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

Order reserved on :04.11.2022

Order pronounced on : 15.11.2022

+ **CRL.M.C. 5204/2022 & CRL. M.A. 20774/2022**

ASSURED BEST CARE HOSPITAL PVT LTD Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with
Mr. S. Seetharaman, Mr. M.P.
Devnath, Mr. T. Sunder
Ramanathan, Mr. Mohan
Goswami, Mr. Vivek Pandey, Ms.
Sukanya and Mr. Sumit, Adv.

versus

RAJA ARORA AND ORS Respondent

Through: Mr. V.K. Garg, Sr. Adv. with Mr.
Jagdish Saini, Mr. K.S. Rekhi, Mr.
Parv Garg and Mr. Pawas
Kulshrestha, Adv.

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA

ORDER

15.11.2022

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1.0. This is petition under Section 482 Cr.P.C for quashing of the order dated 26.09.2022, whereby the Ld. M.M has directed for issuance of warrants of attachment of bank accounts of the petitioner, praying as under:-

“a. Return a finding under Section 482 of the Code of Criminal Procedure 1973 that the Impugned Order of 26 September 2022

passed by the Ld. Metropolitan Magistrate No 2, Tis Hazari (Central) in 533998/2016, 534000/2016, 534001/2016, 534003/2016, 534004/2016, 534103/2016, 534140/2016, 534141/2016, 534142/2016, 534924/2016, 534930/2016, 534931/2016, 534936/2016, 534937/2016, 534942/2016,

534943/2016 & 534945/2016 was erroneous for the reasons stated above, and hence set aside the same;

b. Quash the warrant dated 29 September 2022 issued by the Ld. Metropolitan Magistrate pursuant to the Impugned Order, and direct immediate un-freezing/removal from attachment of the Petitioner Company's bank account;

c. Direct the Respondents No 1 & 2 to effect immediate service of all papers in the relevant Complaint Cases (mentioned in the Impugned Order dated 26 September 2022) to the Petitioner;

d. Any other order in the interest of justice.”

2.0. Briefly stating, the facts relevant for disposal of the present petition are that the respondents no. 1 and 2 (Raja Arora and Ashok Arora) filed aforesaid complaint cases under Section 138 NI Act against Vasan Health Care Pvt. Ltd. and its directors. They had also filed civil suit bearing CS (OS) no. 3402/2015, which was decided and decreed in favour of the respondents no. 1 and 2 vide order/decreed dated 16.11.2016.

2.1. During the pendency of the proceedings in the aforesaid complaints under Section 138 NI Act, the parties were referred to mediation, where the parties settled all their pending disputes before various Fora and arrived at settlement through Mediation vide settlement agreement dated 19.02.2019. Dr. Arun Murugaiah also gave personal guarantee for compliance of the terms of settlement and payment as per the settlement dated 19.02.2019. The aforesaid complaints u/s 138 NI Act were then disposed of by the Ld. Magistrate, in the light of judgment in ‘Dayawati vs. Yogesh Kumar Gosain (2017) 243 DLT 117, in terms of the said settlement in view of the specific statements of Meera Arun and Dr. Arun Murugaiah (directors/shareholders of accused company).

2.2. However, the aforesaid settlement was not honoured by the accused persons no. 1, 6 and 7 i.e. Vasan Healthcare Pvt. Ltd., Dr. Arun Murugaiah and Meera Arun, respectively. In view of the same, the complainants filed applications under Sections 431 read with Sec. 421 Cr.P.C on 17.08.2019, in which warrants of attachment for an amount of Rs. 5,51,96,336/- came to be issued by the Ld. Magistrate vide order dated 20.08.2020. The said order was challenged by the accused Meera Arun before the Hon'ble Supreme Court by way of SLP No. 5653-5668/2020, wherein vide order dated 27.11.2020, the Hon'ble Apex Court stayed the order of Ld. M.M. The said stay was subsequently vacated by the Hon'ble Supreme Court vide order dated 01.03.2021 remitting the matter back to the Ld. Magistrate for disposal as per law.

2.3. On 23.03.2021, a fresh application was filed on behalf of the complainant/respondents praying inter alia for issuance of warrants under Section 431/421 Cr.P.C for attachment of shares and properties of the ABC Hospital, Assured Best Care Hospital Private Limited, No.1, Annamalai Nagar Main Road. Near Karur Bypass Road, Trichy, i.e. the petitioner herein, in light of the guidelines laid down in Dayawati (supra). The said application was however dismissed by the Ld. M.M vide order dated 20.11.2021 for reason that the learned Trial Court has no jurisdiction to execute settlement qua the cases pending before other Courts and secondly the application was premature as deadline for payment (as per settlement) was 28.02.2022 and till then the payments could have been made by paying 14% interest.

