IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22.02.2019	Delivered on 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application Nos.3047 to 3050 of 2018
in EP Nos.11 and 12 of 2017

M/s. Samson Maritime Limited,
Having its Registered Office at
7 Mb, P.T.Buiding,
Malet Bunder, Mumbai 400 009,
Rep. By its Authorised Signatory
Kunal Trivedi. ... Applicant in all the Petitions

Vs

1. M/s.Hardy Exploration
& Production (India) Inc.,
Having its office at
5th Floor, Westminister Building,
108, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

2. Kotak Mahindra Bank,
185, Near TVS, Mount Road, Branch
Anna Salai, Chennai 06.

3. State Bank of India,
Egmore Branch,
Egmore, Chennai 600 003. ...Respondents in all the Petitions

Prayer: Applications are filed under Order XIV Rule 8 of the Original Side Rules read with Order 21 Rule 12 and 46A, 41(3) of the Code of Civil Procedure, 1908, praying to

(i) To prohibit the 2nd Garnishee Bank, from parting with the funds lying in Site Restoration fund Deposits (14 accounts) bearing CIF No.85024991365, as described in the schedule hereto, of which the Judgment Debtor is the sole account holder and further direct the 2nd Garnishee Bank to deposit the funds lying in the accounts to the credit of the present execution petition hereto under Order 21 Rule 12 and 46 A of the Code of Civil Procedure, 1908. (in A.No.3047/2018)

(ii) To detain the authorised signatory of the judgment debtor Mr.Sankalp Mitra in Civil prison as mandated under Order 21 Rule 41(3) of the Code of Civil Procedure 1908, for concealing the details of the bank accounts in the letter dated 06.05.2016 and violating the order dated 27.04.2016. (in A.No.3048/2018)

(iii) To detain the authorized signatory of the judgment debtor Mr.Sankalp Mitra in Civil prison as mandated under Order 21 Rule 41(3) of the Code of Civil Procedure 1908, for concealing the details of the bank accounts in the letter dated 06.05.2016 and violating the order dated 27.04.2016. (in A.No.3049/2018)

(iv) To prohibit the 2nd Garnishee Bank, from parting with the funds lying in Site Restoration fund Deposits (14 accounts) bearing CIF No.85024991365, as described in the schedule hereto, of which the Judgment Debtor is the sole account holder and further direct the 2nd Garnishee Bank to deposit the funds lying in the accounts to the credit of the present execution petition hereto under Order 21 Rule 12 and 46 A of the Code of Civil Procedure, 1908. (in A.No.3050/2018)

For Applicant : Mr.P.Giridharan
in all the Petitions

For Respondents : Mr. Vinod Kumar for R1
in all the Petitions
Mr.P.J.Bency Switesingh Dhas for R2

M/s. King & Patridge for R3

C O M M ON O R D E R

The Application Nos.3047 to 3050 of 2018 in EP Nos.11 and 12 of 2017, seeking the following reliefs:

(i) To prohibit the 2nd Garnishee Bank, from parting with the funds lying in Site Restoration fund Deposits (14 accounts) bearing CIF No.85024991365, as described in the schedule hereto, of which the Judgment Debtor is the sole account holder and further direct the 2nd Garnishee Bank to deposit the funds lying in the accounts to the credit of the present execution petition hereto under Order 21 Rule 12 and 46 A of

the Code of Civil Procedure, 1908.

(ii) To detain the authorized signatory of the judgment debtor Mr.Sankalp Mitra in Civil prison as mandated under Order 21 Rule 41(3) of the Code of Civil Procedure 1908, for concealing the details of the bank accounts in the letter dated 06.05.2016 and violating the order dated 27.04.2016.

(iii) To detain the authorized signatory of the judgment debtor Mr.Sankalp Mitra in Civil prison as mandated under Order 21 Rule 41(3) of the Code of Civil Procedure 1908, for concealing the details of the bank accounts in the letter dated 06.05.2016 and violating the order dated 27.04.2016.

(iv) To prohibit the 2nd Garnishee Bank, from parting with the funds lying in Site Restoration fund Deposits (14 accounts) bearing CIF No.85024991365, as described in the schedule hereto, of which the Judgment Debtor is the sole account holder and further direct the 2nd Garnishee Bank to deposit the funds lying in the accounts to the credit of the present execution petition

hereto under Order 21 Rule 12 and 46 A of the Code of Civil Procedure, 1908.

