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IN THE HIGH COURT OF DELHI AT NEW DELHI

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EX.P. 126/1997

SOM DUTT ENTERPRISES

..... Decree Holder

Through: Mr. Naresh Thanai and Ms.
Khushboo Singh, Advs.

Versus

VIJAY CABLE INDUSTRIES & ORS

..... Judgement Debtors

Through: Mr. Rajesh Banati and Mr. Vikram
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.04.2018

1. Vide order dated 11th August, 2016 in this execution proceedings, it was held that the execution proceedings, insofar as against Priya Cable Pvt. Ltd., were not maintainable. The reasons which prevailed in the order dated 11th August, 2016 for holding execution proceedings, insofar as against Priya Cable Pvt. Ltd., to be not maintainable, were recorded in the said order as under:

“1. This execution of money decree is filed against Vijay Cable Industries, V.K. Bhatia, V.K. Bhatia & Sons (HUF), T.R. Bhatia and Priya Cable Pvt. Ltd.

2. The decree is in suit No.2482/1995 which was filed against Vijay Cable Industries, V.K. Bhatia, V.K. Bhatia & Sons (HUF) and T.R. Bhatia only i.e. Priya Cable Pvt. Ltd. was not a party to the suit.

3. The decree is in pursuance to the compromise application being IA No.2872/1996 in CS(OS) No.2482/1995. The said IA No.2872/1996 in turn refers to an agreement dated 13th March, 1996 between the parties. The said agreement is found to be between the decree-holder on the one hand, Vijay Cable Industries, a partnership firm through partner V.K. Bhatia on the other hand and Priya Cable Pvt. Ltd. as a third party thereto. The said agreement records that besides Vijay Cable Industries, Priya Cable Pvt. Ltd. had also been availing of financial assistance from Som Datt Finance Corporation Ltd. which had assigned its rights in favour of the decree holder and that the payment agreed to be made by Vijay Cable Industries was for the dues of itself as well as of Priya Cable Pvt. Ltd. There is no liability undertaken in the agreement by the said Priya Cable Pvt. Ltd. Not only so, Priya Cable Pvt. Ltd. was not a party to the compromise application being IA No.2872/1996 and there was no prayer also on 15th April, 1996 for impleading Priya Cable Pvt. Ltd. as a defendant to the suit for the purpose of recording of the compromise. No statement of anyone on behalf of Priya Cable Pvt. Ltd. also is found to have been recorded.

4. In this scenario Priya Cable Pvt. Ltd. cannot be said to be the judgment debtor for the execution petition to be maintainable against it.”

2. The decree holder (DH) preferred EFA(OS) No.33/2016 *inter alia* against the said part of the order dated 11th August, 2016 and paras 3 to 7 of the order dated 21st December, 2017 of the Division Bench in EFA(OS) No.33/2016 disposing of the said appeal are as under:

“3. The second impugned order under challenge dated 11th August, 2016, *inter alia*, holds that the execution proceedings against M/s. Priya Cable Pvt. Ltd. were not maintainable, not being a defendant and judgment debtor in suit no.2428/1995 which was filed against Vijay Cable Industries, V. K. Bhatia, V.K. Bhatia & Sons (HUF) and T. R. Bhatia. The impugned order also records that M/s. Priya Cable Pvt. Ltd., though a party to the agreement dated 18th March, 1996 which became

the basis of the compromise application being IA no.2872/1996, was not a party to the compromise decree. No liability was undertaken by M/s. Priya Cables Pvt. Ltd. No statement on behalf of M/s. Priya Cable Pvt. Ltd. was recorded.

4. Learned counsel for the appellant, on the other hand, has drawn our attention to the subsequent agreement dated 24th July, 1997 to which M/s. Priya Cable Pvt. Ltd. was a party and this agreement was thereafter filed and enclosed with the execution application no.233/1997 filed in execution petition no.126/1997. Affidavit in support of the application was filed by Ms. Priya Bhatia on behalf of M/s. Priya Cable Pvt. Ltd. Contention of the appellant is that pursuant to the said agreement and the application of M/s. Priya Cable Pvt. Ltd. undertaking and guarantee was given. The execution petition no.126/1997 in view of the subsequent developments would be maintainable against M/s. Priya Cable Pvt. Ltd.

