HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 1027 of 2018

M/s Derolion Solvent Product Limited A Company Incorporate Under The Companies Act, 1955 Having Its Registered Office At Village Pendari, Tahsil Takhatpur, District Bilaspur Chhattisgarh. Through Its Director, Satyanarayan Sharma S/o Shri B.R. Sharma, Aged About 57 Years, R/o Old Sarkanda, Bilaspur District : Bilaspur, Chhattisgarh **--- Petitioner**

Versus

1. M/s Mahajan Brothers Firm Registered Under The Indian Partnership Act, 1932, Through Its Partners Shri Madhav Rao S/o Govind Rao Mahajan, Aged About 73 Years, Having Its Place of Business at Anaj Bazar, Itwari Nagpur., District : Nagpur, Maharashtra

2. Union Bank of India Branch Bilaspur Chhattisgarh through its Manager, Near Gandhi Chowk, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

3. Shri Arvind Gulahare S/o Shri Gurudayal Gulahare Aged About 62 Years R/o Gowdpara Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh **--- Respondents**

For the Petitioner	:	Mr. Ravish Agrawal Sr. Advocate with Mr. Sankalp Kochar & Mr. Harsh Wardhan, Advocate.
For Respondent No.3	:	Mr. Malay Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

11.01.2019

1. Initially the petition was filed on 29.11.2108 challenging the order dated 19.11.2018 (Annexure P-1) passed by the Court of learned 7th Upper District Judge, Bilaspur (C.G) whereby the objection filed by the petitioner u/s 151 CPC in execution proceedings was rejected and the sale certificate was directed to be issued in respect of the land along-with godowns & sheds situated therein. In the meanwhile another order dated was passed by the learned court below on

04.12.2018 whereby it was ultimately directed that the land will form part of the sale certificate apart from the structures. Both orders have been placed to challenge in this petition.

2. Heard on application for amendment and taking documents on record along-with affidavit. The said amendment sought by the petitioner is a procedural nature and do not cause any prejudice. The nature of amendment will facilitate to decide the controversy between the parties. Application is allowed. Therefore in the present petition two orders are under challenge one is dated 19.11.2018 and another is 04.12.2018.

3. The submission of the petitioner Company who is judgment debtor is that they suffered a decree dated 12.06.1996 passed by the Court of 7th Joint Civil Judge, Senior Division, Nagpur (Maharashtra) whereby an amount of Rs.23,72,379.50 was directed to be recovered against the petitioner. The said decree was transferred for execution from 7th Civil Judge, Sr. Division, Nagpur to District Court Bilaspur in the year 1996. Thereafter, on 04.07.1998 the entire property of the petitioner (Judgment debtor) was attached in execution of decree which included the solvent plants, godowns, superstructure, land etc. It is further stated that thereafter the judgment debtor had prayed for valuation of the property wherein the High Court of M.P., by order dated 12.2.1999 had directed the District Judge to make proper enquiry so as to ascertain proper value of the entire property and to make identification of different properties which are attached. Pursuant to such order passed in Civil Revision preferred by the judgment-debtor bearing No.63/

1998 wherein the direction was given to assess the value the property, the District Judge called for the report of the valuation. Accordingly, the valuer had filed his report dated 07.04.2001.

4. It is contended by the judgment debtor, petitioner herein that as per the valuation report the civil works which stand over the land i.e., godowns, factory, industrial sheds & iron frame works were separately valued. Subsequently the Executing Court by order dated 13.03.2002 has directed that as per the valuation report (Pg.7) the property attached may be sold. Thereafter the respondent No.3 purchased certain part of the properties i.e., building and shed. It is stated that now the dispute is about the particulars of the property which has been purchased. The petitioner contends that only the superstructure which exists over the landed property was purchased and they have no objection if the sale certificate is issued only with respect to the structures which was purchased and if the land is included in auction along-with structures, then it would defeat the entire auction and by purchasing the superstructure, the decree holder would become owner/ purchaser of the land which was not the subject of sale in auction. It is stated that the sale certificate may be issued with respect to the building and shed and not for the land.

5. Learned counsel for the petitioner further submits that when such objection was raised before the Executing Court, the said Court has failed to take into account the orders and valuation report before the Court and has simply proceeded to reject the application, therefore, the present petition. He

submits that the land was separately auctioned in 2012 which would show that at the time of initial sale made in the year 2003, the land was not included, therefore, the sale certificate including the land could not have been issued.

6. Per contra, learned counsel for respondent no.3 vehemently opposes the argument and would submit that the initial objection in the like nature was raised before the Executing Court under order 21 Rule 90 read with section 151 CPC which was decided on 12.01.2005 wherein the entire property has been squarely included. Further an application under order 21 Rule 94 was filed which mandates the procedure for issuance of sale certificate wherein the Executing Court directed for issuance of sale certificate vide order dated 07.02.2006. He submits that the issuance of sale certificate by all means includes the immovable property, therefore, all the objections which were raised by the petitioner already stand decided and the objections are grossly delayed for which no relief can be granted.

7. Heard learned counsel for both the parties and perused the order sheets as also the documents.

8. During the course of arguments, it is submitted that in respect of respondents 1 & 2, their right would not be prejudiced as the sale certificate pertaining to issue is only with respect to respondent no.3 who is represented, therefore, in absence of respondents 1 & 2 the petition is heard.

