AD-26
Ct No.09
25.08.2023
TN

WPA No. 13440 of 2021
IA No: CAN 1 of 2023

Subha Raksha Kali Rice Mills Private Limited
and another
Vs.
UCO Bank and another

Mr. Jishnu Chowdhury,
Mr. Ratul Das,
Mr. Amar Dudhwewala,
Mr. Pranav Sharma,
Mr. Karan Dudhwewala
…. for the petitioners

Mr. Arjun Mookherjee,
Mr. Sourjya Roy
…. for the UCO Bank

The present writ petition has been filed in connection with a disposed of writ petition, unambiguously for execution of the order passed by a coordinate Bench, while disposing of WPA 13440 of 2021, whereby the respondent-UCO Bank was directed to refund the money received from the writ petitioners pursuant to the e-auction within a period of eight weeks from that date along with interest at 8 per cent from the date on which the first amount was paid till the date of realization.

Learned counsel appearing for the petitioner places reliance on Rule 53 of the Rules under Article 226 of the Constitution of India in the Appellate Side Rules of this court, where it is provided that save and except as provided by the said Rules and subject thereto, the provisions of the Code of Civil Procedure in regard to suits shall be followed, as far as it can be made applicable, in all proceedings under Article 226 and nothing in the Rules shall be deemed to limit or otherwise affect the inherent power of this court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Read in conjunction with the said Rule, learned counsel places reliance on Section 36 of the Code of Civil Procedure, which provides that the provisions of the Code relating to execution of decrees, including provisions relating to payment under a decree, shall, so far as they are applicable, be deemed to apply to execution of orders (including payment under an order).

Learned counsel submits that Rule 53 of the Rules, read with Section 36 of the Code, enable the applicability of Order XXI Rule 11 of the Code of Civil Procedure for executing the order of the writ courts as well.

It is further contended that previously a writ petition had been filed for implementation of the order-in-question. However, subsequently the petitioners were advised that instead of a writ petition, a tabular statement should be filed along with a proper application for execution, pursuant to which advice the present application has been taken out.

Learned counsel places reliance on a coordinate Bench judgment of this court in *Bonbehari Roy and others vs. Kolkata Metropolitan Development Authority*, reported at *AIR 2004 Cal 254* as well as a judgment of the Supreme Court passed in *Food Corporation of India vs. S.N. Nagarkar*, reported at *(2002) 2 SCC 475*, in support of his proposition.

Learned counsel for the respondent-Bank submits that the present application is not maintainable in law and in its present form. It is contended that the only remedy before the petitioner was probably to file a writ petition which, even after being filed, was withdrawn in the present case. Even in the order granting leave to withdraw the writ petition, the petitioners' submission was recorded to the effect that the petitioners were willing to file a fresh writ petition with a tabular statement. However, instead of filing a fresh writ petition, the present application has been filed. It is submitted that, in the present case, no contempt application has also been filed.

Learned counsel submits that the writ court, after passing its final order and disposing of the writ petition, became *functus officio* and no further interlocutory application can be entertained in connection with the writ petition, apart from applications in the nature of clarification/modification or a regular review.

Learned counsel for the respondents places reliance on a judgment rendered by the Supreme Court in *State Bank of India and others vs. S.N. Goyal,* reported at *(2008) 8 SCC 92.* In the said case, the Supreme Court, *inter alia,* referred to the concept of *functus officio.*

Learned counsel also places reliance on a judgment of a learned Single Judge of the Delhi High Court which is reported at *2016(165) AIC 577 (Shambhu Nath Das and Ors. Vs. Director of Education and Ors.),* in support of his proposition.

Lastly, it is argued that the present application cannot be entertained and ought to be rejected at the threshold.

Heard learned counsel for the parties.

It is an admitted position that an appeal has been preferred against the order sought to be implemented now, but no interim order has been passed in connection therewith despite the pendency of the appeal for some time. It is well-settled that mere pendency of an appeal does not operate as a stay. As such, there cannot be any fetter to the court entertaining the present application on such score. In any event, such objection has not also been taken by the respondents.

The plinth of the objection of the respondents is that the present application is not maintainable in law and in its present form. It is argued that the provisions of Section 36 of the Code of Civil Procedure are not applicable, because those relate to a suit, as opposed to the present writ petition.

