

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Civil Revision Application No. 89 OF 2022

[Smt. Seema W/o Amit Gupta (D/o. Anantraai Bhutani) ..vs.. Mrs. Krishna Kumari Wd/o Ruplal Bhutani and ors.]

with

Writ Petition No. 5494 of 2022

[Smt. Seema W/o Amit Gupta (D/o. Anantraai Bhutani) ..vs.. Mrs. Krishna Kumari Wd/o Ruplal Bhutani and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P P Kothari, Advocate for the applicant/petitioner
Mr. R. L Khapre, Senior Advocate with Mr. R. T. Anthony, Advocate for
respondent nos. 1 to 13

CORAM : MANISH PITALE, J.

DATED : 7-9-2022

Heard Mr. Kothari, learned counsel for the petitioner and
Mr. R. L. Khapre, learned Senior Counsel along with Mr. Anthony,
learned counsel appearing for the caveator.

2. The present petition is another illustration of the manner in which the process of law is abused by judgment debtors in order to frustrate a decree and to ensure that as long as possible, the decree holder (s) do not enjoy the fruits of the decree. The Privy Council as far back as in 1872 in the case of *General Manager of the Raj Durbhunga Vs. Coomar Ramapat Sing (1871-72) 20ER 912*, had aptly commented that the difficulties for the plaintiff in this country begin when he gets a decree in his favour. Execution proceedings have become a haven for unscrupulous litigants who are bent upon exploiting every procedural avenue, in order to achieve the object of

frustrating the decree. The present case and its facts are a sad commentary on the aforesaid state of affairs.

3. In the present case, arbitration award was rendered as far back as on 22-3-1993, which became rule of the Court, much later, on 13-4-2006.

4. The first appeal filed thereagainst in the year 2006 remained pending before this Court for eight years and it was eventually dismissed on 11-7-2014.

5. A special leave petition was filed against dismissal of the said appeal, bearing SLP (Civil) No. (CC) 2470/2016. By an order dated 27-2-2015, the special leave petition was also dismissed. Thereafter review petitions, bearing Review Petition (Civil) Nos. 1296 and 1297 of 2015 were filed before the Supreme Court and the review petitions were also dismissed on 7-5-2015.

6. Thereafter, objections were raised in the execution proceedings, that were rejected and Writ Petition No. 1472 of 2017 was filed before this Court, which was eventually dismissed on 30-8-2019. It is an admitted position that special leave petition filed against the said order was also dismissed by the Supreme Court. It is also an admitted position that the petitioner was party to the aforesaid proceedings.

7. It is in this backdrop that the present round of litigation has come up before this Court. The petitioner filed application raising objection before the executing court, claiming that the decree was obtained by fraud. Reliance was placed on a document purportedly recently received on 8-9-2021, on the basis of which it was claimed that the firm was never dissolved, which issue went to the root of the matter, indicating that the decree was a nullity and hence inexecutable. The petitioner also moved an application for permission to lead evidence in support of such an objection. The executing court passed the impugned orders, both dated 16-7-2022, whereby the objection was rejected and the application for permission to lead evidence was also rejected. These matters i.e civil revision application and writ petition arise out of aforesaid impugned two orders dated 16-7-2022, passed by the executing court.

8. Mr. Kothari, learned counsel appearing for the applicant/petitioner submitted that although an objection on the ground of fraud was raised earlier, which was rejected by the executing court, it was based on the basis of different set of facts raised on behalf of the objectors. It was submitted that the fraud pleaded in the objection, which has been rejected by the impugned order, is based on a specific document received recently on 8-9-2021, which went to the very root of the matter and that therefore, merely because earlier objection had been rejected and the matter had

travelled up to the Supreme Court on merits, could not be a ground to reject the objection without consideration of the same on merits and without opportunity to the petitioner to lead evidence in that regard.

9. Mr. Khapre, learned Senior Counsel appearing on behalf of the some of the contesting respondents, submitted that both the application and the petition filed by the petitioner deserve to be dismissed on the short ground that all relevant facts and documents have not been placed before this Court. By handing over a compilation of documents pertaining to earlier rounds of litigation, the learned Senior Counsel vehemently submitted that present two matters are nothing but an abuse of the process of law and that the civil revision application along with the writ petition ought to be dismissed with heavy costs.

10. Learned Senior Counsel invited attention to the documents in the compilation which traced the journey of the litigation from the year 1993, when the award was passed by the arbitrator. By referring to the adverse orders passed against the petitioner and other similarly situated persons up to the Supreme Court on two occasions, the learned Senior Counsel submitted that there was no question of entertaining any such objection concerning the plea of fraud at the behest of the petitioner. It was submitted that the very

question as to whether the partnership firm had been dissolved was a matter considered and decided upon, on its own merits by three Courts, right up to the Supreme Court and yet the petitioner was once again trying to raise the same issue and it was now being claimed that fraud was committed, rendering the decree itself a nullity. In such a situation, the executing court was justified in passing the impugned order and there was no question of permitting further delay in the execution of the decree. It is further submitted that the contesting respondents had to struggle for withdrawal of amounts that were deposited as per the directions of this Court and even today, an amount of Rs. 5,00,000/- is lying in the executing court and appropriate directions are necessary for disbursal of the same forthwith.

11. As noted above, the execution proceedings in our legal system have become a scourge and unscrupulous litigants are taking benefit of procedural avenues while seeking to frustrate decrees on one count or the other. The petitioner in all fairness ought to have placed the documents pertaining to the earlier rounds of litigation before this Court, which was not done. It is only because the contesting respondents appeared *suo motu* and handed over compilation of documents, which are undisputed, that the real picture has emerged.