9. Admittedly a decree was passed by 7th Joint Civil Judge, Senior Division, Nagpur in the year 1996 for recovery of Rs.23,72,379/- against the petitioner,which stood transferred

for execution to District Court Bilaspur. When the execution was pending, the issue of valuation was subject of adjudication in Civil Revision No.63/1998 before the High Court of Madhya Pradesh wherein certain direction was issued for valuation of the property of the judgment debtor. Pursuant to such direction, valuation of property was carried out. The said valuation report is on record and the valuation of the subject property of the building and shed finds at Page No.7 and whereas the land valuation is at Page No.8. For the sake of convenience, the same is reproduced herein below :

According to Page 7 of the Valuation Report

A. Building & Shed

Item	Plinth Area in Sqft	Unit Cost	Depreciation	Net cost Rs.
1. Godown A Verandah	3354 1131	300/- 125	30% 30%	Rs.7,04,340.00 Rs. 98,960.00
2. Godown B Verandah	3354 1131	300/- 125/-	30% 30%	Rs.7,04,340.00 Rs. 98,960.00
3. Godown C Verandah	3081 1131	300/- 125/-	30% 30%	Rs.6,47,000.00 Rs. 98,960.00
4. Store D Verandah	3081 1131	300/- 125/-	30% 30%	Rs.6,47,000.00 Rs. 98,960.00
5. Power Control Room E	264	200/-	30%	Rs. 36,960.00
6. Laboratory/ Store F	773	350/-	25%	Rs. 2,02,910.00
7. Godown G	6942	300/-	30%	Rs.14,57,820.00
8. Solvent Extraction Shed H steel frame 3 storeyed RCC 3 storeyed MS tank 25000 Ltr.	1578 390/- 25000 Lts.	700/- 700/- 5/-	30% 25% 30%	Rs. 7,73,220.00 Rs. 2,04,750.00 Rs. 87,500.00
9. Boiler shed I	2261	300/-	30%	Rs. 4,74,810.00
10.Ash Cooling House J	663	250/-	30%	Rs. 1,16,025.00
11.Godown/ cleaning, breaking & roasting shed K	8642	300/-	30%	Rs.18,14,820.00
12.Cooling pond L	7500 cft.	60/-	30%	Rs. 3,15,000.00

13. Cooling tower M	750 cft.	50/-	30%	Rs. 26,250.00
14. Pump House N	222	200/-	30%	Rs. 31,080.00
15. MS Oil Tanks 3 nos. @ 70000 ltrs.	210000 ltrs.	7/-	30%	Rs.10,29,000.00
16. Weigh Bridge P Cabin Pit	 184 950 cft.	 300/- 50/-	 25% 30%	 Rs. 41,400.00 Rs. 33,250.00
17. Admin.Office Q Office Verandah	 555 420	 350/- 150/-	 30% 30%	 Rs. 1,35,975.00 Rs. 44,100.00
18. Hexine tank	5000cft.	75/-	30%	Rs. 2,62,500.00
19. Compound wall	333 rft.	350/-	30%	Rs. 81,585.00
20. Compound gate	140 sft.	90/-	40%	Rs. 7,560.00

Total Rs.1,02,75,035.00

(According to Page 8)

B. LAND :

Land area 3.51 acres @ Rs.1,50,000/- per acre : **Rs. 5,26,500.00**

Therefore, the total value of BUILDING + LAND (Excluding plant & Machinery) is **Rs.1,08,01,535.00**

SAY Rs.1,10,00,000.00

10. Reading of the orders of the Executing Court dated 13.03.2002 would show that the Executing Court observed that as per the direction made for valuation in Civil Revision No.63/1998 dated 12.2.1999 by the High Court of Madhya Pradesh that part of the property after valuation should be put to sale which satisfies the decree of the respondent. By such order, the Court observed that the building and shed which was valued for about Rs.40 lakhs may be attached for recovery. The order refers to report of the valuer (Page 7). When the valuer's report at Page 7 is seen, it shows that the building and sheds have been separately valued and the land has been separately valued. The auction sale of such building and shed was made by order dated 20.01.2003

(Annexure P-8) and the particulars of the property shows the same as that mentioned in valuation report which are at serial No. 1 to 7. Another order of auction which took place on 17.12.2012 also finds place in Annexure P-20 wherein, the particulars of lands is mentioned as follows :

Kh.No.1197/1 .... 0.80 acres,
Kh.No.1199/1 ....0.70 acres
Kh. No. 1199/2 .... 0.70 acres,
Kh. No.1200 .... 1.31 acres

Total .... 3.51 acres

11. In the note appended to the particulars of sale shows that in the aforesaid land, the godowns 1 to 7 have already been sold, therefore, they were excluded. Necessarily this leads to draw an inference that in the auction made on 20.01.2003 only the property which finds place from items 1 to 7 in the valuation report were subject of sale and not the land. The land has been separately valued and the purchase of property 1 to 7 was made for an amount of Rs.2,04,000/-. This also allows the Court to draw an inference that what was the subject of property. Though by order dated 12.01.2005 the application moved by the petitioner/judgment debtor u/s 151 of CPC was dismissed by the Court below but it do not travel to the issue as to what was the actual subject of sale. Likewise the order dated 07.02.2006 makes it clear that the sale certificate be issued in respect of property sold in auction. Reading of both the orders do not contemplate that what was the actual property sold or it says that the land was included in the auction sale. Therefore, the auction which was made on 20.01.2003 necessarily was not with respect to the land. Under the circumstances taking into

consideration the facts, it is directed that the Executing Court shall be free to issue the certificate of sale with respect to the property which are shown at Page 7 of the valuation report of the valuer under the building and shed only and the land of 3.51 acres may not be included in that.

12. With such observations the petition stands allowed.

Sd/-
GOUTAM BHADURI
JUDGE

Rao