5. Learned counsel appearing for M/s. Priya Cable Pvt. Ltd. submits that there was novation of the agreement dated 24th July, 1997 and hence M/s. Priya Cable Pvt. Ltd. is no longer liable. He submits that vide order dated 15th January 1998, the execution proceedings were revived and the restraint order passed earlier in respect of property No.A-111, New Friends Colony, New Delhi-110065 was also revived.

6. We would observe that these aspects have to be examined and have not been examined and allude to in the impugned order dated 11th August, 2016. Without examining the aforesaid contentions it would not be appropriate to delete and treat M/s. Priya Cable Pvt. Ltd. as not being a party to the execution proceedings. What was the effect of the agreement dated 24th July 1997, execution application No. 233/1997 and the orders passed, would have to be examined and considered.

7. Accordingly, we set aside the operative portion of the order dated 11th August, 2016 deleting M/s. Priya Cable Pvt. Ltd. from the execution petition, while observing that the question of effect of agreement dated 24th July 1997, the execution application no.233/1997 and orders passed thereafter

including the order dated 15th January, 1998 would be examined and considered by the learned Single Judge. We clarify that we have not expressed any opinion on the said aspect.”

3. The Division Bench, as would be apparent from a reading of the paragraphs aforesaid of the order dated 21st December, 2017, though has set aside the order dated 11th August, 2016 insofar as against Priya Cable Pvt. Ltd., has not held the execution to be maintainable against Priya Cable Pvt. Ltd. and has merely set aside the order dated 11th August, 2016 holding the execution to be not maintainable against Priya Cable Pvt. Ltd.

4. The counsel for the DH has today not argued anything different or shown any case law or any other statutory provision than what was argued and recorded in the order dated 11th August, 2016, relevant portion whereof is also set out hereinabove. Rather, the order dated 21st December, 2017 of the Division Bench is in the nature of a consent order as is apparent from the statement, recorded in para 1 of the order of the Division Bench, that the Execution Petition be restored.

5. The counsel for the DH has not urged anything for me to take a different view than that taken on 11th August, 2016. The counsel for the DH today also is unable to justify as to how, without there being any decree against Priya Cable Pvt. Ltd. and without Priya Cable Pvt. Ltd. being a judgment debtor (JD), this Court acting as Executing Court, can execute the decree against Priya Cable Pvt. Ltd. What is again urged is that though the decree was not against Priya Cable Pvt. Ltd. but Priya Cable Pvt. Ltd. in

execution proceedings also had given an undertaking and guaranteed payment. Attention is drawn to the order dated 30th July, 1997 in the present Execution Petition.

6. I have enquired from the counsel for the DH, how would the same still make Priya Cable Pvt. Ltd., a judgment debtor. It has also been enquired from the counsel for the DH that if Priya Cable Pvt. Ltd. had given an undertaking to this Court, why did the DH not invoke jurisdiction of this Court under Contempt of Courts Act, 1971 against Priya Cable Pvt. Ltd. for breach of undertaking given to the Court.

7. The counsel for the DH states that Contempt of Courts Act provisions were invoked but the same did not meet with any success and appeal thereagainst is pending.

8. Even if Priya Cable Pvt. Ltd. had given any guarantee and by which it was not standing, the remedy of the DH could have been to file a suit against Priya Cable Pvt. Ltd. on the basis of the said guarantee and to obtain a decree and execute that decree against Priya Cable Pvt. Ltd.

9. It would thus be seen that without having anything new to say about the deletion of Priya Cable Pvt. Ltd. from this execution proceedings, the counsels, to keep the dates running and to not allow the *lis* to get over, have consented to remand before this Court to again have a round of several years, as has been happening in this execution pending since the year 1997.

10. Having not been given any reason to change the opinion qua Priya Cable Pvt. Ltd., the execution qua Priya Cable Pvt. Ltd. is again dismissed.

