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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 15th February, 2018

\+ CM (M) 1103/2013 & CM Nos. 16332/2013, 12982/2014

SH. JAGMOHAN BAHL ..... Petitioner

Through: Mr.D.K. Rustagi & Mr. Kapil Gulati, Advs.

versus

COL.(RETD) K S GUPTA & ANR. ..... Respondents

Through: Mr. Virender Kumar Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner was the defendant in civil suit (suit no. 177/03) instituted by the respondents (plaintiffs) herein on 13.03.2003 seeking recovery of Rs. 14,27,000/- with interest against the backdrop of a loan statedly advanced by them (plaintiffs) in 1989. The suit was decreed by the Additional District Judge by judgment dated 12.10.2010.

2. The petitioner (judgment debtor) had preferred an appeal (RFA 94/2011) against the aforesaid judgment and decree in which this Court, on the application moved by the petitioner (judgment debtor), granted by order dated 24.02.2011, a conditional stay against execution, the direction to the petitioner (judgment debtor) being to deposit 2/3rd of the decretal amount within four weeks. Concededly,

the said condition was not fulfilled as no amount was deposited and the respondents (decree holders) took out execution proceedings (execution case no. 415/11). In the course of proceedings arising out of the execution application, the amount due and recoverable is stated to have swollen at that stage to the extent of Rs. 41 lakhs, the judgment debtor having deposited only Rs. 5 lakhs with the executing Court, statedly having arranged the said amount of money from close relatives and friends. He pleaded before the executing court that he did not have sufficient means to either comply with the conditional stay order against execution as granted in appeal or to satisfy the decree.

3. Against the above backdrop, the decree holder approached the executing court with information that the judgment debtor was in receipt of rental income from State Bank of Indore in respect of a premises (M-46, Connaught Circus, New Delhi) owned by him, reference also being made to income derived from M/s Pride Fashion Pvt. Ltd. in which the judgment debtor has been a shareholder and director. The judgment debtor was directed by the executing court to discover facts on oath in such regard. He filed an affidavit the discoveries made wherein were not to the satisfaction of the executing court, it holding the judgment debtor to have withheld complete and true facts.

4. Against the evasive conduct, as noted above, the executing court by its order dated 11.05.2012 had issued warrant of arrest against the judgment debtor with directions for subsistence allowance

to be deposited. The judgment debtor had moved an application for dropping of the proceedings arising out of the order issuing warrant of arrest. His said application was dismissed by the executing court on 01.10.2013. The petition at hand brought a challenge to the said order.

5. During the pendency of the petition at hand, the first respondent (the first decree holder) died on 24.05.2014. Instead of the petitioner, the surviving first respondent (the second decree holder) moved an application under Order 22 Rule 4 of the Code of Civil Procedure, 1908 (CPC) seeking substitution of the first decree holder by the second decree holder (his wife) and Mr. Vidyut Gupta (son of the deceased decree holder), cause of action having survived in their favour. There is no contest to the prayer in the said application. The application (CM No. 12982/2014) consequently is allowed. The amended memo of parties submitted with the application shall be taken on record.

6. Though interim protection was granted by order dated 11.10.2013 to the petitioner (judgment debtor) in respect of coercive steps being taken against him in terms of the impugned order, the proceedings recorded thereafter vividly reveal his continued evasive conduct. While pressing for interim protection, he had submitted "no objection" to the release of Rs. 5 lakhs deposited by him earlier with the executing court in favour of the decree holder. He later moved an application to seek modification of the order in such regard. The application was dismissed with observations that it was wholly misconceived, by order dated 22.10.2013.

7. The fact about the judgment debtor being in receipt of rental income (at Rs. 2.75,000/- per month) from State Bank of Indore had been gathered by the decree holder from the proceedings relating to another case (RFA 361/2002). As per the information available with the decree holder, as submitted on 01.10.2013 before the executing court, the judgment debtor had received a total sum of Rs. 16.5 lakhs from State Bank of Indore during the pendency of said RFA 361/2002. This submission was reiterated by the decree holder before this Court on 23.04.2014 when the counsel for the judgment debtor sought time to obtain instructions. No clear response was given and instead, on 10.07.2014, it was submitted by the judgment debtor that he would "positively" pay to the decree holder an amount of Rs. 5 lakhs. The submission was treated as an undertaking given to the Court. The undertaking was not complied with.