A careful perusal of the judgment of the coordinate Bench of this court cited by the writ petitioners shows that the learned Single Judge was of the opinion that an order passed by a writ court cannot be executed by the civil court in the absence of express power conferred on it for such purpose by law.

In the said case, it was also observed that the court had not decided the matter on merits and the order passed therein shall not prevent the petitioners therein from initiating a fresh proceeding for the same relief before the competent forum. In the passing, it was also observed that from the judgment cited in the said case, that is, *Food Corporation of India* (supra), it appeared that there the execution application was made in the writ petition, that is to say before the writ court which passed the order.

In *Food Corporation of India* (supra) as well, the same proposition was laid down with regard to an application for execution being maintainable in connection with a writ petition.

Insofar as the judgments cited by the respondent-Bank are concerned, the judgment passed by the Supreme Court was rendered in an entirely different context. The court, in the said case, was deciding an issue whether the disciplinary authority could revise/review/modify its own order after the main consideration was over. In such context, the court observed that the Judge becomes *functus officio* when he passes the order, but only when the order passed is "entered".

Apart from the fact that the consideration in the said case before the Supreme Court was whether the Judge could pass an order on merits or vary its own order after becoming *functus officio* on deciding the issue, the other question which fell for consideration was whether the date on which the officer/Judge becomes *functus officio* is the date of passing the order or noting the order in a file but not pronouncing/publishing or communicating it publicly. The second question indicated above is not germane in the present case at all. Insofar as the first aspect is concerned, the present occasion which has arisen now is not one where the petitioner is seeking a review/modification/revision of the order of the writ court but, in no uncertain terms, an enforcement of the order of the writ court.

Hence, the ratio laid down in *State Bank of India* (supra) is not applicable in the present case.

Insofar as the logic laid down in the Single Bench judgment of the Delhi High Court, cited by learned counsel for the respondents is concerned, with utmost respect, I am unable to accept the said views on any aspect of the judgment.

The court therein observed, *inter alia*, that a final judgment in a writ petition is not a decree or order which is capable of execution proceedings under the CPC (Code of Civil Procedure). Such a judgment was held to be enforced by invoking the contempt jurisdiction of the court. It has been held time and again, by much wiser brains than mine, that contempt cannot itself be an alternative of an execution proceeding. The domains of the contempt jurisdiction and execution are entirely distinct and different from each other. Whereas contempt is entirely on penalizing the contemnor, execution pertains to implementation of a decree by several modes, and not, by any stretch of imagination, merely to penalize the judgment debtor.

The second ratio which was laid down in the Delhi High Court judgment was that execution proceedings under CPC are with respect to decrees or orders passed in proceedings governed by CPC, that is, suits. The said fact is self-evident and need not be distinguished. However, in the present case, the determinant is not such proposition but the existence of Rule 53 of the Appellate Side Rules as cited by the petitioners. Coming to the said topic later, the third proposition laid down by the Delhi High Court was that final judgments of writ petitions, if not complied with, cannot be treated as decrees for seeking the execution in execution proceedings by applying CPC.

Although the CPC may not be applicable in terms in the writ jurisdiction, the principles therein have been borrowed in case of writ petitions as well.

Without devoting further time on consideration of the judgments cited by the respondents, since those have been distinguished in the light of the observations above, let us now come to the relevant provisions in respect of the Rules of our High Court.

Rule 53 of the Rules under Article 226 of the Constitution, which is a part of the Appellate Side Rules of this court, clearly delineate that save and except as provided by the said Rules and subject thereto, the provisions of the Code of Civil Procedure in regard to suits shall be followed, as far as it can be made applicable, in all proceedings under Article 226 and nothing in the Rules shall be deemed to limit or otherwise affect the inherent power of this court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

The present application is maintainable on both such counts. Taking the second proposition first, the application is very much maintainable to ensure that the ends of justice are subserved and the abuse of the process of court by non-compliance of the court's order by the Bank is prevented.

Even without going into such vague consideration, the first part of Rule 53 has to be taken in conjunction with Section 36 of the Code of Civil Procedure.

Section 2(2) of the Code of Civil Procedure clearly enumerates a decree to mean the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.

