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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 1st September, 2021

\+ **EX.F.A. 3/2020 & CM APPLs. 7447/2020, 850/2021, 6169/2021**

M/S INDIA OFF SET PRINTERS PVT LTD & ANR ..... Appellants
Through: Mr. Javed Ahmed, Advocate with Appellant No.2 and his son in person.

versus

INTECH CAPITAL LTD ..... Respondent
Through: Ms. Mallika Ahluwalia, Advocate with Mr. Dhruv Goel in person.
Mr. Vivek Dudeja, Advocate.

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\+ **EX.F.A. 4/2020 & CM APPLs. 7499/2020, 6174/2021**

M/S INDIAN OFF SET PRINTERS PVT LTD & ANR..... Appellants
Through: Mr. Javed Ahmed, Advocate with Appellant No.2 and his son in person.

versus

INTECH CAPITAL LTD ..... Respondent
Through: Ms. Mallika Ahluwalia, Advocate with Mr. Dhruv Goel in person.
Mr. Vivek Dudeja, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

2. The present two appeals have been filed challenging the impugned orders dated 9th January, 2020 by which the Executing Court has issued warrants of attachment of the machines of the Appellants.

3. The brief background to this case is that Appellant No.1, which is a Private Limited Company engaged in the business of publishing and

printing books, had availed of loan facilities from the Respondent - Intech Capital Ltd. The loans were disbursed sometime in 2012. However, due to defaults by the Appellants, the matter was referred to arbitration. On 19th August, 2015, the Sole Arbitrator passed an *ex-parte* award in favour of the Respondent. The operative portion of the award reads as under:

> *"19. In the facts and circumstance of the present case, I am of the view that despite several opportunities, the respondents have not contested, filed or protest against the claim or any of the documents and were proceeded ex-parte vide order dated 26.05.15. In my opinion, from the conduct of the respondents it is clear that they have no defense to the claim and are intentionally not appearing in the arbitration proceedings. There is no dispute that the loan Agreement along with other documents was executed between the parties, accordingly the respondents were bound by the terms of the documents and under liability to pay the installments.*
>
> *20. Undisputedly the respondent no.1 had defaulted in payment. Respondent nos. 2 & 3 being the guarantor are also liable for the payment due along with principle amount due. The claimant is able to prove its case on the bases of the documents. After going the statement of claim, statement of accounts, evidence and all other documents annexed along with the statement of claim, this Arbitrator is of the opinion that all the respondents are severally/ jointly liable for the amount due and payable to the claimant.*
>
> *21. Accordingly the claim is allowed and an award is passed for a sum of Rs.1,11,12,898/- against the respondents and in favour of claimant.*

> *The claimant would be entitle to interest @18% p. a. on the amount awarded from 13.02.2015 till the final payment is made.*
>
> *22. Further, claimant is also entitled for cost of litigation a sum of Rs.50,000/- against the respondents. The respondents shall pay severally or jointly the amount to claimant within 30 days from the date of this award.*"

4. The said award was not challenged by the Appellants. Accordingly, the Respondent sought to execute the award. In the execution proceedings, warrants of attachment have repeatedly been issued since 2017. An application was then moved by the Appellants filing objections against the warrants of attachment. It is in these proceedings that the impugned orders dated 9th January, 2020 have been passed directing attachment of the machinery. The operative portion of the impugned orders reads as under:

> "*An application u/s 151 CPC filed today on behalf of JD no.2 is being dismissed for want of any merit in the application. There is no merit m the submission that JDs are willing to make payment of Rs. 5 lakh in case DH settles both the execution petition for around Rs. 60 lakhs. It is important to note that total decreetal amount in both the execution petition bearing no.9624/16 and 9658/16 as on date is more than Rs. 2.5 crore.*
>
> *Warrant of attachment of machines be issued along with police aid. Copy of today's order-sheet be annexed with warrant of attachment to rule out any confusion in issuance of warrant of attachment. To appear before learned ACJ on 25.01.2020 and for report on 27.02.2020.*"

5. From the above it is clear that as against the total outstanding dues in both the execution petitions of approximately Rs.2.5 crores, the Appellants offered only a sum of Rs.60 lakhs. Under such circumstances, directions for

attachment of the machinery were passed by the Executing Court.

6. In the present appeals, on the first date i.e., 25th February, 2020, a stay was granted of the impugned orders, subject to the deposit of Rs.50 lakhs in two instalments i.e., Rs.10 lakhs and Rs.40 lakhs. The said amount of Rs.50 lakhs has been deposited by the Appellants with the Respondent. The Court had, thereafter, granted leave to the Appellants for de-sealing of the machinery. Accordingly, applications have been moved seeking de-sealing of the machinery. In the said applications, it is the case of the Appellants that they have some pending orders *qua* printing etc., which they would like to execute. The Appellants also state that in view of the attachment orders, they are unable to use the machinery and are being deprived of their livelihood, accordingly, de-sealing is sought.