8. On 25.08.2014, the above-noted undertaking was reiterated and the court granted further two months' time qualifying it with a direction that if the said amount were not to be paid, the judgment debtor would remain present in person for initiation of contempt proceedings against him on account of violation of the undertaking. The directions were again flouted. The judgment debtor would not appear and instead submitted through his counsel, on 13.11.2014, a cheque in the sum of Rs. 1 lakh to the second decree holder, offering to pay another similar amount of Rs. 1 lakh on or before 30.11.2014. Though the decree holder took over the said cheque, the court by order dated 13.11.2014 directed the judgment debtor to remain present in

Court on the next date. The judgment debtor would not again appear in compliance though he did hand over another cheque of Rs. 1 lakh to the decree holder on 20.02.2015. The court once again directed the judgment debtor to remain present in Court on 12.03.2015 with caution that in case of non-compliance, coercive measures would be taken.

9. On 12.03.2015, the judgment debtor finally appeared in person in the court. It was argued on his behalf that the executing court had not arrived at a satisfaction that despite having the resources he had failed to make the payments. The court noted that in the affidavit dated 21.05.2014, in this court, the judgment debtor had admitted having received an amount of Rs. 14,85,000/- as against the payment by the bank (the tenant) in the sum of Rs. 16,50,000/- towards user charges for the period ending 28.02.2013, but he had not disclosed the details as to when the said amount was received and how it had been invested (utilized). The court noted violation of the undertakings given even before this Court and, thus, issued notice to the petitioner to show cause as to why contempt proceedings be not initiated against him.

10. The judgment debtor submitted a reply to the aforesaid notice for show cause. On 22.04.2015, it was submitted on his behalf that he would deposit an amount of Rs. 1 lakh per month with the respondent on or before 30.05.2015, 30.06.2015 and 30.07.2015. On 03.08.2015, it was claimed that three cheques had been sent by courier which was

later confirmed to have been received by the decree holder as per proceedings recorded on 12.08.2015.

11. From the above narration of the background facts and proceedings, it is clear that the judgment debtor (the petitioner) has successfully evaded the satisfaction of the decree obtained by the respondents till date. Though the execution proceedings are pending before the Additional District Judge and the proceedings before this court were limited to the challenge to the legality of the order dated 01.10.2013 directing arrest of the judgment debtor, by virtue of the undertakings given and the enlargement of time sought by the judgment debtor, they have been reduced to parallel execution proceedings which is not correct or proper.

12. The undertaking on account of breach whereof the notice of show cause against the initiation of contempt proceedings was for payment of Rs.5,00,000/-. Technically speaking, as was pointed out, the amount of Rs.5,00,000/- stands paid by the judgment debtor to the decree holder in the form of two cheques of Rs.1,00,000/- each handed over on 13.11.2014 and 20.12.2015 respectively, followed by three similar cheques of Rs.1,00,000/- each as acknowledged by the decree holder at the hearing on 12.08.2015. But payment of Rs.5,00,000/- in such piecemeal manner has not satisfied the decree nor such piecemeal payment is likely to lead to the decree being satisfied in the near future.

13. In the above facts and circumstances, it is deemed appropriate that the execution of the decree in accordance with law continues

before the executing court. For this, the focus has to shift back to the legality of the order dated 01.10.2013 which was challenged by the petition at hand.

14. The provision contained in Order XXI Rule 41 of the Code of Civil Procedure, 1908 (CPC) has been referred to. It empowers the executing court to examine the judgment debtor, to be called upon to disclose as to whether any or what debts are owed to him and as to whether he (judgment debtor) has any and what other property or means of satisfying the decree or payment of money. Rule 41(1) empowers the executing court to enforce the attendance and examination of the judgment debtor and for production of any books or documents. Rule 41(2) of Order XX1 CPC further empowers the executing court in the proceedings in execution relating to a decree for payment of money which has remained unsatisfied for a period of thirty days to require the judgment debtor *"to make an affidavit stating the particulars of the assets of the judgment-debtor"*.

15. As noted in the impugned order, as indeed in the orders anterior thereto, the petitioner (the judgment debtor) was called upon to disclose the necessary facts with regard to the rental income which had accrued to him from his tenant (State Bank of Indore) in terms of proceedings relating to the other litigation (RFA 361/2002). Though an admission came before this court in the affidavit dated 21.05.2014 about receipt of amount of Rs.14,85,000/-, the judgment debtor (the petitioner) failed to make a clear, complete or honest disclosure before the executing court. It is this conduct which has been treated as

disobedience leading to the direction for his arrest in terms of consequences that are to follow as per provision of Rule 41(3) of Order XXI CPC.

16. Given the conduct of the petitioner (judgment debtor) even before this court, the view taken by the executing court in the impugned order, which was only reiteration of orders passed earlier cannot be said to be erroneous, illegal or perverse.

17. The interim stay is thus vacated.

18. In the above facts and circumstances, the petition is found to be devoid of substance and is dismissed.

19. This disposes of all the pending applications as well.

R.K.GAUBA, J.

FEBRUARY 15, 2018
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