improper to advert to their entire submissions, since their contentions will have to be considered by the Executing Court to which the execution proceedings will have to be transferred under Order XXI Rule 6 of the CPC.

2. The petitioner is aggrieved by the order dated 05/09/2015 by which the Executing Court has rejected application Exh.41 filed by this petitioner in Spl.Dkt.No.01/2012. It is quite apparent that the petitioner has quoted the wrong provision in Exh.41 and the Executing Court even did not care to peruse Order XXI Rule 56 of the CPC while passing the impugned order.

3. The petitioner was before this Court in WP No.8397/2014 for challenging the order of attachment passed by the Executing Court in a single sentence on Exh.34 filed by the decree holder. The cryptic order passed on 28/08/2014 by which the Executing Court reads as "*application is allowed in terms of prayer clause*". This order was assailed in the writ petition by this petitioner and this Court permitted the petitioner to withdraw the petition as an alternate remedy under Order XXI Rule 58 of the CPC was available. The petitioner moved Exh.41 under Order XXI Rule 56 which therefore is untenable.

4. It appears from Exh.34 that the furniture in the office premises of the petitioner was a subject matter of attachment. This order was passed by the Nanded Court and the furniture of the petitioner is at its office in Taluka Udgir Dist. Latur. The Executing Court at Nanded therefore could not have entertained Exh.41 in view of Order XXI Rule 6.

5. Learned Advocate for the decree holder submits that he has no objection if the Spl.Dkt.No.01/2012 is transferred from the Executing Court at Nanded to the appropriate Executing Court at Taluka Udgir.

6. In view of the above, this petition is partly allowed. The impugned order passed by the Executing Court at Nanded under Order XXI Rule 56 below Exh.41 is quashed and set aside. Exh.41 was inappropriately filed under Order XXI Rule 56 and hence the same stands disposed of with liberty to the petitioner to make an application under Order XXI Rule 58 after the date of the transfer of the execution proceedings from the Nanded Court to the Udgir Court.

7. The litigating sides shall appear before the Executing Court at Nanded on 21/12/2018. The decree holder shall move an application under Order XXI Rule 6 of the CPC on the same date. The litigating sides shall not oppose and the Executing Court shall transfer Spl.Dkt.No.1/2012 to the appropriate Executing Court at Udgir. The litigating sides would then appear before the Executing Court at Udgir on 14/01/2019. Formal notices need not be issued. On this date, the present petitioner shall file an application under Order XXI Rule 58 and the concerned Executing Court would then decide the said application, after the pleadings of the parties are complete on that application, in accordance with Law and on considering all the contentions of the parties.

(Ravindra V.Ghuge, J.)