

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22.11.2019

JUDGMENT DELIVERED ON : 18.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

O.S.A.NO.287 OF 2019

AND

C.M.P.NOS.22998 AND 24061 OF 2019

1. M/s.G-Tech Stone Limited,
No.7, 1st Floor,
LVR Centre, Seshadri Road,
Alwarpet, Chennai-600 018.
 2. Mr.L.V.Sivaprasad
- ... Appellants

Vs.

BFIL Finance Limited,
Eucharistic Congress Building No.1,
4th Floor, 5, Convent Street,
Colaba, Mumbai-400 039.

(formerly known was ITC Bhadrachalam
Finance and Investment Limited,
and since amalgamated with
Russel Credit Limited)

.. Respondent

Original Side Appeal (O.S.A) filed under Order XXXVI Rule 9 of the Madras High Court Original Side Rules, read with Clause 15 of the Letters Patent, against the order and decree dated 15.10.2019 passed by the learned Single Judge in Application (Appeal) No.6896 of 2019 in E.P.No.75 of 2018 confirming the order dated 28.08.2019 in E.P.No.75 of 2018 on the file of the learned Master, High Court (Original Side), Madras.

For appellants : Mr.R.Thiagarajan

For respondent : Mr.Krishna Srinivasan
for M/s.Ramasubramaniam and Associates

JUDGMENT

R.SUBBIAH, J

This Original Side Appeal (O.S.A) is filed as against the order dated 15.10.2019 passed by the learned Single Judge in Application (Appeal) No.6896 of 2019 in E.P.No.75 of 2018, whereby the said application seeking to set aside the order dated 28.08.2019 passed by the learned Master of this Court, was dismissed, thereby, confirming the arrest of the second appellant as ordered by the learned Master on 28.08.2019 passed in E.P.No.75 of 2018.

2. Brief facts which are necessary to decide the issue involved in this appeal are as follows:

(a) An arbitration case was filed by the respondent-Company as against the first appellant-Company for breach of terms and conditions of the agreement, dated 02.02.1995 for recovery of the full consideration for 5,40,000 Optionally Fully Convertible Debentures (OFCD) valued at Rs.5,13,00,000/- with interest @ 24% p.a. from the date of redemption till the date of realisation. A Three-member Arbitral Tribunal passed an Award, dated 14.06.2001, directing the first appellant-Company to pay a sum of Rs.8,10,00,000/- within two months from the date of the Award, failing which, interest thereafter @ 15% per annum has to be paid till the date of realisation.

(b) The first appellant-Company filed Arbitration Petition No.499 of 2001 under Section 34 of the Arbitration and Conciliation Act, before the Bombay High Court to set aside the said Award. By order dated 27-28.11.2001, a learned Single Judge of the Bombay High Court had set aside the said Award holding that the Award is opposed to public policy. Aggrieved by the same, the respondent-Company filed Arbitration Appeal No.284 of 2002, before a Division Bench of the Bombay High Court under Section 37 of the Arbitration and Conciliation Act. The appeal was allowed by the Division Bench of the Bombay High Court on 07.08.2002 and the Award dated 14.06.2001 was restored. Aggrieved by the judgment rendered by the Division Bench of the Bombay High Court, a Special Leave (Civil) Petition (SLP) was filed by the first appellant-Company before the Supreme Court and the Supreme Court converted the SLP (Civil) into Civil Appeal No.6495 of 2003. Ultimately, by order dated 07.09.2010, the Civil Appeal was dismissed by the Supreme Court. Thus, the Award has become final and conclusive between the parties thereto on 07.09.2010.

(c) After the Award was confirmed by the Apex Court, the respondent-Company preferred O.A.No.991 of 2010 before this Court under Section 9 of the Arbitration and Conciliation Act, seeking for an order of interim injunction restraining the first appellant-Company, its officers, members, servants and agents and any person or any staff acting at its behest from in any manner, alienating, transferring or encumbering its assets, both movable as well as immovable. This Court, by order dated 17.09.2010, allowed the said O.A.991 of 2010.

