

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISIONCommercial Appeal (L) NO. 92 OF 2018
IN
Chamber Summons NO. 210 OF 2017

Sharad Prabhakar Deshpande And Ors.	...Appellants
<i>Versus</i>	
Reva Industries Ltd. And Ors.	...Respondents

WITH
Notice of Motion (L) NO. 163 OF 2018

Mr.Gaurav Parkar, for the Appellants.

Mr.Sanjay Joshi, for Respondent No.1.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.****DATE : 20th APRIL 2018****P.C.:**

1. This appeal is directed against the order passed by the learned Single Judge of this Court on 22nd January, 2018 in Chamber Summons No.210 of 2017 taken out in Execution Application No.78 of 2016. On 5th January,2018 an Award was passed in the dispute between Reva Industries Ltd. - the decreeholder and Pratibha Industries Ltd. -the judgment debtor. A petition under Section 34 of the Arbitration and Conciliation Act (for short 'the act') was filed before the Additional District Judge, Faridabad. Additional District Judge, Faridabad

dismissed the petition filed under Section 34 of the Act by Pratibha Industries Ltd. On 6th January, 2016 respondent no.1 filed an execution proceedings in the Bombay High Court. On 12th February,2016 a warrant of attachment was issued which was served on the other side on 17th February,2016.

2. The respondent no.3's appeal against the order passed by the Additional District Judge, Faridabad was allowed by the Punjab and Haryana High Court on 3rd March,2016. On 18th April,2016 an affidavit came to be filed in the execution proceedings, placing on record of the execution proceeding, the order passed by the Punjab and Haryana High Court.

3. The respondent no.1 preferred a Special Leave Petition in the Apex Court on 10th May,2016, a notice was issued on 29th June,2016 by the Apex Court.

4. On 14th March,2016 the subject property was mortgaged to Bank of Baroda.. On 26th October,2016 the subject property under attachment was sold by Pratibha Industries Ltd.-respondent no.3 to Bank of Baroda. On 31st March,2017 the Bank of Baroda sold the subject property to Sterling and Wilson Pvt. Ltd. in a public auction.

5. On 28th June,2017 the respondent no.1 obtained warrant for sale of the subject property. On 13th June,2017, Sheriff of Mumbai issued a certificate which is annexed at "Exhibit C" at page 109 of the paper book which reads thus:-

"Execution Application No.467 of 2016
In the High Court of Judicature at Bombay
Ordinary Original Civil Jurisdiction
Arbitration Award Dated 05th JANUARY,2015

M/s.Reva Industries Ltd. ...Claimant
vs.
M/s.Pratibha Industries Ltd. ...Respondent

I hereby certify that at the request of Mr.Sanjay Joshi, Advocate for the Claimant and pursuant to the Warrant of Attachment under Order XXI, Rule 54 of the Code of Civil Procedure issued herein on 12th February,2016, I have attached the right, title and interest of the immovable property of the Respondent situated at Universal Majestic Tower, 13th and 14th floor, Off.Eastern Express Highway, P.L.Lokhande Marg, Ghatkopar Mankhurd Link Road, Govandi, Mumbai-400043 on 17th February,2016 and the said attachment is still subsisting.

Dated this 13th day of June,2017.

Sd/-

S.D.Chitgopekar

For Sheriff of Mumbai

No.SCG/A-59433/1155/2017

To,
Mr.Sanjay Joshi,
Advocate for the Claimant,
House No.57, Sector-9A,
Chandigarh-160017
Enrol.No.P/48/1986
(Bar Council of Pb.& Har.)

sd/-
Deputy Sheriff of Mumbai

6. By an order dated 22nd January, 2018 the learned Single Judge of this Court directed the appellants who are Directors of Pratibha Industries Ltd. to file affidavit showing statement of assets of all the directors of Pratibha Industries Ltd. This order is the subject matter of this appeal.

7. The learned Counsel for the appellants submits that in view of the provisions of Order XXI Rule 41 of the Code of Civil Procedure, such directions cannot be issued. The learned Counsel advances the proposition that in a proceedings where the execution proceeds against the Company, the Directors cannot be held responsible much less subject themselves to disclosure of the assets in such proceedings. The learned Counsel placed reliance on the judgment in the the case “**Anirban Roy & Ors. Vs. Ram Kishan Gupta & Ors.**”¹ in support of the submission that in very exceptional circumstances or in a case of fraud alone such an order can sustain. In this case no case of fraud is made out neither this is a case of exceptional circumstances for the Court to pass such an order. This being the apparent error in the impugned order, the learned Counsel submits that the impugned order is required to be set aside.

¹ Manu/DE/3524/2017

8. The learned Counsel for respondent no.1 by referring to the judgment in the case “*Nancy John Lyndon Vs. Prabhati Lal Chowdhury & Ors*”¹ submits that even if during the pendency of the Special Leave Petition, no interim relief was obtained by the respondent. The warrant of attachment issued in the execution proceedings would continue to operate unless the warrant of attachment in the execution proceedings gets revoked or suspended. The respondent had no authority in the eye of law to create any third party rights in the property which is subject matter of attachment. The plea advanced on behalf of the appellant that in view of the order of the Punjab & Haryana High Court allowing their appeal by setting aside the order of Additional District Judge, Faridabad, the parties were entitled to deal with the property and accordingly, they had taken steps by creating mortgage and sale of the property cannot be sustained considering the above legal position. Their bonafides cannot be questioned. The learned Counsel for the respondent submits that the learned Single Judge has looked into the facts and circumstances under which the proceedings initiated before the Court, the conduct of the parties and thereafter, passed an order directing the Directors of the Company to file the affidavit of assets. In the facts and circumstances of the case, the learned Counsel submits that no interference is warranted in the impugned order.

1 1987(4) SCC 78

9. We have perused the record and the judgments cited. As a general rule and principle, we find that the Court could not direct the Directors of the Company to file affidavit of disclosure of assets, and in a case of fraud, misconduct or in a case of exceptional circumstances, the Court is justified to lift the corporate veil and direct the Directors to file affidavit. The learned Single Judge, after noticing series of events, the proceedings, the orders of the Court, the conduct of the parties, has directed the Directors of the Company, by lifting the corporate veil, to file affidavit of disclosure of assets. We find substance in the submissions advanced by the learned Counsel for the respondent no.1. Considering the spirit of the order passed by the learned Single Judge, in the facts and circumstances of the case, the learned Single Judge was convinced to pass the order directing disclosure of the assets by the Directors by filing an affidavit. The learned Single Judge had exercised inherent powers, considering the equities and thrust of the parties, precisely keeping in view the pleas raised by the respondents. We are, therefore, not inclined to interfere with the view taken by the learned Single Judge which we do not find perverse in the facts and circumstances of the case.

10. The appeal is, therefore, dismissed.

11. Notice of Motion (Lodg) No.163 of 2018 does not survive and is disposed.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]