

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2020
Pronounced on: 20.03.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

O.S.A.No.181 of 2019
and C.M.P.No.16959 of 2019

M/s. CJP Industries
Represented by its Managing Partner Mr.S.Julius
W-166/167, Sidco Industrial Estate,
Valavanthankottai,
Trichy - 620 015. ... Appellant

Vs.

1. Amitha Bishnoi
2. Akshaykumar Bishnoi
3. M/s. Techpro System Limited
Represented by its Managing Director
Techpro Towers,
11-A, 17, 5th Cross Road,
Sipcot IT Park, Siruseri,
Chennai - 603 103. ... Respondents

Prayer: Appeal filed under Order XXXVI Rule 9 of C.P.C read with Clause 15 of the Letters Patent, seeking to set aside the fair and decretal order passed by this Court, dated 04.06.2019 in A.No.4830 of 2018 in A.No.1436 of 2018 in A.No.3223 of 2017 in E.P.No.146 of 2016.

For Appellant : Mr.B.Ravi Raja

For Respondents : Mr.Sharath Chandran for R1 and R2
Mr.Nithiyaesh and Vaibhav for R3

J U D G M E N T

R.SURESH KUMAR, J

This Appeal has been directed against the fair and decretal order passed by the learned single Judge of this Court in A.No.4830 of 2018 in A.No.1436 of 2018 in E.P.No.146 of 2016, by order, dated 04.06.2019.

2. The fact in nutshell to be noted for the disposal of this Appeal are as follows :

(i) that the appellant herein is the decree-holder against the third respondent herein, who is the judgment-debtor. The appellant / decree-holder, in order to execute the decree, filed Execution Petition in E.P.No.146 of 2016, where the appellant / decree-holder sought for attachment of an immovable property.

(ii) In the said E.P, order of attachment was made on 05.04.2017 by the learned Master of this Court. Pursuant to the said attachment and after coming to know of the said attachment, the respondents 1 and 2 herein, who were the third parties filed an application in A.No.3223 of 2017 in the E.P, seeking to raise the attachment on the ground that, the property in question, which was attached, was not belonged to the third respondent / judgment-debtor, instead, the property belonged to the first and second respondents. However it has been wrongly quoted, as if the property belongs to the third respondent / judgment-debtor, therefore on that ground the respondents 1 and 2 sought for raising the attachment in their application, i.e., in A.No.3223 of 2017.

(iii) When the said application filed by the respondents 1 and 2 was pending consideration before the Execution Court / Master Court, the present appellant, who is the decree-holder, had filed an application in A.No.1436 of 2018, where, the appellant / decree-holder sought for a prayer to issue subpoena to the Bank Manager, namely, Vijaya Bank, Adyar Branch to furnish before the Court, the entire records pertaining to the bank statements of the persons, in whose names, the property was purchased / settled, namely Mr.Ajaykumar Bishnoi, Mrs.Amita Bishnoi, Mr.Akshay Kumar Bishnoi bearing Account Numbers 30010101 0006986, 3001010 1100 0564, 30010101 0007209, 30010101 1001039 and 60330101 1000343.

(iv) In the said application, i.e., A.No.1436 of 2018 filed by the appellant / decree-holder to issue subpoena to the bank authorities, counter affidavit had been filed by the respondents 2 and 3 and after hearing both parties, the learned Master, on 27.04.2018 passed an order, issuing subpoena to the Manager as has been prayed for.

(v) Aggrieved over the said order made by the learned Master in A.No.1436 of 2018, the respondents 1 and 2 filed Application in the form of appeal before the learned Judge of this Court on the Original side in A.No.4830 of 2018 with a prayer to set aside the order passed by the learned Master,

dated 27.04.2018 in A.No.1436 of 2018 issuing subpoena to the Bank authorities.

