

ORDER

OC-4

APOT/155/2022  
WITH  
EC/176/2021  
IA NO: GA/1/2022  
IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
COMMERCIAL DIVISION

FAIR DEAL SUPPLIES LIMITED  
VERSUS  
R. PIYARELALL IRON AND STEEL PVT. LTD. AND ORS.

BEFORE:

THE HON'BLE JUSTICE HARISH TANDON  
THE HON'BLE JUSTICE PRASENJIT BISWAS

DATE : 22<sup>nd</sup> September 2022.

APPEARANCE:

*Mr. Joy Saha, Senior Advocate*  
*Mr. Shuvasish Sengupta, Advocate*  
*Ms. Nilanjana Adhya, Advocate*  
*Mr. Debdut Mukherjee, Advocate*  
*Mr. Kaushik Banerjee, Advocate*  
*Ms. Sudipta Paul, Advocate*  
*.....for appellant.*

*Mr. Ratnanko Banerji, Senior Advocate*  
*Mr. Anirban Ray, Advocate*  
*Mr. Ratnesh Kumar Rai, Advocate*  
*Mr. S.N. Pandey, Advocate*  
*Mr. Ankan Rai, Advocate*  
*Mr. Ashutosh Singh, Advocate*  
*... ... for respondents.*

The Court:- The instant appeal arises from the order dated 23<sup>rd</sup> August 2022 passed by the executing court in EC/176/2021 whereby and whereunder a receiver was appointed to take symbolic possession of the property and carry on enquiry as to the persons staying in the said property. It is not in dispute that the appellant has suffered an award, which partakes the character of a decree, and such decree has been put into execution.

Simultaneously, a challenge is also made to the said award under Section 34 of the Arbitration and Conciliation Act, 1996, which is pending.

It transpires in course of hearing that initially, a direction was passed upon the appellant to secure the awarded sum by depositing the same in Court and the appellant having not complied with such direction, the executing court did not find any fetter in proceeding with the execution case. Affidavit of assets was directed to be filed by the appellant/judgment-debtor, which, in fact, was done. The said affidavit would reveal that the property over which the receiver was appointed was shown as the registered address of the appellant and, in fact, the appellant is carrying on business therefrom. The executing court further found that the said affidavit of assets does not contain the detailed particulars and directed a fresh affidavit of assets to be filed in the proper form disclosing the details of the amount lying in the bank account maintained by the appellant. The Executing Court held that the subject property over which the receiver was appointed is situated within the jurisdiction of Kolkata and therefore, if any act is done in respect thereof, it may bring an irreversible situation and therefore, it would be proper that a receiver be appointed to take symbolic possession thereof and to carry out an enquiry as to the persons staying in the said property.

Mr. Saha, learned senior advocate appearing for the appellant, is very much vocal on his submission that the Court, before proceeding to appoint a receiver, must satisfy that the said property is owned by the judgment-debtor. Having not done such enquiry, the Court has hastily proceeded to appoint a receiver, which is impermissible. He further submits that the apprehension of the appellant has also been taken care of in the form of an injunction having been issued against the judgment-debtor no.5 from transferring and/or

alienating any of the immovable properties, which is still operative. Lastly, it is submitted that there is no reason provided for appointment of the receiver and therefore, the order should immediately be set aside.

Mr. Banerji, learned senior advocate appearing for the decree-holder, vociferously submits that despite several opportunities having been given to the appellant to secure the awarded sum, which is a decretal amount, there was an apparent failure on their part and therefore, there is no other option left to the Court but to appoint a receiver over the property disclosed in the affidavit of assets. He further submits that the appellant has disclosed the said property as a registered address of the company owned, controlled and administered by them and in fact, the business is being carried on therefrom.