2. These applications arise in Execution proceedings. The applicant/decree holder had succeeded in obtaining awards for payment of money against the respondent in arbitration proceedings. The awards came to be passed on 25.08.2015 and additional awards were passed on 25.10.2015. It is not in dispute that applications filed under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to set aside the awards were also dismissed. Subsequent there too, the present Execution Proceedings were launched by the applicant/decree holder. Pending the Execution proceedings the applicant/ decree holder filed Application Nos.8191 to 8193 of 2015 seeking a direction to the respondent to furnish security towards the award amount and also to pass an order directing the respondent to make a truthful disclosure of its assets in India.

3. By an order dated 23.03.2016, this Court allowed the applications. Insofar as the Application No.8191 of 2015 is concerned this Court after referring to Order 21 Rule 41 of the Civil Procedure Code, directed the respondent/judgment debtor to furnish the details of assets. In the other two applications, the respondent was directed to furnish security for the award amount. This common order was

challenged by the respondent/judgment debtor in OSA Nos.101 to 102 of 2016. A Division Bench of this Court up held the direction to furnish details of assets. As regards the applications to furnish security the order was modified. Thereafter, the respondent by its letter dated 06.05.2016 made a disclosure of its assets along with Bank account numbers. However, on 03.02.2018, the 2nd respondent namely, the garnishee (State Bank of India) filed an affidavit stating that the judgment debtor has got 14 other Accounts with the State Bank of India and large sum of money was available in the said Accounts. Thereafter, the applicant/decree holder filed Application Nos.3047 to 3050 for the aforesaid reliefs. All these applications were disposed of by a common order dated 06.06.2018. Taking note of the objection of the judgment debtor that the Site Restoration Fund, which was subject matter of the Applications in Application Nos.3047 and 3050 of 2018, cannot be attached as the same cannot be used for any other purposes except for the restoration of the Site, on completion of the drilling operations.

4. Considering the fact that the respondent/judgment debtor cannot utilise the Site restoration fund for any other purpose except without approval of the Ministry of Petroleum, this Court directed the judgment debtor to apply to the Ministry of Petroleum and Natural Gas, Government of

India, for permission to pay the award amount, from and out of the Site Restoration Fund Account and to replenish the same, as and when, the amounts are recovered by the judgment debtor in the Arbitration proceedings that are said to be pending before the Hon’ble Supreme Court. In view of the said directions issued, this Court closed Application Nos.3047 to 3050 of 2018, as no further orders are necessary. This order was challenged by the judgment debtor, before the Division Bench in OSA Nos.270 to 273 of 2018.

5. In the said Original Side Appeals, the Secretary, Ministry of Petroleum and Natural Gas, Government of India, was suo-motu impleaded by the Division Bench and the Assistant Solicitor General appearing for the Ministry of Petroleum and Natural Gas, informed the Court that the request of the judgment debtor for withdrawal of the Site Restoration Fund has been rejected by the Ministry on 19.09.2018 and hence the order of the learned Single Judge dated 06.06.2018 cannot be complied with. The Bench therefore, revived Application Nos.3047 to 3050 of 2018. Hence the applications are posted for hearing before me.

6. I have heard Mr. P.Giridharan, learned counsel appearing for the applicant/decree holder, Mr.Vinodh Kumar, learned counsel appearing for the 1st respondent/judgment debtor, Mr.P.J.Bency Switesingh Dhas, learned counsel

appearing for the 2nd respondent/Garnishee and M/s.King & Patridge, learned counsel appearing for the 3rd respondent.

7. As far as the Application Nos. 3047 and 3050 of 2018 are concerned, they seek an order prohibiting the garnishee from parting with the funds, lying in the Site Restoration Fund deposits namely, 14 Accounts. The rules of the Site Restoration Fund have been produced and the guidelines for maintenance of the Site Restoration Fund has been produced. Clause 8 of the Site Restoration Fund Scheme 1999, reads as follows:

> "*Withdrawal and utilisation of the amounts deposited-*
>
> *A depositor shall be entitled to withdraw from the amount standing to the credit of the account only such amount as is necessary to meet any expenditure to be incurred by him on the expiry or termination of the agreement or relinquishment of part of the contract area, towards removal of all equipments and installations, in a manner agreed with the Central Government pursuant to an abandonment plan or towards all necessary site restoration in accordance*

with modern oilfield and petroleum industry practices and towards meeting all other expenses necessary to prevent hazards to life or property or environment consequent on such expiry, termination or relinquishment."

