04.02.2021
Sl. No. 22
srm

C.O. No. 572 of 2020

Smt. Sumita Dutta
Vs.
The Bengal Freemasons Trust Association

Mr. Debojyoti Basu,
Mr. Subhankar Chakraborty,
Mr. Saptarshi Datta,
Ms. Shreemoyee Ghosh
…for the Petitioner.
Mr. R.L. Mitra,
Ms. Priyanka Dhar
…for the Opposite Party.

This revisional application has been filed by the claimant/award-debtor being aggrieved by an order dated February 10, 2020 passed by the learned Chief Judge, City Civil Court at Calcutta in Misc. Case No.2046 of 2018. Misc. Case No.2046 of 2018 is an application under Section 47 of the Code of Civil Procedure and arises out of Title Execution Case No.12 of 2018. The petitioner was the claimant.

According to the petitioner, disputes and differences arose in relation to the Memorandum of Understanding (MOU) entered into between the parties which had taken effect from July 1, 2005. The petitioner was engaged as an operating agent to run a property of the opposite party, which belongs to a trust being Premises No.19, Park Street, Kolkata-16, comprising of a lawn and a Hall, namely, Freemasons Hall.

The premises were let out for the purpose of functions and the donations were collected from such persons mainly member of the trust, who held their functions in the premises. The petitioner was entrusted with the entire work of carrying out the operations of the premises and collection of donations, supervising and management of the private functions in terms of the MOU. As the opposite party failed to renew the licence as an operating agent, the petitioner raised a dispute and the matter was referred to arbitration. The arbitral tribunal passed the award on April 19, 2012, thereby, turning down the claim of the petitioner for renewal of the licence and/or for treating the claimant as a permanent licensee. The tribunal disbelieved the story of construction of a permanent structure by the claimant/petitioner. By the selfsame award, the counterclaim of the opposite party was allowed and the opposite party got a decree of eviction, mesne profits, interests, costs, etc. The award was challenged vide Misc. Case No.1051 of 2012. The learned Chief Judge, City Civil Court at Calcutta dismissed the Misc. Case No.1051 of 2012. The said order was challenged by filing F.M.A. No.542 of 2017. This Court dismissed the appeal. The order of this Court was challenged up to the Hon'ble Apex Court and the Special Leave Petition was dismissed.

With this chequered history, the opposite party put the award dated April 19, 2012 into execution by filing Title Execution Case No.12 of 2018. The petitioner filed an application under Section 47 of the Code of Civil Procedure challenging the executability of the decree on the ground that the decree was *void ab initio* as the arbitral tribunal did not have the jurisdiction to pass an eviction decree. Evidence was going on in the Misc. Case. During recording of evidence, the petitioner filed an application for production of certain documents, which were required for execution, discharge and satisfaction of the decree. According to the petitioner, when the question as to the identity of a representative of a party was raised in an execution proceeding, the documents, on the basis of which such party was authorised to act as a representative of the opposite party should be directed to be produced for the proper adjudication of the Misc. Case and also to enable the petitioner to cross-examine the witnesses properly. From the application filed by the petitioner before the learned Court below, it appears that the petitioner approached the learned Court for direction upon the opposite party to transmit, all resolutions and/or minutes of the trust starting from the year 2001 till the initiation of litigation. The petitioner also prayed for a direction upon the opposite party to produce all books of accounts, ledgers, income tax returns, returns filed with Registrar of Companies, service tax register and the receipts since 2001. Such prayer of the petitioner was rejected. The petitioner approached this Court under Article 227 of the Constitution of India, aggrieved by the said order.

Records reveal that the MOU was effective from July 1, 2005. The petitioner was engaged as an operating agent to operate, supervise and collect donations from the functions held by the members of the trust. The petitioner claimed to be a licensee. The petitioner herself initiated a proceeding under the Arbitration and Conciliation Act on the strength of Clause 8 of the MOU. Thus, feigning ignorance of the MOU with regard to the signatories of the MOU and the persons who were authorised to enter into the MOU with the petitioner is nothing but a ploy to drag the proceedings. The husband of the petitioner, as the constituted attorney of the petitioner, signed the MOU. The petitioner also cross-examined her own husband in the proceeding. Thus, it cannot be accepted that the petitioner and her husband were unaware of the signatories to the MOU and if such argument of the petitioner is accepted then the very claim of the petitioner to be a licensee on the basis thereof is unfounded. The moot question in the arbitration proceeding was whether the petitioner was entitled to renewal of licence to operate on the basis of the MOU or on the basis of her claim of having acquired the status of a permanent licensee by constructing permanent structures on the property. The defence of the opposite party in the proceeding was that by virtue of the termination of the licence due to efflux of time, the petitioner could not continue to run the premises as an operating agent and must hand over vacant possession of the opposite party to the trustees of the property.

Thus, I do not find any reason as to why all books of accounts, ledgers, income tax returns, service tax registers and other documents, as prayed for since 2001, would be relevant for the adjudication of the Misc. Case. Misc. Case 2046 of 2018 is only for adjudication of the executability, discharge and satisfaction of the decree. There is no question of any controversy with regard to the identity of any person herein because the petitioner cannot deny the MOU, which is the basis of her claim in the arbitration proceeding. Whether there was a Board Resolution allowing the opposite party to enter into the MOU with the petitioner is beyond the scope of the executing Court, inasmuch, the MOU was considered in details all through the litigation up to the Hon'ble Apex Court.

The decision of Jai Narain Ram Lundia vs. Kedar Nath Khetan & Ors. reported in AIR 1956 SC 359 does not help the petitioner, inasmuch, in the dispute leading to the filing of this revisional application, neither the identify of the award holder nor that of the award debtor was ever in question. There was also no question as to whether the award debtor was in a position to perform her part of the award. There is also no dispute with regard to the identity of the property. Thus, I do not find any relevance of the judgment.

The judgment in Century Textiles Industries Limited vs. Deepak Jain & Anr. reported in (2009) 5 SCC 634 also does not help the petitioner, inasmuch as, one Mr. Deepak Jain/Mr. D.K. Jain against whom the decree was sought to be enforced, denied to be the same D.K. Jain, owner of M/s. Surya Trading Company, the judgment debtor therein and the Hon'ble Apex Court held that the identity of this person could be decided in the execution for discharge and satisfaction of the decree. I do not find from the Misc. Case that there are contentions on these lines made by the claimant. The claimant has asked for production of some documents since 2001 with regard to the accounts, and financial aspects in the functioning of the trust. The accounts, ledgers, income tax returns, service tax register, etc. of the trust have no relevance and the claimant as an operating agent does not have any business to have them. This Court finds that the ploy of the claimant to delay the execution proceeding is apparent from the conduct. The claimant is already enjoying a stay of the execution on the basis of an order of this Court and is, thus, dragging the proceeding.

This revisional application is, thus, dismissed.

The learned Executing Court is directed to dispose of the execution case expeditiously preferably within a period of three months from the next date fixed.

This Court has not gone into the merits of the executability of the decree and the learned Court below shall proceed independently while disposing of the Misc. Case and execution proceeding, without being influenced by any observation made hereinabove.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)