

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1757 OF 2020

Sahayadri Industries,
A-4/2, MIDC, Shrirampur,
Office at Bhagat Building,
Shivaji Road, Shrirampur.
Prop. Rupali W/o. Nitin Bhagat,
Through her GPA
Nitin S/o. Eknath Bhagat,
Age 50 years, Occu. Business,
R/o. Shivaji Road, Shrirampur

.. Petitioner

Versus

1. Samrudhhi Sugars Ltd.,
Renukanagar, Deviddahegaon,
Ta. Ghansavgi, Dist. Jalna
2. Satish S/o. Jagannath Ghatge,
Age 45 years, Occu. Business,
R/o. Siddhi, Keshav nagri,
Shahnoorwadi, Aurangabad
3. Mahendra S/o. Rameshchandra Medhi,
Age 43 years, Occu. Business,
R/o. Flat No. 6, Tirupati Vihar,
Garkheda, Aurangabad
4. Ritika W/o. Mehendra Medhi,
Age 40 years, Occu. Business,
R/o. As above.
5. Smt. Vaishali W/o. Sunderrao Udhan,
Age 45 years, Occu. Business,
R/o. Siddhi, Keshav nagri, Shanoorwadi,
Aurangabad

.. Respondents

...

Mr. Yogesh G. Somani, Advocate for Petitioner
Mr. Yuvraj V. Kakde, Advocate for Respondent No.1

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04-03-2022

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Advocates appearing for the parties.

2. The petitioner is aggrieved by the order passed by the learned 7th Joint Civil Judge, Senior Division, Jalna, below Exhibit-16 in Special Darkhast No. 63 of 2017, thereby rejecting his Application for attachment of debt and for issuance of notice to the garnishee.

3. The petitioner – decree-holder filed Special Darkhast No. 63 of 2017 for execution of Decree passed by the Civil Judge, Senior Division, Shrirampur, in Special Civil Suit No. 5 of 2015. In the said darkhast, the petitioner filed application Exhibit-16 contending that, initially the petitioner filed Special Darkhast No. 12 of 2016 in the Court at Shrirampur, for recovery of decretal amount. In that matter, garnishee i.e. the Maharashtra State Electricity Distribution Company Limited (“MSEDCL”) admitted that amount payable to the Judgment-Debtors is still with them, but, they gave unwarranted explanation. It is, therefore, necessary to issue notice to the garnishee i.e. MSEDCL with a direction to deposit the

amount payable to the Judgment-debtors.

4. The Judgment-debtors resisted the said application by filing say, contending that, the application is not tenable in law. Decree-holder has suppressed material facts and has obtained *ex-parte* decree. The proceeding filed by Judgment-debtors to set aside the said decree, is pending. The Judgment-debtor No.1 has obtained loan from Indian Renewable Energy Development Agency Limited (for short, "IREDA") and for that charge is created on the amount receivable from MSEDCL. Therefore, the amount payable to the Judgment-debtors from MSEDCL cannot be attached. Hence, they urged to reject the application. The application is rejected by the Executing Court. Hence, the present petition.

5. I have heard the learned Advocate for the petitioner at length. Perused the impugned order and documents placed on record.

6. Order XXI, Rule 46 of the C.P.C. provides that notice can be issued to the garnishee for depositing the debt in the Court only after attachment of debt under Rule 46. Without attachment of debt, notice cannot be issued. Thus, the attachment of debt under Rule 46 is a pre-requisite condition for issuance of notice under Rule 46. Rule 46-A makes it clear that the debt secured by

a mortgage or charge or negotiable instrument is excluded from the operation of said provision.

7. From the terms and conditions of the agreement entered into between Judgment-debtors and the IREDA, it is clear that, the Judgment-debtor No.1 has obtained loan from IREDA for Bagasse Cogeneration Project on condition that sale proceeds of power will be credited only in Trust and Retention Account ("TRA"). The amount deposited in TRA is subject to the first charge of IREDA. In terms of the agreement, the sale proceeds of power receivable from MSEDCL i.e. debt of Judgment-debtor No.1 is being deposited in TRA account. The amount so deposited in TRA is having charge of IREDA.

8. While rejecting application of the petitioner, the Executing Court has taken into consideration the terms and conditions in the agreement executed between the Judgment Debtors and IREDA and the fact that loan was obtained from IREDA for Bagasse Cogeneration Project on condition that sale proceeds of power will be credited only into TRA and said TRA shall be subject to first charge of IREDA. The Executing Court has therefore rightly recorded a finding that the debt of Judgment Debtor No.1 comes under the category of debt excluded by Order XXI, Rule 46-A of the C.P.C. and since the said amount is not free and it is subject to

charge of IREDA, it is outside the purview of Rule 46-A. The Executing Court has also noted that IREDA sanctioned loan on 23.09.2014, whereas, the Judgment in Special Civil Suit No. 5 of 2015 was delivered on 29.01.2016. Therefore, before passing the Decree, the charge of IREDA was created on the receivables of the Judgment-debtors. The Executing Court has passed a well reasoned order. No illegality or perversity found in the order impugned in the present petition. The petitioner has failed to make out a case to exercise extraordinary writ jurisdiction.

9. The writ petition being devoid of merits is dismissed.

10. Rule is discharged. No costs.

(NITIN B. SURYAWANSHI)
JUDGE

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