2.4. The aforesaid order of the Ld. Magistrate dated 20.11.2021 was challenged by the respondents no. 1 and 2 herein vide Crl. M.C no. 3333/2021. The said petition was allowed by this court vide order dated 03.09.2022. The relevant portion of the said order is reproduced hereunder :-

“The parties executed a settlement agreement on 19.02.2019 before the mediation centre in order to settle all their pending disputes in various fora and pursuant thereto specific statements of respondent no.1 and her husband were recorded by learned MM in terms of judgment passed in Dayawati vs. Yogesh Kumar Gosain (2017) 243 DLT 117. Late Shri A.A.Murugaiah, husband of respondent no.1 also gave personal guarantee for compliance/ payment as per the settlement agreement dated 19.02.2019. However, after paying few installments the respondent failed to fulfill their obligation and resultantly committed its breach. Subsequently, **to enforce the abovementioned settlement agreement, the petitioner filed an application on 23.08.2021 under Section 431 Cr.P.C. read with Section 421 Cr.P.C. praying inter alia for attachment of shares and properties of respondents i.e., ABC Hospital, Assured Best Care Hospital Private Limited, No.1, Annamalia Nagar Main Road. Near Karur Bypass Road, Trichy, in light of the guidelines given in Dayawati (supra). The said application dated 23.08.2021 was dismissed by the learned MM vide impugned order dated 20.11.2021.**

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4. I have perused the mediation agreement dated 19.02.2019 annexed as annexure A of this paper book. It refers to three set of cases referred to in Mediation being a) 31 cases under Section 138 Negotiable Instruments Act pertaining to 31 cheques for a total amount of Rs.1,34,07,966/- each delivered by the respondent to the petitioner for discharge of commercial liability; b) 18 other similar complaints pending between the parties but in a different court and c) a decree dated 16.11.2016 passed by the High Court of Delhi in case bearing CS(OS) No.3402/2015 passed in favour of the complainant and transferred to the Madras High Court for its execution

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10. Thus the apprehension of the learned MM has been duly answered in the judgment of Dayawati (supra) wherein it says after the mediation settlement the entire amount, be it outstanding in some other Court can be realised by the Court which has accepted the settlement and it may proceed for recovery under Section 431/421 Cr.P.C.

11.

12. The contention only Late Shri A.A. Murugaiah was liable as all the cheques were signed by him and the complaints were filed primarily, on the cheques signed by him only, I disagree, to this contention since respondent no.1 (*Meera Arun*) was also a party to the mediation proceedings; signed the mediation settlement and she gave a specific undertaking to abide by the settlement that in case of default she may be too be proceeded with under Sections 421/431 Cr.P.C. The impugned order, thus, suffers from infirmity and needs to be set aside.

13. In the circumstances, the petition is allowed. The learned MM is directed to enforce the terms of the settlement agreement dated 19.02.2019 against the respondents by way of attachment of the property belonging to respondent no.6, late Shri A.A. Murugaiah to the extent of shares inherited by the respondents herein as also to the property of respondent no.1. An affidavit qua the properties belonging to late Shri.A.A.Murugaiah and to the extent inherited by respondents and of respondent No.1 be submitted before the learned MM within a week.

14. With these observations, the petition stands disposed of along with pending application(s)."

2.5. Thereafter, on 07.09.2022, the respondents no. 1 and 2 herein filed before the Ld. M.M, an application under Sections 421 and 431 Cr.P.C praying as under :-

"In view of above submissions, it is therefore most respectfully prayed that the shares and properties as mentioned in the affidavit annexed with the present application may please be allowed to be attached and the amounts so realized may please be allowed to be recovered in terms of Section 431 / 421 Cr. P .C.

2.5.1. Subsequently, the respondent filed another application praying for, attachment of the bank accounts of the petitioner herein to the extent of recoverable amount of Rs. 7,18,83,844/-.

2.6 The above applications were disposed of by the Ld. M.M vide orders dated 12.09.2022 and impugned order dated 26.09.2022, respectively. Relevant portion of the impugned order dated 26.09.2022 reads as under :-

“.....

