

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4693 OF 2016

M/S GHANSHYAM ENTERPRISES
THROUGH ITS PROPRIETOR ARVIND CHANDULAL PATEL
VERSUS
THE LIQUIDATOR SHRI JAGDAMBA SAHAKARI SAKHAR
KARKHANA LTD AHMEDNAGAR

Advocate for Petitioner : Mr. S.D. Munde
h/f. Adv. Mr. S.S. Gangakhedkar.

CORAM : M.S. Karnik, J.
Dated : 05.08.2019

Per Court :

1. Heard learned counsel for the petitioner.
2. The order impugned is dated 10.01.2012, passed by the executing Court dismissing the execution proceedings for want of steps not taken by the decree holder since long.
3. This Court had issued notice to the respondent. Respondent are duly served. No one appears on behalf of the respondent. This Court had indicated that if possible, the petition would be heard finally at admission stage.
4. My attention is invited by the learned counsel for the petitioner to the order

dated 28.04.2009, passed by this Court in Writ Petition No. 2451/2009, which is at page No. 38 of the paper book. So far as the question of interim relief is concerned, this court has passed the following order :

“2. So far as question of interim relief is concerned, by way of the order impugned in the present petition, the machineries of the petitioner society and the bank accounts are attached upto the extent of recovery of the amount of the Decree Holder i.e. respondent No. 1. The learned counsel for the respondent no. 1 - caveator states that order is already executed and the machinery as well as bank accounts are attached. Hence, there shall be an ad-interim order to the effect that no further steps shall be taken in the matter prejudicial to the interest of the petitioner.”

5. Learned counsel for the petitioner states that this order was placed on record before the executing Court. He would, therefore, submit that as the interim relief was in operation in Writ Petition No. 2541/2009, there was no question of taking any further steps in the execution proceedings till further orders of this Court. The learned counsel for the petitioner would submit that as this Court had passed the interim orders, he was under impression that the executing Court would not proceed with the darkhast.

6. The respondent, though served, has chosen not to remain present to controvert the contentions of the petitioner. In view of interim order passed by

this Court on 28.04.2009, the cause stated by the petitioner for setting aside the order dated 10.01.2012 seems to be justified.

7. The petitioner had filed an application bearing Civil Misc. Application No. 24/2014 for setting aside the order dated 10.01.2012. The said application came to be rejected vide order dated 17.03.2016.

8. The petition is allowed in terms of prayer clause 'B' with no order as to cost. Prayer clause (B) reads thus :

“B) By an order of this Hon'ble High Court in the like nature of writ or any appropriate order, kindly quashed and set aside the impugned Order dated 17.03.2016 below Exh. 1 in Civil Misc. Application No.24/2014 passed by Civil Judge Senior Division, Shrigonda and consequently allow the application filed by the petitioner.”

(M.S. Karnik, J.)