

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7029-2021 (O&M)

Date of Decision: April 09, 2021

SHIV DIAL SUD & SONS (INDIA) PETITIONER(s)

Versus

SAAR MEDTEC LL COMPANY (JORDAN) RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Monish Panda, Advocate and
Mr. Umang Goyal, Advocate
for the petitioner.

Mr. Varun K. Chopra, Advocate,
Mr. Vipul Joshi, Advocate and
Mr. Gurtejpal Singh, Advocate
for the respondent.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

This writ petition has been filed for quashing and setting aside part of order dated 15.03.2021 (Annexure P-5), passed by learned Additional District Judge, Ambala to the extent it is observed that the petitioner/judgment debtor would not alienate any of his properties till 30 days of passing of the order or till filing of fresh execution by the respondent-decree holder, whichever is earlier.

Brief facts necessary for adjudication of this matter are that award dated 08.03.2018 (Annexure P-2) was passed by the sole Arbitrator in respect to a dispute, which had arisen between the parties. Place of

arbitration is London, United Kingdom. Execution petition (Annexure P-3) was filed by the respondent on 04.09.2020, before the learned Additional District Judge, Special Commercial Court, Ambala. Respondent's application has been dismissed by the learned Additional District Judge, Ambala vide order dated 15.03.2021 on the ground that jurisdiction for enforcement and execution of award in question lies with the High Court. However, while dismissing the application under Order 21 Rule 54 read with Section 60 CPC, learned ADJ, Ambala observed as under:-

“However, in the interest of justice, under Section 151 CPC, it is ordered that in case fresh execution is filed by the DH within 30 days from the date of this order or till filing of fresh execution, whichever is earlier, the JD shall not alienate any of his properties to defeat the rights of the DH”

Aggrieved with this interim relief granted by the learned ADJ, Ambala, while dismissing the respondent's application, present writ petition has been filed.

Learned counsel for the petitioner submits that once learned Additional District Judge, Ambala did not have the jurisdiction to entertain the application under Order 21 Rule 54 read with Section 60 CPC, direction for restraining the petitioner from alienating any of its properties for thirty(30) days or till filing of fresh execution petition, whichever is earlier, is absolutely illegal and unjustified. It is further stated that an international award, in any case, would first have to be enforced before its execution. It is submitted that the respondent did not take any action since the passing of the award dated 08.03.2018 and incorrectly filed the application for execution

under Order 21 Rule 54 read with Section 60 CPC. Learned counsel argues that once learned Additional District Judge admittedly did not have jurisdiction to entertain the execution petition, passing of interim directions is clearly illegal. Learned counsel for the petitioner relies upon the judgment of Hon'ble Supreme Court in *Deepak Agro Foods Vs. State of Rajasthan and others (2008) 7 SCC 748*, *Deep Industries Ltd. Vs .ONGC (2020)15 SCC 706* and *PSPCL vs. EMTA Coal Ltd.SLP No.8482 of 2020*, decided on 18.09.2020, to submit that present writ petition is maintainable as impugned direction in order dated 15. 03.2021 lacks inherent jurisdiction. Learned counsel for the petitioner during the course of arguments submitted that though the petitioner has no plans in the near future to alienate its immovable property, there was no occasion for learned ADJ, Ambala to restrain alienation of property by the petitioner, while dismissing the execution petition due to lack of jurisdiction, thereby leading to an impression of a prima facie case in its favour. It is, thus, prayed that this writ petition be allowed.

Reply on behalf of the respondent has been circulated on the e-mail address, created for the purpose of video conferencing. Print out of the same be taken and attached with this file.