After hearing the respective counsels, there is no dispute that the appellant has suffered an award and despite an application for challenging the award having been filed before the Court and the order passed in proceedings pending before this Court to secure the said amount by way of deposit or otherwise, the same has not been complied. After the radical change having been brought by way of amendment in the Arbitration and Conciliation Act, 1996, it is no longer *res integra* that mere challenging the award under Section 34 of the said Act does not *ipso facto* stay the operation of the award nor creates any bridle on the part of the Court in proceeding with the execution case. The aforesaid amendment has been brought in order to bring equilibrium between the rights of the successful and unsuccessful litigants and therefore, it is obligatory on the part of the unsuccessful litigants to seek an order of stay.

The real trouble starts after the decree is passed. It travels through a difficult terrain of Order XXI of Code of Civil Procedure, 1908 as rigorous

provisions are to be followed. Recently, the Apex Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi & Ors.** reported in **(2021) 6 SCC 418** directed the procedures to be followed during the execution proceedings in order to reduce the heap of pendency in the dockets of different Courts within the country. It would be profitable to quote the relevant excerpts from the said judgement, which runs thus:-

*“42. All courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:*

*42.1 In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.*

*42.2 In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.*

*42.3 After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.*

*42.4 Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.*

*42.5 The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.*

*42.6 In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.*

*42.7 In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during*

*the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.*

*42.8 The court exercising jurisdiction under Section 47 or under Order 21 of CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.*

*42.9 The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.*

*42.10 The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.*

*42.11 Under Section 60 CPC the term "...in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.*

*42.12 The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.*

*42.13 The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.*

*42.14 The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts."*

It can be logically deduced therefrom that in a deserving case, the Court may appoint a receiver to monitor the status of the property in question as *custodia legis* for proper adjudication of the matter.

So far as the plea sought to be taken by the appellant that before the Court embarks its journey in considering the prayer for appointment of receiver in an execution proceedings, it is obligatory to consider the status and the rights over the property in question and unless the Court is satisfied that the said property is capable of being dealt with to satisfy the decree passed against such person, the receiver should not be appointed, we are not unmindful of the ingredients required to be considered before the Court appoints a receiver in respect of a property and take it into *custodia legis*. The Court must satisfy that it is just and convenient to appoint a receiver and such satisfaction must be arrived both objectively and subjectively. A plea was also taken before us that once the injunction has been passed protecting the interest of the decree-holder restraining the judgment-debtor no.5 from dealing with the said property in any manner whatsoever, there was no justification for appointment of the receiver. At the very outset, we must record that there is no fetter on the part of the Court to appoint the receiver even when an order of injunction is passed in respect to the property. We, therefore, do not find any substance in the argument of Mr. Saha that since the right has been protected by passing an injunction, there was no necessity to appoint the receiver.

So far as the plea that the Court must ascertain the status of the property by appointing the receiver, the same is also not tenable, in view of the exposition of law laid down in ***Rahul S. Shah (supra)*** where the Apex Court has said that the receiver can be appointed to monitor the status of the

property for proper adjudication of the matter. Even paragraph 42.7 of the said judgment indicates that it is an obligation of the defendant to disclose his assets on oath to the extent he is liable in the suit and there is no fetter on the part of the Court to exercise the powers under Section 151 of the Code to demand the security to ensure satisfaction of the decree.

By the impugned order, the executing court has not dislodged and/or dispossessed the appellant from the property shown in the affidavit of assets as the registered address of the appellant-company owned, controlled and administered by them. The receiver was directed to make an enquiry as to the persons staying in the said property which impliedly includes the status and the right on the basis whereof such possession is claimed. There cannot be any apprehension in the mind of the appellant that by appointing the receiver not only the possession would be disturbed but the functioning of the company shall also be hampered. We do not find any such apprehension to be sustainable in view of the categorical observations made in the impugned order. The executing court was conscious of the aforesaid eventualities and directed only the symbolic possession of the property to be taken, which is distinct from physical possession thereof. From whatever angle we look at, we do not find there is any infirmity in the impugned order.

The appeal is dismissed. All connected applications are accordingly disposed of.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J.)