(d) Thereafter, the respondent-Company filed an Execution Petition in E.P.No.15 of 2012 before this Court for attachment of the movable properties belonging to the first appellant-Company. In the said E.P., the respondent/decreed-holder filed application in A.No.6900 of 2014 under Order 21 Rule 41 of the Civil Procedure Code (CPC) to direct the Managing Director/Company Secretary of the first appellant-Company to appear before this Court and be orally examined so as to disclose as to whether the first appellant-Company has any other property or means of satisfying the Award, dated 14.06.2001 and to this effect, to produce such books or documents before this Court. The learned Master of this Court, by order dated 01.04.2015, allowed A.No.6900 of 2014 and the Managing Director of the first appellant-Company was directed to appear before the Court on 15.04.2015 for oral examination.

(e) However, the Managing Director of the first appellant-Company did not appear as directed by the learned Master. Thereafter, on 05.08.2016, a Memo was filed by the respondent-Company (decree-holder) and a copy of the same was also furnished to the first appellant-Company/judgment debtor's counsel. The judgment debtor's counsel represented that sufficient intimation was given to the judgment debtor, but there was no response from the judgment debtor. Sufficient time was given to the judgment debtor to appear before the Court for oral examination. But the judgment debtor was not present. Hence, the learned Master of this Court issued arrest warrant against the judgment debtor/Managing Director's address mentioned in the Memo of the decree holder and posted the matter on 24.08.2016 for further proceedings.

(f) A.No.6900 of 2014 in E.P.No.15 of 2012 was again listed on 15.09.2016 before the learned Master. On that day, the Bailiff had secured and produced the judgment debtor (Managing Director of the first appellant-Company) before the Court and the Managing Director of the first appellant-Company made an endorsement in the case papers stating that he undertakes to settle the issue within four weeks. Accordingly, the Managing Director of the first appellant-Company was directed to appear before this Court on 19.10.2016.

(g) In the meantime, the Managing Director of the first appellant-Company filed an affidavit dated 19.10.2016 before the learned Master in E.P.No.15 of 2012, disclosing the assets of the Company, both movables and immovables owned by the first appellant-Company. Thereafter, based on the endorsement made by the decree-holder's counsel, the Execution Petition in E.P.No.15 of 2012 was dismissed as withdrawn on 12.04.2017 with liberty to file fresh Execution Petition.

(h) Subsequently, two Execution Petitions came to be filed by the respondent-Company in E.P.Nos.74 and 75 of 2018. E.P.No.74 of 2018 was filed for attachment and sale of immovable property and E.P.No.75 of 2018 was filed for arrest and detention of the second appellant being the Managing Director of the first appellant/debtor-Company. By common order dated 28.08.2019, the learned Master of this Court allowed both the said Execution Petitions, thereby attachment order was passed and the second appellant was directed to appear before the Court on 25.09.2019.

(i) Aggrieved by the said order of the learned Master in E.P.Nos.74 and 75 of 2018, the first appellant-Company filed Application (Appeal) No.6894 of 2019 as against E.P.No.74 of 2018 and Application (Appeal) No.6896 of 2019 was filed as against E.P.No.75 of 2018. In the meanwhile, since stay of the order of the learned Master, dated 28.08.2019, was not granted in A.No.6895 of 2019 in E.P.No.74 of 2018 and A.No.6897 of 2019 in E.P.No.75 of 2018, the second appellant appeared before the learned Master on 26.09.2019 in obedience to the show cause notice issued against him. By order dated 26.09.2019, the appellants have been granted four weeks' time for payment of Rs.5 crores. Subsequently, by the impugned order dated 15.10.2019, the learned Single Judge dismissed the said A.Nos.6894 and 6896 of 2019, resultantly, A.Nos.6895 and 6897 of 2019 were closed. Challenging the said dismissal order passed by the learned Single Judge in Application (Appeal) No.6896 of 2019 in E.P.No.75 of 2018, ordering arrest of the second appellant, the present O.S.A. is filed by the appellants.