11. Vide order dated 17th August, 2016, the Execution Petition was also dismissed finding that the DH had not informed the Court the manner in

which the assistance of this Court is required for execution. It was further noted in the order dated 17th August, 2016, that vide earlier order dated 11th August, 2016, it had already been made clear to the DH that it could not be permitted to keep the Execution Petition pending, without taking any steps therein.

12. The order of dismissal of the Execution Petition has also been set aside by the Division Bench vide order dated 21st December, 2017 supra on the consent of the counsel for the JD.

13. Though more than three months since 21st December, 2017 have lapsed but the counsel for the DH is today also unable to state the mode of execution.

14. The counsel for the DH draws attention to the order dated 4th March, 2016 where on the statement of the counsel for the DH that some monies are receivable by JD No.1 Vijay Cable Industries from several State Electricity Boards, the JDs were directed to file detailed affidavit, as to how much amount is recoverable from each of the State Electricity Boards and Director General of Supplies & Disposal (DGS & D).

15. Attention is next invited to page 506 of Part I-C file in para 7 whereof an amount of Rs.73,56,397/- was stated to be recoverable by the JD No.1 Vijay Cable Industries from DGS & D and to para 8 where an amount of Rs.74,97,468.26 paise was stated to be recoverable from Delhi Vidyut Board (DVB).

16. Attention is next invited to the order dated 16th May, 2016 whereby attachment was ordered to be affected of the aforesaid receivables of the JD Vijay Cable Industries, subject to any prior right of recovery in favour of

Oriental Bank of Commerce.

17. The counsel for the DH, though states that he filed process fee for issuance of warrants of attachment but is not able to give particulars thereof and admits that attachment of the said receivables was never affected.

18. I have enquired from the counsel for the DH as to what enquiries the DH has made since 16th May, 2016 with respect to the aforesaid receivables from DGS & D and DVB and whether an affidavit has been filed of the outcome of the said enquires.

19. The counsel for the DH though states that enquiries must have been made but is not aware of the same and states that both DGS & D and DVB stated that the amounts were old and could not trace their accounts for that period.

20. I have next enquired, as to what steps have been taken in this regard, after the order dated 21st December, 2017.

21. No steps are informed to have been taken thereafter. Attention is however drawn to the order dated 25th April, 2017 of the Division Bench in EFA(OS) No.33/2016 supra and copy of which has been handed over and para 5 thereof records the statement of Mr. Rajesh Banati, Advocate for JD No.1 Vijay Cable Industries that due to orders passed in execution proceedings attaching the amounts payable by DGS & D and DVB, the said amounts had not been released till that date, though he was also not in a position to give the dates when the attachment order was passed.

22. Though the counsel for the DH refers to some other order of the Division Bench and has handed over a bunch of orders to this Court but is unable to show therefrom, as he has no other copy thereof. After the said orders have been handed back to him, he points out to the order dated 20th

February, 2018, where JD Vijay Kumar Bhatia, present before the Division Bench stated that he would be depositing Rs.10 lakhs in the Court within a period of six weeks and would file a written undertaking given to the Court for the deposit within a period of one week from that day.

23. The counsel for the DH states that the said amount also has not been deposited.

24. On enquiry, whether any undertaking as was required to be filed, the answer is in the negative.

25. I am unable to understand as to what steps this Bench can take with respect to the aforesaid order and the final order of the Division Bench on 21st December, 2017. No directions with respect to the said amount were claimed. If the DH is entitled to proceed against the JD with respect to the order dated 20th February, 2018, the remedy is again before the Division Bench and not before this Bench.

26. As far as the receivables from DGS & D and DVB are concerned, since 21st December, 2017 also, no steps have been taken with respect thereto.

27. It is quite obvious that remand of the execution was obtained just to keep the same pending, without any intent to recover any monies. The same is also evident of total unpreparedness for the hearing and lack of any steps taken prior to the hearing.

28. I have thus no option but to again close the execution and dismiss the same.

29. Dismissed.

RAJIV SAHAI ENDLAW, J.

APRIL 13, 2018/bs..

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