8. Relying upon the above said Clause, the Ministry of Petroleum had by its letter dated 19.11.2008, refused permission for withdrawal of the Site Restoration Fund for satisfaction of the commercial debts of the contractor. Therefore, the prayer in these applications for order prohibiting the garnishee from transferring the funds lying in the Site Restoration Fund cannot be granted. In view of the same, Application Nos.3047 and 3050 of 2018 stand dismissed.

9. As far as the other two applications namely, Application Nos.3048 and 3049 of 2018, they have been filed seeking detention of the authorised signatory of the judgment debtor in the Civil prison for disobedience of the directions of this Court, made in the order dated 23.03.2016, with regard to disclosure of the assets of the judgment debtor. The relevant portion of the order dated 23.03.2016 reads as follows:

> *"24 (b) The respondent is directed to furnish details of the fixed assets and bank accounts held by them in India to the applicant within a period of four weeks from the date of receipt of a copy of this order."*

There was a positive direction to the judgment debtor to make a truthful disclosure of its assets. The said order was confirmed by the Division Bench in OSA Nos. 101 to 102 of 2016 on 27.04.2016. Pursuant there to the judgment debtor by its letter dated 06.05.2016 had disclosed its assets situate in India.

10. The garnishee namely, State Bank of India filed a counter affidavit in Application Nos. 437 to 440 of 2018 viz: the applications taken out by the judgment debtor to raise the attachment, informing the Court that there were about 14 accounts, which fall under the category of Site Restoration Fund accounts, which have not been disclosed by the judgment debtor in its letter dated 06.05.2016. Taking advantage of the said disclosure made by the garnishee, the decree holder has come forward with these applications seeking detention of the authorised signatory of the judgment debtor in a Civil Prison as provided under Sub Rule 3 of Rule 41 of Order 21. These applications were closed by order dated 06.06.2018, however, pursuant to the order was made in OSA Nos.270 of 273 of 2018 dated 18.12.2018, these

applications were directed to be revived and heard.

11. Order 21 Rule 41 of the Code of Civil Procedure, reads as follows:

> ***41. Examination of judgment-debtor as to his property.***-
>
> *(1) Where a decree is for the payment of money the decree-holder may apply to the Court for an order that-*
>
> *(a) the judgment-debtor, or*
>
> *(b) any officer thereof, or*
>
> *(c) any other person,*
>
> *be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.*
>
> *(2) Where a decree for the payment of money has remained un-satisfied for a period of thirty days,*

> *the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.*
>
> *(3) In case of disobedience of any order made under sub-rule(2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.*

While Sub Rule 2 empowers the Court to require the judgment debtor to make an affidavit stating the particulars of the assets of the judgment debtor, Sub Rule 3 empowers the Court to detain in civil prison any person who disobeys an order of Court made under Sub Rule 2 in a Civil Prison for a fixed period.

12. Mr.P. Giridharan, learned counsel would strenuously contend that the non-disclosure of the accounts relating to the Site Restoration Fund, would amount to disobedience of the Order of this Court dated 23.03.2016, and therefore, the Principal Officer of the judgment debtor is liable to be detained in the Civil Prison. He would also draw my attention to the judgment of the Hon'ble Supreme Court in ***State Bank of India and others v. Kingfisher Airline***s ***Ltd., and Ors.,*** reported in ***2017 (6) SCC 654***, wherein the Hon'ble Supreme Court had considered the effect of the provisions of Order 21 Rule 41, which imposed obligation on the judgment debtor to make a truthful disclosure of the assets, pursuant to a direction issued by the Court. The Hon'ble Supreme Court had in fact observed that if the disclosure is vague, it cannot be construed that the directions issued by the Court under Order 21 Rule 41(2) have been substantially complied with.

13. The learned counsel would also draw my attention to the judgment of the learned Single Judge of this court in ***Shri Parvatham Textiles, Rep. By its Sole Proprietor, Erode, v. Chona Financial Services Pvt Ltd. Rep by Managing Director, Chennai,*** reported in ***2007 (2) MLJ 929,*** wherein

Hon'ble Ms.Justice R.Banumathi, had observed as follows:

> *"13. The object of Order 21 Rule 41 C.P.C., is to obtain discovery in aid of execution of money decrees when there is difficulty in getting information regarding judgment-debtor's property. The object is to enable the decree-holder to get information of assets which is within the special knowledge of the judgment-debtor. ..."*

It was further observed that as follows:

> *"22. ..... Even assuming if the judgment- debtor had no assets, the judgment-debtor ought to have obeyed the order of the Court by filing an Affidavit to that effect or producing the documents showing his income whatever it may be. But, the judgment-debtor has not chosen to do so and there was disobedience of the order made under sub-rule (2). I am unable to accept the argument of judgment-debtor that the order of arrest of the*

judgment-debtor is vitiated by impropriety."