3. Assailing the said order dated 15.10.2019 passed by the learned Single Judge, the learned counsel for the appellants submitted that the learned Master of this Court had committed manifest error in granting permission for filing simultaneous Execution Petitions as against the first appellant-Company as well as its Managing Director being the second appellant herein. Before passing such order, the learned Master ought to have decided the maintainability of the Execution Petition as against the second appellant, inasmuch as the second appellant is not a party to the Award, nor he has furnished surety or guarantee for the debts payable by the first appellant-Company. Further, the

learned Master proceeded with the Execution Petition and granted permission, thereby committed a grave error in law by issuing the show cause notice to the second appellant herein, calling upon him to appear before the Court, without deciding the issue as to whether the Execution Petition filed by the holder of the Award as against the Managing Director, is maintainable personally, in the absence of any liability that could be fastened on the Managing Director of the first appellant-Company. Moreover, absolutely there is no allegation against the second appellant herein to show that he had indulged in any siphoning off the funds or secreted the assets and monies of the first appellant-Company, thereby acted prejudicial to the interest of the first appellant-Company.

4. The learned counsel for the appellants further contended that it is pertinent to note that only the first appellant-Company has suffered the Award. As such, the Company alone is due and liable to the respondent-Company to pay the Award amount. The Managing Director of the first appellant-Company is neither a party to the arbitration agreement in his personal capacity, nor is he a party to the arbitration proceedings, or a judgment debtor. Further, there is neither personal guarantee nor personal surety by any of the Directors of the first appellant-Company (debtor-Company). Therefore, the learned Master is not justified in ordering arrest of the second appellant, when the Award that is put into execution is silent about him.

5. With regard to the undertaking given by the second appellant before the learned Master on 15.09.2016, stating that he undertakes to settle the issue within four weeks, it is submitted by the learned counsel for the appellants that the said undertaking was given by the second appellant only on behalf of the first appellant-Company as its Managing Director and not in his individual capacity. Further, the affidavit of assets of the Company was filed on oath in compliance of warrant under Order 21 Rule 41(2) CPC. As such, the earlier arrest in the Execution Petition filed for attachment of the assets of the Company, would not mean that he can be arrested later based on the endorsement made by him. Only the Award holder (respondent-Company) could proceed as against the assets of the judgment debtor-Company (first appellant-Company) and as such, the Managing Director of the first appellant-Company is not personally liable to pay any amount. The properties of the Managing Director shall not be attached for the dues of the debtor-Company, nor can he be detained for the dues of the debtor-Company. When there is a legal embargo to attach and bring the properties of the Managing Director of the debtor-Company for sale, the same prohibition would prevail as regards the arrest and detention of the Managing Director of the debtor-

Company.

6. It is also the submission of the learned counsel for the appellants that the learned Master ought to have noticed Section 51 CPC, which contemplates that if the judgment debtor suffers a decree individually, the decree holder is entitled to enforce the decree as against the assets, both movables and immovables, provided he establishes that the judgment debtor is removing the properties surreptitiously and fraudulently with a view to delay and defeat the interest of the decree holder, and then only, the Execution Petition for arrest is maintainable. In the case on hand, admittedly, there is no personal decree as against the Director and in such circumstances, the Execution Petition for arrest and detention of the Director cannot be used as a weapon to harass the Director of the judgment debtor-Company to obey and satisfy the decree as against the Company, when the decree does not mandate him to do so. In this regard, the learned counsel for the appellants invited the attention of this Court to Section 51 CPC and submitted that none of the ingredients therein have been pleaded or proved in the manner known to law by the respondent-Company.

7. The learned counsel for the appellants also submitted that the Company is a separate and distinct entity and as such, for the dues of the Company, its Director cannot be proceeded against. The learned counsel for the appellants relied on a judgment of this Court reported in 2007 (4) CTC 161 (Sreyas Sripal Vs. Upasana Finance Ltd.), wherein a Division Bench of this Court had laid down the procedures for arrest of judgment debtor in execution of decree. The learned counsel for the appellants also submitted that the grounds on which the arrest of the judgment debtor is being sought, have to be explained with sufficient materials. Further, in the present case, absolutely, no material is produced to show that the second appellant is having the assets deliberately to avoid the payment of the amount on behalf of the first appellant-Company.