A second application has been filed on behalf of the complainant for the attachment of bank accounts of Assured Best Care Hospital to the extent of shares of Late S. A.M. Arun and Ms. Meera Arun as per directions/orders of Hon'ble High Court of Delhi vide order dated 03.09.2022.

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Vide order dated 19.09.2022 Court notice was sent by electronic mode to the concerned opposite parties to appear and file reply/make submission (if any) qua the said application on 26.09.2022 at 2.00 p.m. Scanned copy of the application along with order dated 19.09.2022 was also sent with the court notice. Liberty was given to parties to appear through VC on 26.09.2022 with prior intimation to Reader of the Court.

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As per report received from Nazarat Branch, court notice has been served on the concerned opposite parties. However, none has appeared on behalf of the concerned opposite parties either physically or through VC. No reply is forthcoming from the concerned opposite parties.

Accordingly, in compliance of order dated 03.09.2022 of Hon'ble High Court of Delhi, attachment warrant qua bank accounts mentioned in the application be sent to concerned DM through SHO Paharganj for NODH”

3.0. The aforesaid order is challenged by the petitioner inter alia, on the grounds that :-

(i) the impugned order is a non-speaking order and was passed in violation of principles of natural justice as no notice of any of the proceedings was ever served upon the petitioner. Although, the Ld. Magistrate in the impugned order has mentioned that Nazarat Branch had effected service upon the petitioner, the petitioner did not receive the documents and therefore, had no opportunity to present the correct facts;

(ii) the petitioner became aware of the proceedings/attachment of its bank account only when it sought to draw money from its account with the Axis Bank, HDFC and City Union Bank i.e. the respondents no. 4 to 6 herein ;

(iii) the Ld. Metropolitan Magistrate failed to appreciate that as per the Settlement Agreement of 2019, Late Dr Arun Murugaiah and Mrs Meera Arun undertook personal responsibility to pay the arrears of rent and fines owed to the respondents No 1 & 2. For which, the accounts of company which is a distinct entity from its shareholders, could not have been attached and the fact that Dr Arun Murugaiah held a majority shareholding is of no consequence and reliance in support was placed upon the judgment in case titled as '**Bacha F. Guzdar v. Commissioner of Income Tax, Bombay, MANU/SC/0072/1954** ;

(iv) Ld. M.M. failed to consider that Dr Arun A Murugaiah has expired and his shares in the petitioner company have been transmitted and equally divided amongst his children;

(v) the petitioner's bank accounts could not be attached for the personal failings of the shareholder viz. Late Dr Arun Murugaiah and his wife, the respondent no 3. Further, warrants of attachment under Section 421 Cr.P.C could not have been issued with respect to the property that does not belong to the persons upon whom the fine is to be levied (Ram Singh vs. Emperor AIR 1935 Pat. 214);

(vi) even otherwise, the Ld. M.M failed to consider that the shares of Late Dr Arun Murugaiah and Ms Meera Arun in the petitioner Company already stand attached vide order of the Tax Recovery Officer, Chennai dated 3 April 2019 and 15 April 2019.

3.1. Ld. counsel for the petitioner also argued that in the affidavit filed along with their application for attachment dated 07.09.2022, the respondents no. 1 and 2 have incorrectly mentioned that the deceased Dr. Arun Murugaiah, the then director of M/s Vasan Health Care and late husband of Meera Arun is the recorded owner of land beneath the petitioner hospital vide document registration no. 8627/2010 book no. 3091, which is not the case.

4.0. This petition is strongly opposed by the respondents pleading that it is a malicious litigation in order to avoid liability and deserves to be dismissed with heavy cost. Ld. counsel submitted that the Vasan Health Care Pvt. Ltd. as well as the petitioner company were incorporated by Dr. A.M. Arun ; the petitioner company came to be established by Dr. A.M. Arun, when Vasan Health Care came to be investigated by Enforcement Directorate. He also submitted that the petitioner company

is a closely held company of late Dr. A.M. Arun ; Late Arun and his wife hold more than 50 per cent shares in the petitioner company. The above companies were just a corporate-web created by the petitioner ; petitioner is no more than a glorified partnership firm ; and if the corporate veil is lifted, it shall be clear that it was late Dr. A.M. Arun and his wife, and his other legal heirs (who admittedly have succeeded his estate), who are the real persons owning and controlling these companies and their entire movable and immovable assets Reliance in this regard was placed on **DDA v. Skipper Construction Co. (P) Ltd. (1996) 4 SCC 622.** Ld. counsel also submitted that the land underneath the petitioner company was/is owned by late Dr. Arun Murugaiah, as per the registered document.

