

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 26 OF 2018

Belarmina Gowda		Applicant
Versus		
Ranjith Nath		Respondent

Mr. Manish Salkar, Advocate for the Applicant.

Ms. H. Gopi, Advocate holding for Mr. G. Teles, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 4th April, 2019

ORAL ORDER:

By this revision application, the petitioner is challenging the order dated 03.05.2018, passed by the Executing Court, by which, the Executing Court has refused to discharge the petitioner.

2. It appears that the respondent had filed Regular Civil Suit No. 97/2014/B, against Harshada Trading Company. The case made out in the plaint was that the defendant-Harshada Trading Company is a Company incorporated under the Companies Act, having its office at BG-12, Campal Trade Centre, Behind Military Hospital, Campal, Panaji, Goa. The cause title of the suit shows that the defendant-Harshada

Trading Company was not shown to be represented by any person i.e. a Director or any authorized person of the Company.

3. The suit came to be decreed ex-parte on 22.03.2014 in the following terms:

“The suit of the plaintiff is partly decreed.

The defendant is directed to pay an amount of Rs.6,11,627/- (Rupees Six Lakhs Eleven Thousand Six Hundred and Twenty-Seven only) to the plaintiff with interest at the rate of 24% per annum from 27.11.2014 till full and final payment.

Decree accordingly.”

It can thus be seen that the suit was decreed against the defendant-Harshada Trading Company, which according to the respondent-decree holder is a Company incorporated under the Companies Act.

4. The respondent thereafter filed Regular Execution Application No. 18/2016/B for execution of the decree, in which, the respondent sought assistance of the Court in the following terms:

1. Directing the bailiff of this Hon'ble Court to attach shop/office bearing no. BG-12,

Campal Trade Centre, Behind Military Hospital, Campal, Panaji, Goa.

2. Directing the judgment debtor to declare on oath by filing affidavit list of assets of the judgment debtor.
3. Detention of civil prison the sole proprietor/authorized signatory/ partner/ director of judgment debtor in civil prison.

5. The notice in the execution case was served on the petitioner, who filed application Exhibit-9 for discharge, on the ground that the petitioner is neither a Director nor an employee of the Company. It was contended that the petitioner is the proprietor of Harshada Trading Company and although, the address is the same, both are separate entities.

6. The respondent-decree holder opposed the application.

7. The Executing Court by the impugned order dated 03.05.2018 has dismissed the application Exhibit-9, thereby refusing to discharge the petitioner. Hence, this petition.

8. I have heard the learned Counsel for the parties. Perused record.

9. It is apparent that as per the case made out in the plaint Harshada Trading Company is a Company, incorporated under the Companies Act and the decree is also passed against the original defendant-Harshada Trading Company alone. It is now well settled that where the decree is against the Company, which is an independent entity, the decree cannot be executed against any individual, being a Director or a person responsible for the conduct of the business of the Company. It was for the respondent to point out as to what are the assets of the Company, against which the decree can be executed. Such details can be obtained by the decree holder from the office of the Registrar of Companies (RoC). Without doing any such exercise, the respondent is trying to execute the decree against an individual and that too, without showing that the petitioner is in anyway related to the Company-Harshada Trading Company.

10. In that view of the matter, the impugned order cannot be sustained. Accordingly, the petition is allowed. The impugned order is set aside. Application Exhibit-9 is allowed and the petitioner is discharged. This shall however be subject to the liberty to the petitioner to amend the execution

application, on the basis of the record obtained from the Registrar of the Companies or otherwise and to take steps, as may be advised, for the execution of the decree against the Company.

In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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