(vi) The said application in A.No.4830 of 2018 was heard by the learned Judge, who, through the impugned order, dated 04.06.2019 allowed the said application by setting aside the order, dated 27.04.2018 passed by the learned Master in A.No.1436 of 2018 issuing subpoena to the bank officials. Felt aggrieved over the said order of the learned Judge, dated 04.06.2019 made in A.No.4830 of 2018, the appellant preferred this intra-Court Appeal.

3. We have heard Mr.Ravi Raja, learned counsel appearing for the appellant, Mr.Sharath Chandran, learned counsel appearing for respondents 1 and 2 and Mr.Nithiyaesh, learned counsel appearing for the third respondent.

4. It is the case of the appellant, as has been projected by the learned counsel for the appellant that, the appellant / decree-holder in order to execute the decree, filed Execution Petition in E.P.No.146 of 2016, where, the decree-holder sought for attachment of immovable property, which, according to the appellant, belongs to the third respondent, namely M/s. Techpro Systems Ltd., from whom recovery of money has to be made by the decree-holder.

5. It is the further case of the appellant that, in the said E.P, order of attachment had been passed by the learned Master as prayed for on 05.04.2017, subsequently, the respondents 1 and 2, who were the family members of the erstwhile Managing Director of the third respondent company, filed application to raise the attachment and the said application was pending consideration before the learned Master.

6. In this context, the learned counsel for the appellant has submitted that, the strong case of the appellant in seeking attachment of the property stands in the name of the respondents 1 and 2 was that, for several years, especially during the year 2008, large fund of the third respondent company were siphoned off or diverted to the erstwhile Director's personal accounts, who is none other than the husband of the first respondent and the father of the second respondent. Only out of the fund, which were siphoned off or diverted from the company, the Director of the company, namely Ajay Kumar Bishnoi purchased the property in question on 18.01.2008 by way of sale deed, both in his name and

the first respondent's name and thereafter in the year 2014, he settled the property in favour of the second respondent, who is none other than his son. Therefore it is the case of the appellant that, the property though stands in the name of the respondents 2 and 3 as on date, actually it is the property of the third respondent company, as the same was purchased only out of the fund siphoned off from the company by the individuals namely the first and second respondent family and therefore in that strength, there was every justification on the part of the appellant to seek for attachment of the said property in question, which was in fact considered in proper perspective by the learned Master and accordingly, he ordered attachment of the property. Therefore there had been no reason to raise the said attachment.

7. The learned counsel for the appellant would further submit that, in order to establish the said factor that, the property in question were purchased only out of the fund diverted from the company, it become necessitated for the appellant to produce the bank records and that is the reason why application in A.No.1436 of 2018 was filed by the appellant before the learned Master to issue subpoena to the concerned Bank Manager to produce the accounts in various account numbers of these individuals, namely the first and second respondent and Mr.Ajaykumar Bishnoi, which was also considered and ordered by the learned Master. Therefore the learned counsel for the appellant would submit that, the said order is very innocuous in nature and it become absolute necessity to establish the case of the appellant before the Execution Court, hence it ought not to have been interfered and set aside by the learned Judge, who erroneously set aside the order of the learned Master, through the impugned order, therefore it requires interference from this Court.

8. However, Mr.Sharath Chandran, learned counsel appearing for the first and second respondents would submit that, the property was purchased sometime in 2008, i.e., on 18.01.2008 and the very Execution Petition itself was filed only in October 2016, after 8 years, where knowing well that the property was purchased by the first respondent and the father of the second respondent who subsequently settled the same in the year 2014 in favour of the second respondent, the appellant has filed the said Execution Petition for attachment of the said property, as if that the property stands in the name of the third respondent company or belongs to it. The said attempt made by the appellant / decree-holder in filing the very Execution Petition for attachment itself is not maintainable against the first and second respondent, therefore the order of attachment passed by the Execution Court has to be lifted or raised. Therefore

proper application in A.No.3223 of 2017 has already been filed by these respondents, which was pending consideration before the Execution Court at that time.