4.1 Ld. counsel for the respondent also argued that even otherwise, this petition is misconceived as this court u/S. 482 Cr.PC, can not go into the question of facts (as agitated by the petitioner) and act as an appellate court. He placed reliance upon the judgment of Hon'ble Supreme Court on the scope of Section 482 Cr.P.C in ***Dineshbhai Chandubhai Patel v. State of Gujarat and Ors., (2018) 3 SCC 104*** and ***Suryalakshmi Cotton Mills Ltd. vs. Rajvir Industries Ltd. & Ors., (2008) 13 SCC 678.***

4.2. Ld. Counsel for the respondent also submitted that the petitioner was duly served as per report of Nazarat Branch as has also come in the impugned order. The petitioner had due knowledge of the proceedings throughout, but deliberately chose not to file reply and join the proceedings. Therefore, the petitioner cannot now plead that the impugned order was passed without hearing it.

4.3. Ld. counsel for the respondent also drew attention of this court to e-mail dated 23.12.2021, whereby the order passed by this court dated 17.12.2021 was communicated to Meera Arun and the petitioner herein through its directors. Ld. counsel also pointed out that the said order was duly received by them on e-mail id i.e. info@abchospital.in. Notice of the application for issuance of warrants of attachment was also issued/served on the same e-mail id.

4.4. Ld. counsel for the respondent further submitted that the petitioner company has many FDRs in the aforesaid 3 banks and the respondent has no objection if the accounts in question are de-attached after securing the respondents no. 1 & 2's dues to the tune of Rs. 7,18,00,000/- and interest accrued thereon.

5.0 In rebuttal, with respect to the respondents' contention regarding lifting of veil, the Ld. counsel for the petitioner submitted that the said doctrine is not available in every case and can be given effect to only where the corporate structure has been created to perpetuate a fraud and referred to the judgments of this court dated 02.08.2019 in *CM(M) 1066/2018 & CM APPL. 36566/2018 titled Gurmeet Satwant Singh & Ors. vs. Meera Gupta & Anr.* and judgment dated 12.04.2021 in *C.R.P. 166/2018 & C.M. APPL.32378/2018 & 10441/2021 titled Sanuj Bathla & Anr. vs. Manu Maheshwari & Anr.*, in support.

6.0. I have duly considered the submissions made by both the sides.

7.0. The petitioner has challenged the impugned order primarily on the ground that the same has been passed without giving an opportunity of

hearing to the petitioner, as no notice was ever served upon them. Same is contested by the respondents no. 1 & 2 submitting that the petitioner was duly served through e-mail on e-mail id info@abchospital.in, on which even the earlier order dated 17.12.2021 of this Court, was served. But they chose not to appear and contest, as is also reflected in the impugned order.

7.1. In this respect, the Ld. counsel for the petitioner submitted that even if it is accepted that the petitioner was served with the application, it is apparent that the petitioner was not served with the affidavit which was filed on the date of hearing/passing of the impugned order i.e. 26.09.2022. The petitioner therefore, did not have the complete information/documents to respond.

8.0. Perusal of the record shows that pursuant to the order passed by this court on 03.09.2022 in CrI. M.C no. 3333/2021 directing the learned Magistrate to enforce the terms of the settlement dated 19.02.2021, the respondents no. 1 and 2 herein had filed an application on 07.09.2022 for attachment of the properties of late Sh. A.M. Arun and Ms. Meera Arun, wherein the petitioner herein and its director were impleaded as the respondents no. 5 and 6. From the record it appears that the petitioner herein did not appear in the matter and the said application was disposed of by the Ld. Magistrate vide order dated 12.09.2022. Vide said order, the Ld. M.M. directed issuance of warrants of attachment qua the movable and immovable properties as mentioned in the affidavit accompanying the said application. Said affidavit mentions that the deceased Arun A. Murugiah is the recorded owner of the land beneath the Assured Best Care Hospital Pvt. Ltd. (petitioner herein) bearing no. 1, Anna Mali

Nagar, Main Road, near Karur Bypass Road, Trichy vide New T.S. No. 25, 27 and 28, New Ward B, Annamali Nagar, Chinthamanti Village, Trichy Town-620018. The affidavit also mentioned that Late Arun A. Murugiah is the recorded share holder of 38535 in class A and 28815 equity shares held in class B of the petitioner company and Ms. Meera Arun is the recorded share holder of 1400 equity shares held in class A. Shareholding of Dr. Arun A. Murugiah and Ms. Meera Arun in the petitioner company is not disputed.

