

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11309 OF 2015

Madhusudan Zumbarlal Sarda
Age : 59 Yrs. Occu : Petty Business
R/o. 24 Yash Bungalow, Anandnagar
Colony, Ahmednagar,
Dist. Ahmednagar.

... Petitioner

Versus

1. The State of Maharashtra
Through the Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. The Collector, Ahmednagar
3. The Sub-Division Officer,
Ahmednagar.
4. The tahasildar, Ahmednagar
5. The Topkhana Police Station,
Through it's Police Station Officer,
Ahmednagar.
6. Dattatraya Sopan Sangle
Age: 32 yers, occu: Service,
R/o. Bhutkarwadi, Sangle Nivas,
Savedi, Ahmednagar,
Dist. Ahmednagar.
7. Jayant Vinayak Salve,
Age: 38 years, occu: Service,
R/o. Behind Parosh Hall, Tarakpur
Ahmednagar, Dist: Ahmednagar.
8. Arun Murlidhar Raut,
Age: 30 years, occu: Service,
R/o.At: Po: Kordgaon, Tal. Pathardi,
Dist. Ahmednagar.

9. Dnyaneshwar Baburao Dhorge,
Age: 32 years, occu: Service,
R/o. Bharad Galli, Topkhana
H. No.565/66, Ahmednagar,
Dist. Ahmednagar ...Respondents

Mr. R.R. Mantri, Advocate for Petitioner
Mr. P.K. Lakhotiya, A.G.P. for Respondent Nos. 1 to 5
Mr. P.V. Barde, Advocate for Respondent Nos. 6 to 9

**CORAM : R.M. BORDE AND
A.M. DHAVALA, JJ.**

RESERVED ON : 17th JULY, 2018

**PRONOUNCED ON : 2nd AUGUST, 2018
(THROUGH VIDEO CONFERENCING)**

JUDGMENT : (Per A.M. Dhavale, J.)

1. Heard.
2. Rule. Rule returnable forthwith. With the consent of the parties, petition is taken up for final disposal at the stage of admission.
3. The petitioner assails the recovery certificate including warrant for arrest and commitment to civil prison issued against him by Sub Divisional Officer, Ahmednagar (Respondent No.3) dated 10.10.2015 and tried to be enforced by Police of Topkhana Police Station (Respondent No. 5) and seeks writ of prohibition restraining respondents from pursuing the recovery certificate personally against the petitioner and implementing warrant of arrest against him.

4. The petitioner is Managing Director of Public Limited Company, 'Sarda Fashions Ltd.' which is changed to 'Sarda Information Technology Ltd.' Respondent Nos. 6 to 9 were employees of the said company. They filed ULP proceeding No. 77 of 2003 in the Industrial Court, Ahmednagar for recovery of their dues from the company and for other declarations. The company took a stand that respondent Nos. 6 to 9 had taken voluntary resignation. Industrial Court issued directions for recovery of dues of respondent No. 6 to 9 against the company and issued recovery certificate in favour of respondent Nos. 6 to 9. The company became defunct and its assets were seized and taken in possession under the Securitization Act. It was declared as sick industry. Tahasildar (Respondent No. 4) as a Recovery Officer issued notice dated 28.07.2009 to the petitioner calling upon him to pay Rs. 7,16,568/- towards dues of respondent Nos. 6 to 9 with direction that in case of non-payment, the amount would be recovered as land revenue. The petitioner gave reply through his advocate contending that it was liability of the company and it was declared as sick unit, its property was attached, he cannot be personally held liable for payment of company dues. On 7th November, 2015, Sub Divisional Officer (Respondent No.3) issued arrest warrant against the petitioner for recovery of the dues for his detention in civil prison till the

recovery of the dues. The said warrant, it seems was forwarded to the Police Station for arrest.

5. Mr. R.R. Mantri, learned advocate for the petitioner challenges the said order on following grounds :-

(i) The petitioner cannot be held personally responsible for recovery of dues of the company.

(ii) The company assets were already attached, and it could be recovered from the company assets.

