

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **EX.P. 245/2014 & EA(OS) 1160/2015, 108/2016, 21/2017**

Reserved on: 09.10.2018

Date of decision : . 21.12.2018

M/S SHREE SECO PVT LTD

..... Decree Holder

**Through: Mr.Anil Kumar Gupta &
Ms.Pushti Gupta, Adv.**

versus

M/S S.A TRADERS PVT LTD

..... Judgment Debtor

**Through: Mr.Anil Sapra, Sr. Adv. with
Ms.Biji Rajesh, Ms.Eshita Baruah,
Ms.Pooja Singh, Ms.Akanshsha
Choudhary & Mr.Sathak Katyal,
Adv.**

**Mr.Saud Ahmed, Adv. for the
Objector.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. The present Execution Petition seeks enforcement of the Arbitral Award dated 29.05.2009 passed in favour of the petitioner and against the respondent.

2. It is asserted that the application under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the respondent challenging the Award was dismissed by the District Judge, Jaipur vide order dated 08.02.2011. Thereafter, the petitioner filed an Execution

Petition being Ex. No.1191/2011 before District & Sessions Judge, Jaipur. The said Execution Petition was transferred to the Court of the District & Sessions Judge at New Delhi vide order dated 21.11.2011 on basis of the submissions made by the petitioner that not only was the registered office of the respondent situated at New Delhi but also that one of the immovable properties owned by the respondent was at New Delhi.

3. The present petition was thereafter transferred to this Court as the amount under the decree was approximately Rs.2.55 crore.

4. The petitioner claimed that the respondent owns the following two properties within the jurisdiction of this Court:-

- a. E-217, Greater Kailash-I, New Delhi; and
- b. 82-A, Block E, Greater Kailash-I, New Delhi

5. Affidavits have been filed on behalf of the respondent by Ms.Medha Saikia, Director of the respondent. In the affidavit it has been asserted that the registered office of the respondent company was in Guwahati, Assam and the ground floor of the property bearing No.82-A, Block E, Greater Kailash-I, New Delhi had been sold by the respondent to one Sh.Ashok Lakhani vide Sale Deed dated 21.07.2009 duly registered on 23.07.2009 and the entire basement, the garage portion of the ground floor and the first floor of the property were sold to M/s ProBuild Trexim Pvt. Ltd. vide two separate Sale Deeds both dated 30.06.2010 and both registered on 03.07.2010, that is prior to the transfer of the decree to the Court of District & Sessions Judge, New Delhi.

6. As far as the property bearing No.E-217, Greater Kailash-I, New Delhi is concerned, it has been asserted that the same never belonged to the respondent. In fact, objections to the present petition have been filed by one Sh.Ashok Kumar Jain stating that he had purchased the ground floor (back portion) of the above property from Mr.A.R. Malik vide Sale Deed dated 13.12.1995. He has further stated that the front portion of the ground floor is owned by the legal heirs of late Sh. Arjun Dass and the first floor of the property is owned by M/s N.V. Marketing Pvt. Ltd., who had purchased the same vide Sale Deeds dated 13.12.1995 and 20.12.1995 respectively.

7. The above facts have not been denied by the petitioner. The counsel for the petitioner, however asserts that the property bearing No.82-A, Block E, Greater Kailash-I, New Delhi has been sold by the respondent in a clandestine manner so as to defeat the rights of the petitioner under the decree.

8. On the other hand, the learned senior counsel for the respondent submits that the present Execution Petition was transferred by the District Judge, Jaipur to the District Court at Delhi only on the basis of the assertion of the petitioner that as on that date, the registered office of the respondent company was at New Delhi and that the respondent company owned properties within the territorial jurisdiction of Courts at New Delhi. Once the said statement is found to be incorrect, this Court cannot take any further steps in execution of the decree and must leave it to the Court which passed the decree to take further steps in execution thereof. He places reliance on the judgment of the Madras High Court

in *Vasireddi Srimanthu and Ors. v. Devabhaktuni Venkatappayya*, 1947 SCC OnLine Mad 45 and of this Court in *Citibank, N.A., New Delhi v. Indo-American Electricals Ltd.*, Calcutta AIR 1981 DEL 27.