8. The learned counsel for the appellants also submitted that the admitted position is that the arbitration Award having the force of the decree is only against the judgment debtor-Company and not against its Director(s). He further submitted that there is no provision in the Civil Procedure Code (CPC) to execute the money in respect of a Company as against its Director. Order 21 Rule 50 CPC does provide for execution of a money decree against a firm from the assets of the partners of the said firm mentioned in the said Rule, but there is no provision with respect to the Director(s) of a Company. The executing Court cannot go behind the decree and can execute the same as per its form only. The decree is against the Company and the executing Court cannot execute the decree against anyone

other than the judgment debtor, or against from the assets/properties of anyone other than the judgment debtor. The identity of a Director or a shareholder of a Company is distinct from that of the Company. That is the very genesis of a Company or a Corporate identity or a juristic person. In this regard, the learned counsel for the appellants relied on a decision reported in 1897 AC 22 (Solomon Vs. Solomon & Co. Ltd.), wherein the House of Lords had held that in law, a Company is a person altogether different from its shareholders and Directors, and the shareholders and Directors of the Company are not liable for the debts of the Company, except to the extent permissible by law.

9. Lastly, it is contended by the learned counsel for the appellants that unless and until opportunity is accorded to the parties and proceedings are conducted in accordance with law, the Court will not be in a position to assess the merits and demerits of the respective cases projected by the parties. In the interest of justice, equity, good conscience and fair play, it is just and necessary that opportunity may be accorded to the appellants by setting aside the order of the learned Master/Single Judge and the matter may be remanded back to the learned Master for fresh consideration and upon placing all the relevant materials and documents by either party for proper appreciation and consideration. Furthermore, the order passed by the learned Master is perfunctory in nature, which was also confirmed by the learned Single Judge by the impugned order, which calls for interference by this Court, inasmuch as the conclusion arrived at by the learned Master as well as the learned Single Judge is perverse.

10. Countering the above submissions, the learned counsel appearing for the respondent-Company submitted that on 01.04.2015, the Managing Director of the first appellant-Company, i.e. the second appellant was directed to appear in Court as per Order 21 Rule 41(1)(b) CPC, which was not complied with by the second appellant. Hence, he was arrested on 15.09.2016 for disobedience of the order passed by the learned Master in terms of Order 21 Rule 41(3) CPC. The order of arrest was not challenged by the second appellant and the same attained finality. Even though the second appellant is not a judgment debtor in terms of the Award, dated 14.06.2001, the second appellant has, as an officer of the Company, made endorsement before this Court that he would settle all the issues. Therefore, now the second appellant cannot take a different stand as if he had made the endorsement not in his individual capacity.

11. The learned counsel appearing for the respondent-Company further submitted that, in the present case, it has been

found by the Income Tax Appellate Tribunal, by order dated 27.12.2017 (M/s.Perfect Stone Limited Vs. Income Tax Officer) that the first appellant-Company had made various cash transactions with its sister-Company, for which there is no convincing reply from either the first appellant-Company or its sister concern. Thus, the learned counsel appearing for the respondent-Company submitted that the said order of the Income Tax Appellate Tribunal clearly shows that the siphoning off the funds by the first appellant-Company to its sister concern M/s.Perfect Stone Limited in the year 2012, is after confirmation of the Award by the Supreme Court on 07.09.2010 in Civil Appeal No.6495 of 2003. Therefore, it is just and necessary that the Corporate Veil of the first appellant-Company be pierced to prevent it from defeating the enforcement of the Award passed against it. Further, despite the order of interim injunction, dated 17.09.2010 passed by this Court in O.A.No.991 of 2010, the appellants have closed a charge of Rs.20 crores, but never chose to settle the respondent-Company's legitimate dues. The appellants did not even deem it necessary to seek the leave and permission of this Court before closing such charge of Rs.20 crores.