(iii) No notice as contemplated under section 183 of the Maharashtra Land Revenue Code was issued to the petitioner and no opportunity of hearing was given.

(iv) Respondent No. 3 had not recorded the finding that there was deliberate disobedience to implement the order passed by the Industrial Court.

(v) The warrant can be issued through only Bailiff and not through Police.

6. Tahasildar, respondent No. 4 has filed affidavit-in-reply on behalf of respondent Nos. 1 to 4. He stated that in ULP proceedings, the petitioner was made party as respondent No.1 and after hearing the parties, the Industrial Court has passed the order dated 27.03.2003. The certificate was forwarded by

Industrial Court to the Collector for recovery of the amount on 08.08.2008 wherein, the petitioner was shown as second party. Respondent Nos. 6 to 9 had filed recovery application showing the name of the petitioner as opposite party. The petitioner cannot run away from the liability by claiming that no opportunity of hearing was given to him. The legitimate dues of poor respondent Nos. 6 to 9 have remained unpaid for more than 15 years. Respondent No. 4 has communicated to the Collector that there was no property standing in the name of the petitioner and the Collector issued a letter to the Sub Divisional Officer, Ahmednagar, respondent No. 4 for recovery of the dues. Six notices were issued to the petitioner calling upon him to deposit the amount, but he failed to deposit the amount. The petition, therefore, deserves to be dismissed.

7. Respondent Nos. 6 to 9 have filed affidavit-in-reply contending that petitioner was misrepresenting the facts. Sarda Fashions was partnership firm and petitioner was the partner thereof. He was there since beginning and was in entire control thereof. Subsequent to their legal liabilities, it was converted into private limited company. He was made party and was present at the time of each hearing. There is no substance in his contention that there is no hearing for him. He has raised hyper-technical objection. Considering facts, it is necessary to lift the

corporate veil, which is a cloak taken by the petitioner to save himself. The petition deserves to be dismissed.

8. The first point for our consideration is - whether the dues of the company can be recovered from the Managing Director's property ?

9. It is well settled that the company is a legal entity and the share holders are liable for the dues of the company to the extent of their shares and nothing more. The petitioner was Managing Director. There is material to show that the petitioner company became defunct and the property and the assets of the company were seized under the Securitization Act on 16.02.2004. Normally, the dues of the company cannot be recovered from the property of the Managing Director except to the extent of shares held by him in the company. It seems that the company was established by the petitioner himself.

10. The learned advocate for the respondents, Mr. P.K. Lakhotiya Assistant Government Pleader and Mr. P.G. Barde for respondent Nos. 6 to 9 rightly argued that in exceptional case, if individuals acquire property by defrauding people in the name of a legal entity, the court can lift the veil and take action against such persons.

11. Mr. R.R. Mantri, the learned advocate for the petitioner has relied on *P.C. Agarwala Vs. Payment of Wages Inspector, M.P. AIR 2006 (SC) 3576*. The law in this regard is laid down as follows :-

21. In *Tata Engineering and Locomotive Company Ltd. v. State of Bihar and others* 1964 (6) SCR 885 the basic features of a Company, its corporate existence and its position vis-a-vis shareholders was highlighted as follows:

“The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority is not in doubt or dispute. The corporation in law is equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the corporation. This position has been well-established ever since the decision in the case of *Salomon v. Salomon & Co. (1897) A.C. 22, H.L.* was pronounced in 1897; and indeed, it has always been the well-recognised principle of common law. However, in the course of time, the doctrine that the corporation or a company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the

theory about the personality of the corporation may be confined more and more.”

25. As the High Court has proceeded to hold the Directors liable by introducing the expression “occupier”, which expression is used in the Factories Act and not in the Act, the basic premises on which the High Court proceeded are clearly untenable. Therefore, on a plain reading of the language of the governing statute, it cannot be held that the Directors had had any personal liability.

12. In *Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another* AIR 1996 SC 2005, the law in this regard is laid down as follows :-

28. The concept of corporate entity was evolved to encourage and promote trade and commerce but 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 merely cloaks behind which lurks Tejawant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people.