It is well-known that the primary distinction between a decree and an order passed by a court is, although both are formal expressions of adjudications, the decree conclusively determines rights of parties with regard to the matters in controversy whereas an order may or may not do so.

Section 36, in such context, provides that the provisions of the Code relating to the execution of decrees (including money decrees) shall, so far as the they are applicable, be deemed to apply to the execution of orders (including payment under an order).

In the present case, there is an ingredient of final adjudication of the matters-in-dispute and controversy between the parties by the writ court, the order which is sought to be implemented now. However, the said order is not being termed as a decree for the only reason that the same was not passed in connection with a civil suit. Thus, there is no reason why Section 36 does not apply, attracting the provisions of execution of a decree in respect of the final order passed by the writ court.

Read in such context, Order XXI Rule 11 is squarely applicable to the present case as well.

That apart, the "*functus officio*" argument is not applicable to the present case at all. It is not the merits of the writ court's final order which is sought to be reopened here in any manner whatsoever. Rather, the petitioners clearly rely on such order and seek an implementation of the same by way of the present application.

It has been contended by the respondents that there are several judgments which indicate that an order of writ court can also be implemented by a further writ petition.

There is no requirement of going into the question of veracity of such proposition at the present juncture. There is no quarrel between the said proposition and the proposition now sought to be advanced by the petitioners. The mere fact that a further writ petition can be used to attract the attention of the writ court and seek an implementation of its previous order does not operate as a bar or is not mutually exclusive with the power of the writ court to implement its order, by whatever name called.

“Implementation”, “enforcement” (with special reference to Section 36 of the Arbitration and Conciliation Act, 1996) and “execution” (see the CPC) are interchangeably used in Indian Jurisprudence. Hence, there is no quarrel, as reiterated above, between the proposition as sought to be advanced by the respondents and a decree passed by a writ court being executable in an application for execution.

Invoking such considerations and principles of law as discussed above, there is no impediment in the writ court invoking its inherent jurisdiction, read in conjunction with Rule 53 of the Writ Rules of the Appellate Side Rules of this court as well as Section 36 and Order XXI Rule 11 of the Code of Civil Procedure, for enforcement of its own decree. The petitioners are, thus, entitled to implementation of the order passed by the writ court as per the prayer made in the present application.

It is seen from the order of the coordinate Bench dated July 14, 2022 passed in WPA 13440 of 2021, that the writ court directed the respondent-UCO Bank to refund the money received from the petitioners pursuant to the e-auction within a period of eight weeks from date along with interest at 8 per cent from the date on which the first amount was paid till the date of realization.

A perusal of Annexure-E annexed at pages-147 and 148 of the present application clearly indicates that the petitioners (decree holders/holders of the order of the writ court) have clearly enumerated the exact amounts due to the petitioners from the judgment debtor-Bank. The required break-up in terms of the provisions as to execution of an order under Order XXI Rule 11 of the Code of Civil

Procedure have also been disclosed in the tabular statement. As such, there cannot be any bar in allowing the application to implement the order of the writ court.

In order to avoid unnecessary hassles for the petitioners and keeping in view that the judgment debtor is a nationalized Bank and has public duties on a higher footing than the ordinary litigants, it is deemed fit to bypass unnecessary paraphernalia and to grant the relief sought in prayer (e) (ii) and (iii) of the present application.

Accordingly, IA No: CAN 1 of 2023 is allowed on contest. As suggested by the respondent-Bank and not opposed by the petitioners, Mr. Sankarsan Sarkar (Mobile No: 98300 60937), an Advocate and a member of the Bar Library Club, is appointed as Receiver in terms of the prayer (e) to the writ petition, who will operate and withdraw monies from the bank accounts of the respondent no.1/UCO Bank and make over the same to the petitioners in pro tanto satisfaction of the order dated July 14, 2022 in WPA 13440 of 2021, in terms of the tabular statement annexed to the present application.

A copy of the present application along with all annexures and a server copy of this order be served on the learned Receiver by the learned Advocate-onrecord for the petitioners within a week from date. The Receiver shall thereafter comply with the order as passed above and file a report of compliance in that regard on the next returnable date.

The matter shall next be listed on October 05, 2023, fairly at the top of the list, for acceptance of the report of the Receiver.

(Sabyasachi Bhattacharyya, J.)