8.1. It is however the petitioner's case that in the affidavit filed along with their aforesaid application for attachment of movable and immovable properties dated 07.09.2022, the respondents have incorrectly mentioned that the deceased Arun, then director of M/s Vasan Health Care and late husband of Ms. Meera Arun, is the recorded owner of the aforesaid land beneath the petitioner hospital Assured Best Care Hospital Pvt. Ltd. Therefore, the Ld. Magistrate could not have directed attachment of the immovable property. Same is contested by the respondents no. 1 & 2. This Court cannot be expected to go into the disputed question of facts in the present petition. (judgements in **Dineshbhai Chandubhai Patel** (supra) and **Suryalakshmi Cotton Mills Ltd.** (supra) relied upon by the respondents)

9.0. As per record, subsequently, the respondents no. 1 and 2 filed another undated application for attachment of the bank accounts of the petitioner to the extent of shares of late Arun A. Murugiah and Ms. Meera Arun in view of the order of this court dated 03.09.2022.

9.1. Perusal of the impugned order (as reproduced in para 2.6 above) shows that the said application was taken up by the Ld. MM for consideration on 26.09.2022. The impugned order records that the petitioner herein was duly served as per the report of the Nazarat Branch. The petitioner has failed to demonstrate any reason to doubt the said report/observation of the Id. Magistrate in this regard in the impugned order.

9.2. Ld. counsel for the petitioner argued that even if for a while, it is admitted that the application was served on the petitioner, the record shows that the affidavit giving details of the properties to be attached and other documents filed therewith, was filed on the same day i.e. 26.09.2022, and the same were not served on the petitioner. Therefore, the petitioner did not get an opportunity to respond to the same.

9.3. Perusal of the record shows that the Ld. MM while directing attachment of the properties vide order dated 12.09.2022, fixed the matter for 21.11.2022 for District Magistrate's report. However in the meanwhile, aforesaid second application came to be filed by the respondents no. 1 & 2 herein. Said application does not bear any date. It is also seen that the second affidavit filed by the respondent no. 1 herein (w.r.t. above second application) bears verification and attestation date 26.09.2022. From the same it is evident that the said affidavit was filed on the date of hearing i.e. 26.09.2022, which lends credence to the petitioner's plea that the affidavit/document if any, filed along with the same, was not/could not have been served on it. However, it is also seen that the subsequent application stated to have been duly served on the petitioner, did provide details of bank accounts of the petitioner, of which

the attachment was sought ; though, the affidavit with respect to the same, was filed later i.e. on 26.09.2022.

10.0. Be that as it may. In view of above facts and circumstances, it would be in fitness of things, if the petitioner is given an opportunity of hearing. The matter is therefore, remanded back to the Ld. Magistrate to hear the petitioner and to consider the petitioner's contentions as raised in the present petition

10.1. It is hereby directed that the **parties shall appear before the Ld. Magistrate on 21st November 2022, the date already fixed before the Ld. Magistrate.** No further notice in this regard shall be issued to the petitioner. Further, the petitioner shall make submissions on the date fixed for the purpose by the Ld. trial court and shall not seek or be granted any adjournment.

10.2. Ld. Magistrate shall dispose of the matter within two weeks from the said date i.e. 21.11.2022.

11.0. Ld. Counsel for the petitioner argued that attachment of the bank accounts of the petitioner, a multi-speciality hospital, has brought it to near complete halt by constricting the flow of funds for purchase of even life saving medicines and performance of critical surgeries ; therefore, in the meanwhile, the bank accounts of the petitioners be de-attached. In this respect, Ld. Counsel for the respondents submitted that the respondents no. 1 & 2 have no objection to the same subject to securing of the respondents' dues to the tune of Rs.7,18,83,844/- (as was outstanding on 31.08.2022) and interest at the agreed rate.

11.1. In view of the above and considering the facts and circumstances in entirety, it is directed that let the petitioner's bank accounts attached vide order dated 26.09.2022 be de-attached subject to the petitioner securing an amount of Rs. 7,18,83,844/- (outstanding as on 31.08.2022) with interest at the agreed rate, in the form of FDR in favour of Ld. Trial Court to be kept with Ld. Trial Court, till disposal of the matter.

12.0. Petition is disposed of accordingly.

13.0. Pending applications, if any, are closed.

POONAM A. BAMBA, J

NOVEMBER 15, 2022/chandan

Click here to check corrigendum, if any