32. The fiduciary relationship may not exist in the present case nor is it a case of holder of public office, yet if it is found that someone has acquired properties by defrauding the people and if it is found that the persons defrauded should be restored to the position in which they would have been but for the said fraud, the Court can make all necessary orders. This is what equity means and in India the Courts are not only

Courts of law but also Courts of equity.

13. With regard to the necessity of requirements, for issuing warrant of arrest for recovery of the amount, Mr. R.R. Mantri relied on the judgment of the Apex Court in the case of *Jolly George Varghese Vs. Bank of Cochin AIR 1980 SC 470*. The law in this regard is laid down as follows :-

11. This implies, superficially read, that if at any time after the passing of an old decree the judgment-debtor had come by some resources and had not discharged the decree, he could be detained in prison even though at that later point of time he was found to be penniless. This is not a sound position apart from being inhuman going by the standards of Art.11 (of the Covenant) and Art. 21 (of the constitution). The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recalcitrant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonesty disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will pay prominently. We would have, by this construction, saved law with justice, harmonised S. 51 with the Covenant and the Constitution.

13. In the present case the debtors are in distress because of the blanket distraint of their properties. Whatever might have been their means once, that finding has become obsolete in view of later happenings. Sri Krishnamurthi Iyer for the respondent fairly agreed that the law being what we have stated, it is necessary to direct the executing court to re-adjudicate on the present means of the debtors vis-a-vis the present pressures of their indebtedness, or alternatively whether they have had the ability to pay but have improperly evaded or postponed doing so or otherwise dishonestly

committed acts of bad faith respecting their assets. The Court will take note of other honest and urgent pressures on their assets, since that is the exercise expected of the Court under the proviso to S.51. An earlier adjudication will bind if relevant circumstances have not materially changed.

14. On perusal the order of issuance of arrest warrant dated 10.10.2015, we notice that no proper opportunity was given to the petitioner and no specific averments was made therein that he was in possession of the property obtained through the company and in spite of having means, he was avoiding to make the payment of respondent Nos. 6 to 9. For taking action against the Director of the company for the dues of the company and for issuing arrest warrant against him for recovery of the dues, these types of averments and showing satisfaction of the authority are mandatory. Besides the petitioner should have been given opportunity of hearing. The earlier notice issued to him is of 28.07.2009, whereas the impugned order of arrest warrant was issued after six years on 10.10.2015. This arrest warrant is not in consonance with the law laid down by the Apex Court as referred above.

15. At this stage, we do not agree that the amount due and payable to respondent Nos. 6 to 9 by the company cannot be recovered from the petitioner. Those can be recovered from the petitioner in exceptional circumstances as explained by the Apex

Court In Delhi Development Authority's case. Besides, the arrest warrant can not be issued not for mere failure to pay the amount but when there is deliberate refusal to comply the orders of the court and such satisfaction must be recorded by the competent authority before issuing the arrest warrant.

16. We agree that the arrest warrant could not have been sent to the Police Officer for detention in civil prison. Such warrant can be issued for service through bailiff through the Court of the Civil Judge, Senior Division and after arrest, such person will have to be kept in the civil prison in the court premises. The conditions regarding payment of subsistence allowance will have to be complied with. We, therefore, hold that the impugned order of issuance of arrest warrant is not sustainable. At the same time, without expressing anything on the merits, we hold that the prayer of the petitioner that there should not be recovery of the dues of the company from him cannot be accepted at this stage. It is for the competent authority to determine whether the exceptional circumstance exist or not for such recovery from the petitioner.

17. With these observations, we partly allow the petition. The impugned order of Sub Divisional Officer of issuing arrest warrant for detention in civil prison is hereby set aside with direction to the respondent No. 3 to reconsider the case in the

light of the legal position discussed herein above after giving due opportunity to the petitioner for taking appropriate action.

18. Rule is accordingly made partly absolute. No order as to costs.

(A.M.DHAVAL, J)

(R.M. BORDE, J.)

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