12. The learned counsel appearing for the respondent-Company further submitted that, in the present case, the Corporate personality had been used as a cloak for fraud and improper conduct, and to prevent such fraud and improper conduct, the Corporate Veil should be lifted and the persons responsible for the affairs should be held liable for committing the illegality and defrauding the respondent-Company. This is clear from the decision of the Supreme Court reported in 2004 (7) SCC 1 (Singer India Ltd. Vs. Chander Mohan Chadha and others).

13. In support of the contention regarding lifting of Corporate Veil, the learned counsel appearing for the respondent-Company also relied on a decision of a Division Bench of the Bombay High Court reported in MANU/MH/1827/2016 = 2017 (201) Comp. Cases 46 (Bombay), (Bhatia Industries and Infrastructure Limited Vs. Asian Natural Resources (India) Limited and others), wherein it was held that the Doctrine of piercing or removing the Corporate Veil is applicable not only in the cases of holding or subsidiary Companies or in the case of tax evasion, but can be equally applied in the execution proceedings. It was further held that the Corporate Veil can be lifted in cases where the Court, from the materials on record, comes to the conclusion that the judgment debtor is trying to defeat the execution of the Award which is passed against him.

14. The learned counsel appearing for the respondent-Company further contended that the Award in this case was passed 18 years ago, i.e. on 14.06.2001, which remained unsatisfied till

date on account of the technical objections raised by the appellants on each occasion. The appellants have approached this Court by way of the present appeal with unclean hands having suppressed vital facts, which have been repeatedly placed by the respondent-Company before this Court. Thus, for the afore-stated reasons, the learned counsel appearing for the respondent-Company prayed for dismissal of the O.S.A.

15. In reply, with regard to the reliance placed by the learned counsel appearing for the respondent-Company on the order passed by the Income Tax Appellate Tribunal, it is submitted by the learned counsel for the appellants that a statement was made by the respondent-Company before the Single Judge that there was an Income Tax Raid on 11.05.2012 and cash to the tune of Rs.35 crores was seized from the residential premises of L.S.Vishnu Prasad, son of L.R.Siva Prasad (second appellant herein) at No.78, Poes Garden, Chennai. Admittedly, the money does not belong either to the son of the second appellant or the second appellant and the money belongs to one Mr.Arvind Nandagopal, the then Managing Director of M/s.Mohan Breweries and Distilleries Limited and the same was admitted by Mr.Arvind Nandagopal himself and the second appellant herein. An affidavit dated 19.05.2012 to that effect was filed before the Income Tax Authority. The said affidavit has also been accepted by the Income Tax Authorities. Even the Income Tax Department had not added that seized amount to the first appellant-Company's accounts or that of the family accounts. This is the clear proof that the seized cash amount does not belong to the appellants.

16. In reply, the learned counsel for the appellants also submitted that the decree obtained against a Company, the same being distinct entity, could not be executed as against the personal property of the Managing Director, or the Managing Director could not be held personally liable.

17. In regard to the lifting of Corporate Veil as argued by the learned counsel appearing for the respondent-Company, the learned counsel for the appellants submitted that in the absence of a case having been made out for egregious fraud, and the same neither being pleaded nor established, there is no question of lifting the Corporate Veil. The identity of a Director or shareholder is distinct from that of the Company.

18. With regard to the remand of the matter back to the learned Master, the learned counsel for the appellants reiterated that the appellants were not given opportunity to place all the relevant materials before the learned Master. Similarly, the respondent had also not placed all the relevant materials to arrive at a fair conclusion, but however, the

learned Master passed an order on 28.08.2019 in a perfunctory manner in E.P.Nos.74 and 75 of 2018, which was confirmed by the learned Single Judge by the impugned order dated 15.10.2019, which calls for interference by this Court and therefore, the learned counsel for the appellants prayed to remit the matter back to the learned Master.

