IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.66 OF 2020

M/s. Syscon Consultants Private Limited ... Petitioner

Versus

M/s. Primella Sanitary Products (P) Ltd. & Ors. ... Respondents

Shri Siddharth Yadav, Advocate with Shri Richard Almeida, Advocate for the Petitioner.

Shri Amey Kakaodkar and Ms. A. Godinho, Advocate for the Respondent No.1.

Coram: DAMA SESHADRI NAIDU, J.

Date: 25th February 2020

ORAL ORDER:

Introduction:

This matter has already generated sufficient heat. And, appropriately, the learned counsel on either side have argued the matter extensively. In the end they both have agreed that the Court may clarify certain aspects so that it would obviate the Court's revisiting the matter *in extenso*. So, I set out the facts succinctly.

Facts:

2. The first respondent, Primella Sanitary Products (P) Ltd., contracted with the original respondents 2, 4 & 6 and their respective spouses. Through that contract, those respondents agreed to sell their property to Primella. Though some of these respondents died pending the litigation and their legal representatives were brought on record, I confine

the reference to the original respondents.

3. Complaining that the owners had not been performing their part of contract, Primella sued them for specific performance. It was in 1985. The fact remains that Primella contracted with the three brother but left out their sister. Pending the suit, in 1995 petitioner Syscon Consultants Pvt., Ltd., purchased the property from the sister. It was on the premise that the sister had this piece of property exclusively allotted to her in the inventory proceedings. So, as a result, Primella brought on record the sister and Syscon, too.

4. On the last day of December 2001, the trial Court dismissed Special Civil Suit No.88/87/A. Aggrieved, Primella approached this Court. This Court, in August 2010, allowed First Appeal No.179/2003. Both the parties have approached the Supreme Court for different reasons but could not succeed; all the SLPs were dismissed in September 2016.

5. Once the SLPs were dismissed, in 2017, Primella laid execution. In the meanwhile, Syscon and another company—Asian Resorts Development Ltd.,—filed Special Civil Suit No.53/2019 before the Court of Civil Judge, Senior Division, Margao. Incidentally, before the same forum, Primella's execution petition, too, is pending. The suit was against the three brothers, their sister, and Primella. The plaintiffs in that suit sought the declaration that the judgment and decree Primella secured must be declared void, as a product of fraud and collusion.

6. If we come back to the execution proceedings, Primella as the

decree holder applied under Order XXI Rules 11 (2), 15, and 35 of CPC, requiring the Judgment Debtors 1 to 6 to execute a deed of sale in the Decree Holder's favour for "3/4th undivided share in the suit property." Primella has also sought a declaration that Syscon is entitled only to 1/4th share in the suit property, being the share of the J Dr 9, the sister. Primella wanted the Executing Court to appointment a Court Commissioner under Order 26 Rule 9 of C.P.C., for identifying and demarcating 3/4th share in the suit property and for delivering to Primella the possession of 3/4th share.

7. Syscon resisted the Execution Petition. Eventually, through Order, dt.21.12.2019, the Executing Court rejected Syscon's objections. Aggrieved, the Company has filed this Writ Petition.

Submissions:

Petitioner:

8. Shri Siddharth Yadav, the learned Counsel has submitted that Syscon and Asian Resorts have already filed a civil suit. Pending that suit, the Executing Court should put the execution on hold. According to him, in this regard, the legislative mandate under Order 21, Rule 29 of CPC is unmistakable. He has also contended that through execution proceedings, Primella cannot seek partition or division of the 3/4th share from the undivided suit property. Primella has not, Shri Yadav stresses, acquired any exclusive right, title, or interest in the suit property. Besides, Shri

Yadav has attacked the draft sale deed. First, he has drawn my attention to the Registrar's objection to that draft sale deed. Second, he has pointed out that Primella has not secured Syscon's prior consent before showing it as the consenting party in the draft deed of sale.

9. The Executing Court, Shri Yadav also points out, has indulged in piecemeal adjudication. According to him, in the execution even before the notice could be served on the other judgment debtors, it has taken up the application on the merits and disregarded Syscon's objections. To be explicit, Shri Yadav has submitted that Syscon's vendor—that is the sister of Primella's vendors—has had the property exclusively allotted to her in the inventory proceedings. So, once Syscon purchased the property from her, it not only purchased the entire extent but also secured possession. In that backdrop and with that assertion, Shri Yadav stresses that Primella's application for securing possession cannot be sustained.

