

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 2379 OF 2020

IN

COMMERCIAL EXECUTION APPLICATION NO. 565 OF 2019

Parasram H. Bhojwani

... Applicant/
Judgment Creditor

vs.

Pravinchand Sehgal and Ors.

... Respondents
Judgment Debtors

Mr. S. C. Naidu a/w. Mr. Aniketh Poojari and Mr. T. R. Yadav i/b. M/s. C. R. Naidu & Co. for the Applicant.

Mr. Vaibhav Charalwar and Mr. Pritvish Shetty i/b. Vidhii Partners for the Judgment Debtors.

Ms. Kanchan Rane, 1st Assistant to Court Receiver present.

CORAM : A. K. MENON, J.

DATED : 3rd AUGUST, 2021.

P.C. :

1. By this application the judgment creditor seeks the following reliefs :

(a) *The Judgment Debtor No. 3 be directed to deposit in court, to the credit of the Execution Application a sum of Rs. 5,30,000/- being the proceed from the sale of 42 seater Tata Star bus or in the alternate pay directly to the Applicant in part satisfaction of the Decretal amount.*

(b) The Judgment Debtor No. 3 be directed to deposit in court to the credit of the Execution Application a sum of Rs. 65,000/- being the proceed from the sale of Honda Civic or in the alternate pay directly to the Applicant in part satisfaction of the Decretal amount.

2. Mr. Naidu appearing in support submits that the reliefs sought in the present application are a consequence of part disclosure and that thereby part non-disclosure of assets. He has invited my attention to the order dated 22nd April 2019 and paragraph 4 thereof which makes reference to a two page list of assets annexed to the order as “N-1”. “N-1” was tendered by Mr. Naidu on behalf of the Judgment creditor on 22nd April, 2019 and intended to list all assets of the judgment debtors pursuant to Order 21 Rule 41.

3. My attention is invited to item no. 19 of the N-1 purporting to be disclosure under Order 21 Rule 41 which includes a 42 seater bus. The particulars of this bus was not provided and details which were to be furnished by the judgment debtor were not provided. Particulars were later provided only on 26th July, 2019 pursuant to an order passed by this Court on 12th July, 2019 in Chamber Summons (L) No. 840 of 2019. Paragraph 5 of that order directed the judgment debtor to file a further affidavit disclosing material particulars of the motor car which had been sold. Mr.

Naidu pointed out that disclosure of motor car as part of the assets was not made and therefore it was suppressed when the order dated 22nd April, 2019 was passed. There is substance in this submission since Exhibit D-2 of affidavit dated 5th April, 2019 sets out statement of immovable and movable property of the judgment debtor no. 3 and the movable includes the 42 seater bus to which reference is made. Item no. 19 of the list of assets as also the motor car which along with the bus was collectively valued at Rs. 22,40,542/-. By this application Mr. Naidu seeks a direction to the respondent to bring into Court the sale proceeds of these two vehicles.

4. Learned counsel for the respondent has opposed this application. According to the learned counsel for the respondent these sales took place in the regular course and was not intended to defeat the decree. He therefore submits that there is no occasion to bring these amounts to the Court. Nevertheless he admits that the decree is for a sum in excess of Rs. 5 crores and that a Commercial Appeal has been filed and is pending.

5. Although decree was initially stayed conditionally upon deposit of the decretal amount within 16 weeks the amount was not deposited and execution has therefore proceeded. On a query from the Court Mr. Charalwar admits that the decree has not thereafter been stayed.

6. In these circumstances and considering the provisions of Section 51(e) of the Code these amounts can be brought to the Court. I find that

though the value as on 2nd April, 2019 is shown as Rs.22,40,542/- subsequent disclosure on oath reveals that the bus was sold for Rs. 5,30,000/- and the car was sold for Rs. 65,000/-. There is no explanation why these have been sold for the collective price of Rs. 5,95,000/- when the value was in excess of Rs. 22,40,542/-. There is no reason whatsoever as to why these amounts should not be brought to the Court since admittedly these amounts have been collected. In my view and considering the delays and the obstructive conduct of the respondent in making improper disclosures, the attempt is clearly to defeat and delay the execution of the decree . There is no reason why this relief should not be granted especially since respondent no. 3 was party to the disclosure, a fact that is not disputed by the respondent. Accordingly I pass the following order :

- (i) Application is allowed in terms of prayer clause (a) and (b).
- (ii) Deposit to be made within a period of two weeks from the date of uploading this order.
- (iii) Respondent -Judgment Debtors jointly and/or severally to pay cost of Rs. 25,000/- to the Applicants.
- (iv) Interim Application disposed in the above terms.

(A. K. MENON, J.)