Learned counsel for the respondent primarily argues on the maintainability of this writ petition itself. He submits that at best the remedy, if any, available to the petitioner would be under Section 115 CPC and present writ petition against the respondent is not maintainable. He further submits that inherent power under Section 151 CPC has been correctly exercised by the learned Addl. District Judge, Ambala to protect the interest

of the respondent for a period of 30 days or till filing of fresh execution in accordance with law, whichever being earlier. Learned counsel submits that period of 30 days in any case comes to an end on 14.04.2021. It is further submitted that no prejudice whatsoever has been caused to the petitioner by the direction issued by the learned ADJ, Ambala while dismissing the respondent's application. Learned counsel for the respondent seeks dismissal of this writ petition on the ground that an alternate efficacious remedy by way of a revision petition is available. He relies upon the judgment of Hon'ble Supreme Court in *Sadhana Lodh Vs. National Insurance Co. Ltd. and another (2003) 3 SCC 524*. Learned counsel also relies upon the judgment of Hon'ble Supreme Court in *Mohd. Yunus Vs. Mohd. Mustaqim and others (1983) 4 SCC 566* to submit that no interference is called for in the impugned order, in exercise of supervisory power under Article 227 of the Constitution of India. Learned counsel for the respondent further submits that petitioner is in fact indulging in speculative litigation to impede enforcement of the Foreign Arbitration Award and that there has been no miscarriage of justice, which calls for interference of this Court. It is, thus, prayed that this writ petition be dismissed.

I have heard learned counsel for the parties and have gone through the file as well as various judgments referred to, with their able assistance.

Keeping in view the object of minimalizing judicial intervention in matters under The Arbitration and Conciliation Act, it is a settled position that interference in exercise of jurisdiction under Articles 226.227 of The Constitution of India is extremely limited and intervention

can be made in cases of exceptional rarity or cases which are patently lacking in inherent jurisdiction.

Though an alternate remedy under Section 115 CPC is doubtlessly available to the petitioner, it shall indeed be a futile exercise to relegate the petitioner to avail the said remedy at this stage, especially keeping in view the fact that 30 days period as mentioned in order dated 15.03.2021 comes to an end on 14.04.2021. It is not in dispute that the learned ADJ, Ambala did not have the jurisdiction to entertain the application under Order 21 Rule 54 read with Section 60 CPC, filed by the respondent and it has correctly relegated the respondent to avail its remedy in accordance with the provisions of law and especially keeping in view the judgment of the Hon'ble Supreme Court in ***Government of India Vs. Vedanta Ltd. 2020 (10) SCC 1***. While attacking passing of this direction for lack of jurisdiction, it has been urged that such a direction issued without there being any material to justify the same before the learned Additional District Judge, shall be misused by the respondent to stake a prima facie case in its favour. Per contra, learned counsel for the respondent has raised an apprehension that setting aside of this direction will be misused by the petitioner and that any conclusive finding of this Court might impact or prejudice a bonafide prayer which may be addressed by the respondent in the application to be filed by it seeking its remedy before the appropriate forum. Moreover, the petitioner may alienate its property thereby frustrating the right of the respondent.

In my considered opinion, in the given factual matrix proper course to be adopted by the learned ADJ, Ambala was to have simply

relegated the respondent to avail its remedy without any direction restraining the present petitioner from alienation of its property for 30 days. Accordingly, direction issued by the learned ADJ, Ambala for restraining the petitioner from alienating any of its properties for 30 days from the date of the said order i.e. 15.03.2021 till filing of fresh execution by the respondent, whichever being earlier, is set aside. It is pertinent to note at this stage that this court has taken due notice of Mr. Monish Panda, Advocate, learned counsel for the petitioner expressing that the petitioner in the near future has no plans to alienate its immovable property. It is clarified that the respondent is at liberty to avail the remedy/remedies as are available to it in accordance with law, for the enforcement and execution of the award dated 08.03.2018. Furthermore, setting aside of the interim relief as above granted by the learned ADJ, Ambala vide order dated 15.03.2021, is not a reflection on the merits of the matter, which needless to say would be adjudicated by the appropriate forum/authority in accordance with law.

This writ petition is disposed of accordingly.

April 09, 2021

Sunil

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(LISA GILL)
JUDGE