Respondents:

10. On the other hand, Shri Amey Kakodkar, the learned counsel for Primella, to begin with, has submitted on instructions that in the EP., the other judgment debtors have already been served with notice but have not chosen to appear. Thus, they have been set ex-parte. About the executing Court's approach in ruling on Syscon's objections, he has, first, submitted that there is no other contesting respondent. Second, when the pleadings were complete, the executing Court has considered the matter on the merits and rendered the impugned order. According to him, that order is

unassailable.

11. Shri Kakodkar has fairly submitted that though Primella as a decree holder may have sought many reliefs, it has never insisted on having physical possession of the property. He has nevertheless submitted that the first respondent wanted to have a sale deed executed by the parties concerned to the extent of the $3/4^{th}$ undivided interest in the total property. With the judgment dated 31.12.2001 attaining finality, that is the only course left open, argues Shri Kakodkar.

12. Once Primella secures a sale deed for the $3/4^{th}$ undivided interest in the property, then it steps into the shoes of its vendors, explains Shri Kakodkar. Then, it will take steps available under law for it to seek division and demarcation of the property and the consequential possession as well.

13. About the pending suit, Shri Yadav contends that Asian Resorts took over Syscon in 2007. But that Company was unaware of this litigation. The erstwhile management of Syscon alone continued the proceedings. So, taking advantage of Asian Resorts's ignorance, Syscon's erstwhile management, stressed Shri Yadav, colluded with Primella. And that collusion has resulted in the decree. The suit is pending.

14. Shri Kakodkar, on the other hand, submits that it is only *mala fide* machination on Sysco's part to drag the proceedings. At any rate, he maintains that the suit is meritless and does not affect Primella's rights.

Mere pendency of the suit, Shri Kakodkar reminds the Court, is no bar for the Executing Court to proceed with the execution, especially, given the decades of time already lapsed.

15. On the pending application under Order XXI, Rule 29 of CPC, Shri Kakodkar has submitted that, first, Sysco filed that application only recently—that is, after Sysco has filed this writ petition. In other words, when the Executing Court passed the impugned order, Sysco's application under Order XXI, Rule 29 had not been before it. Nor has that provision enjoins the Executing Court to avoid the execution merely because the judgment debtor has invoked that provision.

16. Heard Shri Siddarth Yadav, the learned counsel for the petitioner, and Shri Amey Kakodkar, the learned counsel for the respondent no.1.

Discussion:

17. Indeed, Primella secured a decree in 2010. Sysco went up to the Supreme Court but without any success. Later, along with Asian Resorts, Sysco has filed Special Civil Suit No.53/2019. I refrain from adverting to its merits, lest it should prejudice the prospects of either party to that litigation. The fact remains that Primella laid execution in 2017; Sysco's suit was in 2019.

18. Through the impugned order, the Executing Court, to its credit, has discussed all the relevant points, besides addressing all the contentions Sysco has advanced. To that extent, the order does not suffer from

inherent vices, such as non-application of mind.

19. With the judgment, dt.31.12.2001, secured about two decades ago, attaining finality in 2017, we cannot find fault with Primella's laying the execution. True, as Shri Yadav has contended and as Shri Kakodkar has fairly agreed, in these execution proceedings there can be neither division of property nor exclusive possession. But Primella can press, and has rightly pressed, for having a sale deed covering undivided interest in $3/4^{th}$ of the joint property.

20. As to the application the petitioner has filed under Order XXI Rule 29, the Executing Court did not have it when it rendered the impugned order on Order on 21.12.2019. Yet I clarify that the executing Court will consider Syscon's application on the merits once the other parties, if they choose, file their objections. At any rate, it will consider that application expeditiously.

21. In the meanwhile, if Primella secures the Sale Deed in the execution, it will be subject to the outcome of Sysco's application under Order XXI Rule 29 of CPC.

22. Subject to the above clarification, I find no other ground to interfere with the impugned Order, dt.21.12.2019.

No order on costs.

DAMA SESHADRI NAIDU, J.

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