7. The applications seeking de-sealing of the machinery were first listed on 19th February, 2021, on which date a direction was issued that the Appellants would file an affidavit in respect of any existing work orders and any rent obtained from the immovable property which is located at Okhla Industrial Estate. The said direction reads as under:

> "*4. Mr. Ahmad will, thus, obtain instructions, not only qua any existing work orders, but will also file an affidavit, as to the rent obtained, from the immovable property which, I am told, is located in Okhla Industrial Estate.*"

8. Thereafter, the Appellants filed an affidavit informing the Court that they have orders from NCERT. The said affidavit was very cryptic and did not place on record copies of the work orders. In view thereof, on 5th July, 2021, directions were issued that a copy of the email from NCERT shall be placed on record, along with an affidavit disclosing details of the

Appellants' movable and immovable properties. The said directions read as under:

> "*6. Accordingly, the following directions are issued:*
> *i. The affidavit dated 17th March, 2021 states that a work-order has been received by the email dated 19th February, 2021 from the NCERT. Let the said email be placed on record, along with any further documentation which show that the Appellant is receiving concrete work-orders.*
>
> *ii. All the three Appellants shall also, vide an affidavit, disclose details of any immovable properties or movable properties which they own.*
> *iii. In the meantime, the Id. Counsel for the Appellants shall also obtain instructions as to what would be the monthly payments that they can deposit in a regular manner, so as to enable the Appellants to seek release of the machinery and to commence its business.*"

9. On 5th July, 2021, insofar as the rental amounts are concerned, in respect of property No. X-36, Phase - II, Okhla Industrial Area, New Delhi admeasuring 400 sq. yds., a submission was made on behalf of the Appellants that rent has not been paid by the Garnishee since August, 2018. Relevant extract of the said order dated 5th July 2021 is set out below:

> *"8. Further during the hearing, Mr. Ahmed, Id. Counsel was directed to seek instructions as to the details and the amounts being paid by the garnishee, as rent for the premises X-36 Okhla, Industrial Area, Phase-II. Upon seeking instructions, Mr. Ahmed, Id. Counsel submits that the premises are on rent with the garnishee, however, the rent has not been paid by the garnishee since August, 2018."*

Accordingly, notice was issued to the Garnishee and the Garnishee was directed to file an affidavit giving details as to since when it is in occupation of the said premises and in what capacity, rent paid and the total payment that has been made till date to the Appellant, as also the amount of monthly rental payment being made for the premises.

10. Pursuant to the said order, an affidavit has been filed by Mr. Jagdish Prasad Sharma as per which the Appellants have received an order for printing of 10,000 books from NCERT. Insofar as the other assets are concerned, for the first time it is disclosed in this affidavit that an agreement to sell was entered into by the Appellants with M/s Sun Graphic in 2018 and that the said Garnishee has stopped paying rent. The relevant extracts of the said affidavit are set out herein below:

> *"8. That the Appellant Nos. 2 and 3 are joint owners of property No. X-36, Phase - II, Okhla Industrial Area, New Delhi admeasuring 400 sq. yds. which is also pledged with Punjab National Bank.*
> *9. <u>That the Appellant No. 1 entered into an agreement to sell with the Sungraphic in 2018 in order to sell the property No. X-36, Phase-II, Okhla Industrial Area, New Delhi</u> however the said property has been pledged with PNB hence in the absence of requisite sanction the property could not be transferred in the name of Sungraphic which is Garnishee in respect of the same property.*
> *10. <u>That since August, 2018 Garnishee has stopped from paying rent to the Appellants</u>."*

11. However, the affidavit of the Garnishee, which was deposed by Mr. Naman Bhagat, disclosed a completely different set of facts. The Garnishee informed the Court that initially, there was a rent agreement dated 1st July, 2017 and monthly rent of Rs.1.5 lakhs was being paid which was last paid in

February, 2018. Thereafter, an agreement to sell was entered into between the Appellants and the Garnishee in February, 2018 which was dated 22nd August, 2018, by which the Garnishee agreed to purchase the property bearing no.X-36, Okhla Industrial Area-II, New Delhi-110020 for a sum of Rs.4.5 crores. A sum of Rs.1.78 crores was given in advance, however, since the condition in the agreement to sell for converting the property from lease-hold to free-hold and for discharging the negative lien from the Punjab National Bank was not complied with by the Appellants, the said agreement to sell has yet not been given effect to and the sale deed has not been executed.

12. These two affidavits clearly show that the Appellants have made false statements before this Court. At no point did the Appellants disclose the receipt of Rs. 1.78 crores pursuant to the execution of the agreement to sell with the Garnishee. This fact was completely concealed from the affidavit filed by Mr. Jagdish Prashad Sharma dated 28th July, 2021. In the affidavit, the agreement to sell is mentioned, however, the terms of the same are not mentioned and the fact that Rs.1.78 crores was received was also concealed from the Court. In fact, as recorded in the order passed on 5th July, 2021, the submission recorded on behalf of the Appellants was that the Garnishee has not been paying rent since August, 2018 and details thereof were deliberately concealed from the Court.

13. Vide order dated 23rd August, 2021, the Appellants, the Garnishee and the Respondent were directed to appear today. After hearing their submissions, it is clear that the Appellants are unable to make any payments to the Respondent, who enjoys a decree in its favour. Thus, the attachment order, which has been passed by the Executing Court, cannot be faulted with

in any manner. Even today, the Appellants are not willing to deposit any further amount or make any monthly payments.

14. Both the Appellant and his son have appeared and submit that the interest rate being charged is too high as against the amounts disbursed and the amounts now being demanded including the interest, are very high. This Court, in an appeal against an order passed in execution proceedings is not to go behind the decree. The only question to be seen is the execution of the decree and whether any valid objection against the same is raised or not. Clearly, the loan is admitted, the passing of the award and its finality is not disputed, the non-payment of the amounts is also admitted. Under such circumstances, attachment of other assets would be the correct way to proceed. The impugned order does not warrant interference. The Appellants have brought to the notice of this Court that the Respondent is demanding *ad hoc* amounts of Rs.4 crores or Rs.10 crores, which is denied by the Respondent. It is made clear that the execution would only be of the decretal amount, in terms of the award and not any other amounts.

15. Insofar as the present appeals are concerned, in view of the fact that the Appellants are not willing to pay any further amounts and in view of their conduct, this Court is of the opinion that no further indulgence can be given to the Appellants. Accordingly, the Executing Court shall proceed further in the execution proceedings.

16. The present appeals, along with all pending applications, are accordingly dismissed.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 1, 2021/*dk/T*