19. Keeping in mind the submissions made on either side, we have perused the materials available on record.

20. Though very many contentions have been raised by both parties, the only question that has to be answered in this O.S.A. is as to whether the impugned order passed by the learned Single Judge suffers from illegality or irregularity warranting interference by us to set aside the same.

21. It is the main submission of the learned counsel for the appellants that there is no personal decree as against the second appellant, and as such, there cannot be an order of arrest for executing the Award of the Arbitral Tribunal, as the Award has been passed against the first appellant-Company alone. The second appellant is not arrayed as judgment debtor in the Execution Petitions and as such, the Execution Petition in E.P.No.75 of 2018 for arrest of the second appellant under Order 21 Rule 37 CPC is not maintainable. The endorsement made by the second appellant on 15.09.2016 undertaking that he would settle the issue in four weeks, in A.No.6900 of 2014 in E.P.No.15 of 2012 before the learned Master, is only in his capacity as the Director of the first appellant-Company and not in his individual/personal capacity. Furthermore, according to the learned counsel for the appellants, there is no allegation of fraud or siphoning off the funds as against the appellants and only if there is such an allegation, the question of lifting the Corporate Veil will arise and then only the liability could be fastened on the Managing Director of the first appellant-Company.

22. Before traversing into the above submissions made on either side, firstly, it would be appropriate to extract Order 21 Rule 41 CPC, which reads as follows:

"Order 21: Execution of decrees and orders:
Rule 41: Examination of judgment-debtor as to his property:--(1) Where a decree is for the payment of money the decree-holder may apply to the Court for an order that--

(a) the judgment-debtor, or

(b) where the judgment-debtor is a corporation, any officer thereof, or

(c) any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release."

23. In the present case, the learned Master had passed an order in the Execution Petition in consonance with Order 21 Rule 41(1)(b) CPC, directing the second appellant as Managing Director of the first appellant-Company to appear before the Court. On appearance, he has made an endorsement stating that he will settle the issue within four weeks. Thus, the endorsement was made by the second appellant representing the first appellant-Company and by making such endorsement, the second appellant made himself personally liable to be proceeded against for enforcement of the decree. Further, on a perusal of the order dated 27.12.2017 passed in I.T.A.No.1610/Mds/2017 etc., by the Income Tax Appellate Tribunal, Chennai, it is clear that the first appellant-Company had made various cash transactions to its sister Company. From the said order of the Income Tax Appellate Tribunal, it could be seen that Rs.35 crores were seized during search and seizure operations carried out by the Income Tax Authorities from the premises of the first appellant-Company and/or its Director(s) and related entities.

24. Further, Section 51 CPC clearly provides various modes of execution of a decree, which reads as follows:

"Section 51 CPC: Powers of Court to enforce execution:-

Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by the sale without attachment of any property;

(c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree."

25. A reading of Section 51 CPC would show that it provides for three modes of execution, which stipulates that execution by detention in prison shall be ordered, if the judgment debtor, has, after institution of the suit in which the decree was passed, dishonestly transferred or removed any of its property so as to delay the execution of the decree. In this case, as stated above, Rs.35 crores in cash were seized during search and seizure operations carried out by the Income Tax Authorities from the premises of the first appellant-Company and/or its Directors and related entities. This would show that the requirements under Section 51 CPC had been satisfied.

26. In the above context, it is appropriate to refer a judgment relied on by the learned counsel appearing for the respondent to a Division Bench of Bombay High Court reported in MANU/MH/1827/2016 = 2017 (201) Comp. Cases 46 (Bombay) (Bhatia Industries and Infrastructure Limited Vs. Asian Natural Resources (India) Limited and others), wherein it was held as follows:

"19. From the conspectus of the judgments which are referred to hereinabove, it is now quite well settled that the doctrine of piercing or removing corporate veil is applicable not only in the case of holding of subsidiary companies or in the case of tax evasion but can be equally applied in execution proceedings. It can be seen from these judgments that the doctrine has been referred to also in cases:

(i) where "two separate corporate entities are functioning as if they are in partnership with one company as an alter-ego of the other company, where one company is bound hand and foot by the other";

(ii) where "parent company's management has steering influence on the subsidiary's core activities that the subsidiary can no longer be regarded to perform those activities on the authority of its own executive directors" ; and

(iii) where "the company is the creature of the group and the mask which is

held before its face in an attempt to avoid recognition by the eye of equity or is a mere cloak or sham and in truth the business was being carried on by one person and not by the company as a separate entity".