9. He further contended that, when that was the position, the appellant / decree-holder should have waited for the decision to be taken by the Execution Court in the said Application, i.e., A.No.3223 of 2017, however in order to cover up the mistake committed by the appellant / decree-holder who filed the E.P against wrong persons presuming that the property in question belongs to the company, had come forward to file an application, i.e., A.No.1436 of 2018 before the Execution Court to issue subpoena to the Bank Manager to produce the account records of all of the private respondents as well as the father of the second respondent in various account numbers without specifying even any period. However since the learned Master allowed the said application, these respondents did not have any option except to file an appeal and accordingly, the present application, A.No.4830 of 2018 was filed, which was infact considered in proper perspective by the learned Judge who allowed the same. Therefore the said order which was impugned herein of the learned Judge is perfectly justifiable and sustainable one, therefore it does not require any interference from this Court.

10. Mr.Nithiyaesh, learned counsel appearing for the third respondent company also made similar submissions, who would submit that, subsequent to the impugned order passed by the learned Judge, based on which, the learned Master has dismissed the very Execution Petition itself, as the same does not have legs to stand independently for seeking attachment of immovable property which admittedly not belong to the third respondent company but belongs to first and second respondents.

11. We have heard the learned counsel appearing for the parties with their rival submissions and also perused the materials placed before this Court.

12. There has been no much dispute in the narration of the facts stated herein above, except on the controversy with regard to the property in question as to whether the property had been purchased by the individuals from the diverted amount or siphoned money of the third respondent company or not. This controversy cannot be gone into by this Court at this stage.

13. The reason being that, the property in question was purchased on 18.01.2008, only thereafter the appellant / decree-

holder seems to have obtained decree and after 8 years, i.e., in the year 2016 only, E.P.No.146 of 2016 was filed by the appellant / decree-holder. While filing the Execution Petition, the appellant / decree-holder should have verified as to whether the property in question stands in the name of the company, without even verifying the same, it seems that the E.P has been filed seeking for attachment of the property, as if it belongs to the company or stands in the name of the company.

14. However, after the order of attachment was passed by the learned Master on 05.04.2017, when the respondents 1 and 2 herein entered appearance by impleadment and sought for raising of the attachment by filing A.No.3223 of 2017, hearing went on in the said application and before the said application was decided one way or other by the learned Master, without waiting for the orders to be passed in this regard, it seems that the appellant / decree-holder filed the other application, i.e., A.No.1436 of 2018 seeking for issuance of subpoena to the Bank Manager for production of the entire records of the individuals with various account numbers for unlimited period.

15. Since the said prayer sought for by the appellant / decree-holder was also allowed by the learned Master by issuing the subpoena as prayed for, the aggrieved party, i.e., the respondents 1 and 2 filed the present application, i.e., A.No.4830 of 2018 by way of Appeal before the learned single Judge.

16. While considering the said application, the learned Judge, has, in proper perspective discussed the matter and decided the same. To appreciate the said consideration made by the learned Judge, in the order impugned, the relevant part of the said impugned order is quoted hereunder :

"3. According to the applicant, they had purchased the property as early as on 18.01.2008 and they are the absolute owners of the property. The said application to raise the attachment is pending. While so, the first respondent/decreed holder had filed A.No.1436 of 2018 before the learned Master seeking to issue Subpoena to the Vijaya Bank, Adyar Branch to furnish the entire records pertaining to the transactions of Mr.Ajaykumar Bishnoi, Mrs.Amita Bishnoi and Mr.Akshay Kumar Bishnoi contending that several crores of rupees has been illegally routed

from the account of the Judgment Debtor company to the personal account of the promoter of the family members of the Judgment Debtor company. The learned Master by an impugned order has allowed the said application accepting the plea that the property in question has been purchased out of the funds that were siphoned or diverted.