9. Learned counsel for the petitioner, placing reliance on the judgment of the Rajasthan High Court in *Mahesh Fabrics (P) Ltd. and Anr. v. Nirma Corporation and Anr.*, AIR 1996 Raj 111, submits that once the Executing Court had recorded the finding that the respondent owned immovable property at New Delhi, such finding cannot be challenged before this Court. He also places reliance on the judgment of Calcutta High Court in *D.V.M Construction and Ors. v. Srei Infrastructure Finance Ltd.*, AIR 2009 Cal 227.

10. I have considered the submissions made by the learned counsels for the parties. Section 38 of the Code of Civil Procedure, 1908 (CPC) provides that a decree may be executed either by a Court which passed it or by the Court to which it is sent for execution.

11. Section 39 of the CPC further provides that the Court which passed a decree may, on the application of the Decree Holder, send it for execution to another Court of competent jurisdiction.

12. Sections 38 and 39 of the CPC are reproduced hereinunder:

“38. Court by which decree may be executed.—A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

39. Transfer of decree.—(1) The Court which passed a decree may, on the application of the decree-holder, send

it for execution to another Court of competent jurisdiction, -

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purpose of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.”

13. In the present case, the assertion of the respondent, which could not be challenged by the petitioner, is that on the date of transfer of the

decree for execution to this Court by the District Judge, Jaipur, this Court was not a Court of competent jurisdiction as neither the Judgment Debtor had its registered office at Delhi nor it owned any immovable property at Delhi. The transfer of the decree to this Court was, therefore, itself improper. This Court cannot thereafter acquire jurisdiction on execution proceedings as if it was a Court which passed the decree. The only option for this Court is to report back to the Court which passed the decree of its failure to execute the same due to lack of jurisdiction.

14. In ***Mahesh Fabric*** (supra), the petitioner therein was challenging the cognizance taken on a Transfer Certificate by the Transferee Court. The court held that as the Transfer Certificate records that the Judgment Debtor was residing and had the property within the jurisdiction of the Transferee Court, it could not be said that there was an inherent lack of jurisdiction in the Transferee Court. It was for the Judgment Debtor to show that he neither resided nor owned properties within the jurisdiction of the Transferee Court. In the present case, the Judgment Debtor/respondent has been able to discharge this onus and therefore, the said judgment can have no application.

15. In ***D.V.M. Construction and Ors.*** (supra), the Court found that the Judgment Debtor was unable to show that all properties owned by it are outside the territorial jurisdiction of the Court. In fact, the Court held that had the Judgment Debtor appeared and satisfied the Executing Court that all the properties sought to be proceeded against were outside the territorial jurisdiction of the Executing Court, perhaps it would have succeeded in its challenge to the territorial jurisdiction.

16. Once it is found that the judgment debtor/respondent is neither a resident of Delhi nor is carrying out business within the jurisdiction of this Court nor owns any property within the jurisdiction of this Court, this Court cannot execute the decree.

17. Though not argued, the present case is under the Arbitration and Conciliation Act, 1996. In *Sundaram Finance Ltd. v. Abdul Samad and Anr.*, (2018) 3 SCC 622, the Supreme Court has held that the enforcement of an Award through its execution, can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court which would have jurisdiction over the arbitral proceedings. In the present case, therefore, the petitioner could have filed the present Execution Petition before this Court provided this Court otherwise had jurisdiction to enforce such Award. However, as neither the respondent works for gain or has its registered office nor owns any property within the territorial jurisdiction of this Court, this Court cannot entertain the present petition.

18. In view of the above, this Court cannot proceed further with the present Execution Petition.

19. In terms of Section 41 of CPC, let a report be sent to the Transferor Court of such failure.

NAVIN CHAWLA, J

DECEMBER 21, 2018/Arya