14. Contending contra, Mr.Vinothkumar, learned counsel appearing for the respondent judgment debtor would argue that the letter dated 06.05.2016, in fact makes a truthful and genuine disclosure of the assets held by the judgment debtor. He would further point out that even though the account numbers of the Site Restoration Fund Accounts have not been specified, the respondent judgment debtor had in fact disclosed the amount lying to the credit of Site Restoration Fund. Therefore, according to him, the order dated 23.03.2006 has been substantially complied with and hence it cannot be stated that there was a disobedience of the order passed under Order 21 Rule 41 (2) of the Code of Civil Procedure.

15. The learned counsel would also submit that even assuming that the Site Restoration Fund Accounts were standing in the name of the judgment debtor in view of the scheme, which prohibited payment of the monies lying to the credit in the Site Restoration Fund for satisfying the commercial debts of the firm, the same cannot be treated as the asset on which the judgment debtor had a disposing power and therefore, its non-disclosure cannot be treated as a disobedience with the order of the Court.

16. I have considered the rival submissions.

17. The object of the provisions of Order 21 Rule 41, is to enable the decree holder to know, what are the assets that are in the hands of the judgment debtor. The further object is to make execution easy by compelling the judgment debtor to place the details of the assets held by the judgment debtor before the Court. Whether the judgment debtor has disposing power or not is a question which may arise at a later point of time. But, the duty to disclose as imposed by Order 21 Rule 41 Sub Rule (2) cannot depend on the disposing power of the judgment debtor over the assets. When the Court passes an order directing the judgment debtor to disclose truthfully the assets held by it, it is the duty of the judgment debtor to disclose all the assets.

18. No doubt true, the letter dated 06.05.2016 states that tangible assets worth 57,80,961 US dollars is available with a judgment debtor, out of which, 45,00,000 US dollars is shown as Site Restoration Fund. But the details of the Bank accounts in which this Site Restoration Fund is lying has not been set out while disclosing the Bank balances. The judgment debtor had sought for raising of the order of attachment made on the Bank Accounts on the ground that it is unable to pay the salaries for the employees, because of the attachment.

19. The Principal Officer of the judgment debtor was required to file an affidavit stating as to how his salaries are being paid. Pursuant to the same, the Principal Officer of the judgment debtor has filed an affidavit, wherein it is stated that the salary and allowances on the employees are being paid by obtaining monthly intercorporate loans from the holding company M/s.Hardy Oil and Gas PLC and such loans are remitted to the judgment debtor’s account held in Barclay's Bank, United Kingdom.

20. It is therefore, clear that the judgment debtor has not made a truthful disclosure of the assets, pursuant to the order dated 23.03.2016. The claim of the judgment debtor that it had no disposing power over the amounts lying in the Site Restoration Fund accounts and therefore it is not under an obligation to disclose the details of the said accounts cannot be, in my opinion, accepted as a reasonable explanation for not complying with the directions of this Court dated 23.03.2016. The judgment debtor should have made an open and truthful disclosure. If only the judgment debtor had made a truthful disclosure along with the rider that these amounts lying in the Site Restoration funds cannot be used for any other purpose the order dated 23.03.2016 could be said to have been complied with. Therefore, it can be said that the judgment debtor had made a truthful disclosure.

21. I am therefore of the considered opinion that the judgment debtor had in fact disobeyed the order of this Court dated 23.03.2016. Therefore, it is liable to be committed to Civil Prison under Order 21 Rule 41 Sub Rule 3. Since the judgment debtor is a Company, its Principal Officer, has to be detained, as per the provision of code of Civil Procedure. Hence the applications in Application No.3048 and 3049 are allowed, with a direction to detain the Principal Officer of the judgment debtor - Mr.Sankalp Mitra, in Civil Prison for a period of 15 days. The warrant of arrest and detention to be issued after 10 days. There shall be no order as to costs.

Sd/- R.S.M.J
11.03.2019

//Certified to be a true copy//
Dated this the day of 2019.

R.s/13.03.2019 COURT OFFICER