4. Aggrieved by the said order, the applicants have come forward with the present A.No.4830 of 2019 which is in the nature of the appeal against the order of the learned Master made in A.No.1436 of 2018. A perusal of the order of the learned Master discloses that it is beyond the scope of the proceedings and the prayer sought for. Admittedly, the decree came to be passed only on 06.01.2016 and the property in question was purchased by the applicant even in the year 2008. Therefore, the claim of the decree holder that the property in question has been purchased out of the funds of the company, which were siphoned off or diverted is wholly immaterial to the present proceeding. The decree holder cannot contend before the Civil Court that the property was purchased from the funds belonging to the company in the name of the promoters of the company.

5. In view of the above, I am of the considered opinion that the learned Master was in error to directing the production of the accounts and it is also seen that a specific period has not been mentioned. Issuance of such Subpoena to the Bank Manager directing him to produce accounts without mentioning a specific period will only lead to confusion. I find that the order impugned is beyond the jurisdiction of the Executing Court. Hence, A.No.4830 of 2019 is allowed order of the learned Master dated 27.04.2018 made in A.No.1436 of 2018 is set aside. A.No.1436 of 2018 will stand dismissed. No costs."

17. The learned Judge has also taken note of the fact that, the property in question was purchased on 18.01.2008 by the individuals and the decree was obtained by the appellant / decree-holder against the third respondent company / judgment-debtor only on 06.01.2016, i.e., after 8 years and the Execution Petition was filed only on 24.10.2016. Therefore the appellant / decree-holder having known to the fact that, the property in question does not belong to the third respondent company still had filed the said Execution Petition seeking for attachment of the property, without even showing the name of the actual owners of the property.

18. Though it is the case of the appellant / decree-holder that, the property in question was purchased by the individuals on 18.01.2008 only out of the fund which were mainly siphoned off from the company, that could only be construed as an after thought. The reason being that, if at all the appellant / decree-holder was having the said fact in mind, he could have filed an Execution Petition after collecting the particulars to substantiate certain allegations.

19. Moreover at the time of filing the Execution Petition, the appellant / decree-holder was in the impression that, the property belongs to the third respondent company or it stands in the name of the third respondent company. But only after the respondents 1 and 2 came into picture and filed a petition to raise the attachment, off late, the appellant / decree-holder, in order to cover up such mistake committed by them in filing the Execution Petition against wrong persons, of course against a wrong property, since the same does not belong to the company, against whom only the appellant / decree-holder obtained decree, the latter application, which was in question before the learned Judge, to issue subpoena to the Bank Manager for production of records, was filed.

20. Therefore the said application filed before the learned Master and ordered by him made in A.No.1436 of 2018 was not only an after thought, but also an application without any plausible reasons and foundation to stand. However the learned Master without having gone into these aspects allowed the said application, by order, dated 21.07.2018. Therefore the learned single Judge, who passed the present impugned order, dated 04.06.2019, having gone into all these aspects, has allowed the present application, i.e., A.No.4830 of 2018 filed by the respondents 1 and 2 herein, by setting aside the order of the learned Master, dated 27.04.2018 in A.No.1436 of 2018.

21. We are fully satisfied with the reasons given by the learned Judge for reaching such conclusion in the order impugned, therefore the same need not be interfered with, as it does not require any such interference.

22. It is also to be noted that, subsequent to the impugned order of the learned Judge, the learned Master has dismissed the said E.P, thereby there is no Execution Petition as of now between the parties. At the same time, it is also to be noted that, mere dismissal of the said Execution Petition will not preclude the present appellant / decree-holder to file a fresh Execution Petition for recovery of money or execution of the decree with any available source of money or property belong to the third respondent company. Therefore the present attempt made by the appellant / decree-holder assailing the said impugned order of the learned Judge, dated 04.06.2019 by preferring the present intra-Court appeal is unworthy and undeserving, hence, it is liable to be dismissed, which we do so accordingly.

23. In the result, this Appeal is dismissed. However there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

tsvn
To

The Sub Assistant Registrar(O.S)
High Court, Madras-104.

+1cc to Mr.Govind Chandrasekhar, Advocate SR.24507

Judgment in
O.S.A.No.181 of 2019

MR(CO)
CB(17/06/2020)

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