

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

% **Date of decision: 9th July, 2018**

+ **EX.F.A. 28/2018**

SHOBHA ANAND MOHATTA **Appellant**

Through: Mr. Sitikanth Nayak, Adv.

Versus

DONY POLO UDYOG LTD & ANR **Respondents**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.26589/2018 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

EX.F.A. 28/2018 & CM No.26588/2018 (for stay)

3. This Execution First Appeal impugns the order (dated 27th April, 2018 of Additional District Judge (ADJ)-02, New Delhi District in Ex. No.5290/2016) directing issuance of warrants for recovery of possession of immovable property and posting the warrants before the Administrative Civil Judge on 2nd July, 2018 for allocation of bailiff and listing the execution for report on 7th September, 2018.

4. It is the case of the appellant, (i) that in execution of a money decree, filed by the respondent No.1 / decree holder, against the respondent No.2 Mohatta & Heckel Ltd. / judgment debtor, property No.20, Feroze Shah Road, Kasturba Gandhi Marg, New Delhi of the appellant was attached; (ii) the appellant filed objections under Order XXI Rule 58 of the Code of Civil Procedure, 1908 (CPC) contending that her husband is a Director of the respondent No.2 / judgment debtor and she has no official connection with

the respondent No.2/judgment debtor and the subject property being her personal property and not the property of the respondent No.2/judgment debtor could not be attached in execution; (iii) that during the hearing of the said objection on 19th February, 2018, the learned ADJ directed the personal appearance of the appellant and her husband on 9th March, 2018; (iv) that on 9th March, 2018, though the appellant and her husband appeared but the learned ADJ was on leave; the copy of the order dated 9th March, 2018 has however not been produced; the proceedings were adjourned to 27th April, 2018; (v) that on 27th April, 2018, the following order impugned in this appeal was passed:

“27.04.2018

Present: Shri Satish Kumar, Ld. Counsel for DH.

None is appearing for applicant ShobhaMohta who has moved an application u/o 21 rule 58 CPC. Matter is accordingly adjourned subject to cost of Rs.5000/- upon the applicant, to be paid to the DH. Meanwhile, warrant of attachment be issued against JD on filing of PF. DH to appear before Ld. ACJ on 02.07.2018 and report before this court on 07.09.2018.

Bailiff is at liberty to break open the lock of premises as well as to seek necessary police aid as earlier the report of the Bailiff was to the effect that the lock/gate of the premises was not opened by the person occupying the same.”

5. The counsel for the appellant, on enquiry about the non-appearance of the appellant or her husband or the Advocate on 27th April, 2018, states that since he (i.e. the advocate) did not receive any instructions from the appellant for appearance on 27th April, 2018, he did not appear.

6. On enquiry, whether he had filed the *Vakalatnama* for the entire execution proceedings or was filing *Vakalatnama* or appearance on and for each and every date of hearing, the counsel states that the *Vakalatnama* filed was for the entire case.

7. The counsel having accepted engagement for the entire execution proceedings, could not have chosen not to appear on 27th April, 2018 for the reason of having not been instructed to appear for that particular date.

8. The learned ADJ is thus not found to have committed any error in proceeding with execution, when the appellant as objector chose not to appear. An objector in an execution proceeding and/or his/her Advocate, by adopting such tactics cannot make the Executing Court issue afresh invitation for appearance or stall the execution of the decree. It is for the reason of such practices adopted during execution that it has come to be believed that execution of a decree takes more than double the time than taken in the passing of the decree itself.

9. The counsel for the appellant has also argued that the learned ADJ issued warrants, without a decision on the objection. It is stated that even if the appellant and her Advocate had not appeared on 27th April, 2018, without dismissing the objections preferred, the warrants could not have been issued.

10. Merely because the learned ADJ has shown indulgence to the appellant in not dismissing the objections but adjourning the same subject to costs, cannot vest any advantage in the appellant. It cannot be lost sight of that the objections can be considered till before the property is put to sale in execution of money decree. There was thus valid reason for the learned ADJ for granting another opportunity to the appellant to appear and argue.

11. In fact, an appeal under Order XXI Rule 58 of the CPC lies against a decision on the said objections and the order impugned does not qualify as a 'decision'.

12. The counsel for the appellant has referred to the judgment of the Division Bench of the Andhra Pradesh High Court in **B. Nookaraju Vs. M.S.N. Charities** AIR 1994 AP 334.

13. The Executing Court in that case had held that the objector had not established his claim. It was in this circumstance that such an order was held to be a deemed decree. I am unable to see as to how the aforesaid judgment applies to the facts of the present case. The counsel for the appellant, without reading the facts, has cited the ratio in the facts before the High Court of Andhra Pradesh, to the present controversy.

14. The appellant in the present case, though according to the counsel for the appellant has knowledge of the order dated 27th April, 2018 with effect therefrom only, instead of approaching the ADJ immediately, explaining the reasons for non-appearance and seeking decision on the objections, has chosen to prefer this appeal after the date on which the warrants were ordered to be placed before the Administrative Civil Judge. It is quite obvious that the purport of the appellant is only to delay; alternatively, the appellant is conducting the objections in lackadaisical manner and for which again the appellant is herself to blame. The appellant cannot thereby cause any prejudice to the respondent no.1 / decree holder.

15. Else, the counsel for the appellant only wants to argue the objections on merits before this Court and which is not permissible in law.

16. There is no merit in the appeal which is dismissed with costs of Rs.10,000/- payable to the Delhi High Court Advocates Welfare Trust.

A copy of this judgment be given *dasti*.

JULY 09, 2018
'bs'..

RAJIV SAHAI ENDLAW, J.

