

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 354 OF 2018**

Jaldhi Overseas Pte. Ltd., a Company incorporated under the Law of Singapore and having its registered office at 1, Coleman Street, 09-11, the Adelphi, Singapore 179803.

.... Petitioner

Versus

1. Shree Mallikarjun Shipping Pvt. Ltd., a private limited Company incorporated under the Companies Act, 1956, and having its registered office at O.I. Mercedes Building, opposite Kadamba Bus Stand, Mundvel, Vasco Da Gama, Goa - 403 802.
2. Mr. Satish Sail, major in age, Chairman cum Managing Director of Shree Mallikarjun Shipping Pvt. Ltd., having its registered office at O.I. Mercedes Building, opposite Kadamba Bus Stand, Mundvel, Vasco Da Gama, Goa - 403 802.

.... Respondents

Mr. S.D. Lotlikar, Senior Advocate with Ms. Jimi John, Advocate for the Petitioner.

CORAM : C.V. BHADANG, J.

DATE : 1st February, 2019

ORAL ORDER:

Heard Mr. Lotlikar, the learned Senior Counsel for the petitioner.

2. On 06.12.2018, a notice for final disposal was issued in this petition. The respondent is served, however, none appears.

3. I have heard Mr. Lotlikar, the learned Senior Counsel for the petitioner and the petition is being disposed of finally.

4. The petitioner is the decree holder, in an award passed in an international commercial arbitration. The petitioner has filed Execution Application No. 127/2014, which is pending before the learned District Judge at Margao. It appears that the Executing Court had passed an order dated 08.06.2017, directing the respondents/judgment debtors to file its affidavit of assets, within 15 days. On account of failure on the part of the concerned judgment debtor, Mr. Satish Sail, an order was passed on 26.07.2017, issuing warrant of arrest against Mr. Satish Sail. A fresh warrant was also issued on 04.09.2017. The report of the bailiff, executing the warrant of arrest was not received initially. Subsequently, the report of the bailiff shows that the warrant could not be executed as Mr. Satish Sail was not found at the address as given in the cause title.

5. In such circumstances, the petitioner filed an application on 17.11.2017, claiming that Mr. Satish Sail has managed to avoid the arrest. The petitioner claimed that Mr. Satish Sail is staying at the address as set out in para 3 of the application i.e. at Karwar, Uttara Kannada District (Karnataka). The petitioner accordingly approached the Executing Court

under Section 136, read with Section 151 of the Code of Civil Procedure (Code, for short) to send the warrant of arrest to the District Court at Karwar, for its execution with police assistance.

6. The Executing Court by the impugned order dated 06.12.2017 has dismissed the application. According to the Executing Court, the conjoint reading of Section 39 and Section 136 of CPC shows that the provisions of Section 136(1) of CPC are not applicable, when the arrest or attachment “relates to the execution of the decree”.

7. On hearing the learned Counsel for the petitioner, I find that the view taken by the learned Executing Court may not be correct. Section 136 of CPC reads thus:

136. Procedure where person to be arrested or property to be attached is outside district.—(1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situated outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue, a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount

of the costs of the arrest or attachment.

It can thus clearly be seen that Section 136 provides for procedure where (i) the person to be arrested is residing outside the local jurisdiction of the Executing Court or (ii) where the property so attached is outside the jurisdiction of the Executing Court. The stipulation “not relating to the execution of the decree” under sub section (1) of Section 136 of CPC would obviously relate to the second part. Thus, it is not possible to accept that Section 136(1) of CPC would not be applicable, for the reasons mentioned by the Executing Court in para 4 of the impugned order.

8. In that view of the matter, the petition is allowed. The impugned order is hereby set aside. The application Exhibit-28 filed by the petitioner is allowed as prayed.

C. V. BHADANG, J.

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