12. It is because of the prevailing scenario as regards execution proceedings remaining pending for years and decree holders being frustrated, that the Supreme Court in the case of ***Rahul S. Shah Vs. Jinendra Kumar Gandhi [(2021)6SCC418]*** was constrained to take judicial notice of the manner in which execution proceedings remain languishing, leading to a situation where decree holders are likely to lose faith in the entire system. After taking into consideration the manner in which objections after objections are raised by judgment debtors and even third parties in order to frustrate the decrees, the Supreme Court has given specific directions, which read as follows :

“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 X 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 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 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.

43. We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of Information Technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable.”

13. The aforesaid portion of the judgment of the Supreme Court in the case of **Rahul S. Shah Vs. Jinendra Kumar Gandhi** (supra), shows the anxiety of the highest court of the land to ensure that the

execution proceedings are disposed of at the earliest and decrees that have become final are executed so that rule of law and its majesty is respected.

14. The facts in the present case, as regards the earlier rounds of litigation are admitted and learned counsel appearing for the petitioner did not dispute the same. The picture that emerges from the documents that have been brought to the notice of this Court by the learned Senior Counsel appearing for some of the contesting respondents shows that the present case is another illustration of the manner in which litigants are exploiting procedural wrangles on the basis of various provisions of the Code of Civil Procedure. Ideally, the Code of Civil Procedure is supposed to be a compilation of rules that would facilitate expeditious disposal of litigation, whenever a dispute arises between parties. Instead, the Code has become a maze through which the litigants have to travel and after much efforts when the decree is obtained, there is necessity to cross hurdle after hurdle in the execution proceedings till the fruits of decree can be eventually enjoyed. It is for this reason that in the case of ***Rahul S. Shah Vs. Jinendra Kumar Gandhi***, quoted supra, the Hon'ble Supreme Court has been constrained to issue the aforesaid directions.

15. Having considered the contentions raised on behalf of the petitioner before this Court, it is found that the plea of fraud sought to be raised on behalf of the petitioner is another attempt to delay the proceedings before the executing court. This Court does not find any merit in the said contention for the reason that the petitioner was throughout party to the various rounds of litigation referred to above, which attained finality on two occasions before the Supreme Court. Paragraph no. **42.8** of the said judgment in ***Rahul S. Shah Vs. Jinendra Kumar Gandhi*** (supra) quoted above, indicates that the Court ought to refrain from entertaining any application that raises issues which have been already considered and adjudicated upon or an application which seeks to raise any issue which otherwise could have been raised and determined during adjudication of the suit, if due diligence was exercised by the applicants. In the present case, the issue sought to be raised, is based on an assertion that the partnership firm was never dissolved. In terms, the aforesaid issue was indeed raised on merits, which met with failure and the finding on merits was confirmed right up to the Supreme Court.

16. As noted above, the set of objections raised on an earlier occasion wherein the petitioner was also party, included the plea of fraud, which was rejected, again up to the Supreme Court.

17. Yet, the petitioner had the temerity to raise the issue of fraud before the executing court, now claiming that a document had surfaced in September, 2021, which allegedly indicated that the decree was obtained by fraud, which was an issue decided against the petitioner and others right up to the Supreme Court.

18. A perusal of the impugned order passed by the executing court rejecting the application shows that the position of law and even the facts of the present case were correctly appreciated and the attempt on the part of the petitioner to further delay the execution proceedings, was correctly dealt with in the impugned order. It is often observed that judgment debtors raise the plea of fraud like a mantra or an incantation and they believe that recitation of the mantra would lead the executing court to go into the question, giving opportunity to lead evidence, thereby falling into the trap of the judgment debtor. Merely by raising the expression “fraud”, the judgment debtor cannot be allowed to frustrate the decree. There has to be at least a semblance of a case made out for fraud and the executing court has to examine whether such a plea even *prima facie* is made out or not. In the facts of the present case, the executing court has correctly rejected the objection raised on behalf of the petitioner. Therefore, the order rejecting the application for leading evidence also does not deserve any interference.

19. There is absolutely no merit in these two matters. In fact, this Court is of the opinion that the manner in which objection was raised on behalf of the petitioner before the executing court along with application for permission to lead evidence, was nothing but a gross abuse of the process of law. Therefore, it is found that these two matters deserve to be dismissed.

20. There is substance in the contention raised by the learned Senior Counsel appearing on behalf of some of the contesting respondents that the petitioner deliberately did not place on record relevant documents pertaining to earlier rounds of litigations due to which the said respondents had to appear through counsel *suo motu* to place before this Court the relevant documents. The conduct of the petitioners in these two matters speaks for itself and the prayer made for grant of costs by the contesting respondents is justified. The contention raised as regards delay in disbursal of Rs. 5,00,000/- deposited before the executing court is also found to be justified and therefore, an appropriate direction in that regard is necessary.

21. In view of the above, the civil revision application and the writ petition are dismissed with costs of Rs. 50,000/- (Rupees Fifty Thousand) each. The total amount of Rs. 1,00,000/- (Rupees One Lac) towards costs shall be deposited in the executing Court within four weeks from today.

22. The executing court is directed to disburse the said amount of Rs. 1,00,000/- (Rupees One Lac) to the decree holders forthwith.

23. As regards disbursal of amount of Rs. 5,00,000/- (Rupees Five Lacs), the executing court is directed to disburse the said amount in favour of the decree holders expeditiously and in accordance with law.

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