(iv) where "two companies are inextricably inter-linked corporate entities".

We therefore hold that the concept of lifting the corporate veil is also available in execution proceedings and answer the question No.1 above accordingly.

20. We are therefore of the view that the corporate veil can be lifted in cases where the Court from the material on record comes to the conclusion that the Judgment Debtor is trying to defeat the execution of the Award which is passed against him. In our view, the learned Single Judge was justified in carrying out that exercise."

27. Further, as contended by the learned counsel appearing for the respondent, the order of the Income Tax Appellate Tribunal, dated 27.12.2017 clearly shows the siphoning off funds by the first appellant-Company to its sister concern M/s.Perfect Stone Limited in the year 2012. Therefore, it is absolutely necessary that the Corporate Veil of the first appellant-Company be pierced to prevent the first appellant-Company from defeating the enforcement of the Award passed against it. If the Corporate Veil is lifted, it could be seen that it is the second appellant behind it. Though the learned counsel for the appellants replied that Rs.35 crores were seized from the residential premises of L.S.Vishnu Prasad, son of L.R.Siva Prasad at No.78, Poes Garden, Chennai, the money does not belong either to the son of the second appellant or the second appellant and the money belongs to one Mr.Arvind Nandagopal, the then Managing Director of M/s.Mohan Breweries and Distilleries Limited and the same was admitted by Mr.Arvind Nandagopal himself and the second appellant herein. An affidavit dated 19.05.2012 to that effect was filed before the Income Tax Authority. The said affidavit has also been accepted by the Income Tax Authorities. But no material is placed before us to substantiate the abovesaid contention.

28. With regard to the reliance placed by the learned counsel for the appellants on a Division Bench decision of this Court reported in 2007 (4) CTC 161 (Sreyas Sripal Vs. Upasana Finance Ltd.), to state that the learned Master had failed to follow the prescribed procedures before ordering the arrest of

the second appellant, it is submitted by the learned counsel appearing for the respondent-Company that on 28.08.2019, the learned Master had allowed E.P.Nos.74 and 75 of 2018 by dismissing the application filed by the appellants to dismiss E.P.No.75 of 2018 and directed show cause notice to be issued to the second appellant in terms of Order 21 Rule 37 CPC and Section 51 CPC. The said show cause notice was issued in Form 12 of Appendix-E of the CPC and the second appellant was directed to be present in Court on 26.09.2019, on which date, he appeared before the Master and was cross-examined by the learned Master on the means available to satisfy the Award. Only thereafter, the learned Master ordered the appellants to deposit a sum of Rs.5 crores on or before 05.11.2019, failing which, it was observed that an arrest warrant will be issued against the second appellant. Therefore, it is incorrect on the part of the learned counsel for the appellants to state that the learned Master had failed to comply with the procedures contemplated under law.

29. Further, we find that for the past 18 years from the date of Award, dated 14.06.2001, the appellants had been dodging to pay the decretal amount for one reason or the other by taking technical grounds.

30. Thus, for the reasons stated above, we find no infirmity in the impugned order passed by the learned Single Judge warranting this Court to make interference in the O.S.A. The O.S.A. is accordingly dismissed. No costs. Consequently, C.M.Ps. are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

CS

To

The Sub-Assistant Registrar,
Original Side, High Court, Madras.

+3cc to Mr.R.Thiagarajan, Advocate, S.R.No.105211, 105210

O.S.A.No.287 of 2019

SV(CO)
CS/20/02/2020