

IN THE HIGH COURT AT CALCUTTA
(Civil Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.O. 1160 of 2023

Sesa International Limited

Vs.

Patangi Trade & Holdings Pvt. Ltd.

For the Petitioner	:Mr. Abhrajit Mitra Sr, Adv. Mr. Debdoot Mukherhee, Adv. Mr. D. Chakrabroty, Adv. Mr. K. Sarat, Adv.
For the Opposite party	:Mr. Sanjoy Bose Adv. Mr. Priyankar Basu Mallick, Adv. Mr. Sujay Nath, Adv.

Heard on : April 11, 2023

Judgment on : April 25, 2023

Bibhas Ranjan De, J.

1. The order no. 25 dated 03.04.2023 in connection with money execution no. 98 of 2021 arose out of money suit no. 385 of

2020, is under challenge. By the order under challenge Learned Chief Judge, City Civil Court, Calcutta issued warrant of arrest against the directors of the judgment debtor and decree holder was directed to provide the names of directors of the judgment debtor against whom warrant to be issued.

- 2.** By the order impugned Learned Chief Judge observed that in spite of having opportunity judgment debtor did not file any written objection and thereafter avoided appearance before the Court on several occasions. On 04.05. 2022 Learned Chief Judge in office allowed judgment debtor as last chance for hearing of the petition dated 12.04,2022 with a prayer for issuance of warrant of arrest. Thereafter, on several occasions the hearing was adjourned on different grounds. Lastly, on 03.04.2023 i.e. by the impugned order learned chief judge took up the hearing of the application dated 12.04.2022. In course of passing order Learned Chief Judge came across the argument advanced on behalf of the judgment debtor regarding conditions required before issuing warrant of arrest against the judgment debtor and that conditions have not been incorporation in the petition dated 12.04.2022.

3. It was observed by the Learned Chief Judge that in spite of having several opportunities judgment debtor has avoided making payment to the decree holder and on the other hand judgment debtor mortgaged or charged all the properties with banks. Accordingly, Learned Chief Judge issued warrant of arrest.
4. Learned senior advocate, Mr. Abhrajit Mitra, appearing on behalf of the petitioner/judgement debtor has contended before this Court that the conditions envisaged in Section 51 of the Code of Civil Procedure Code have to be complied with before passing any order of issuing warrant of arrest to enforce execution. Mr. Mitra has further submitted that in the order impugned none of the conditions under Section 51 of the Civil Procedure Code was ever satisfied before issuance of warrant of arrest. In support of his contention, Mr. Mitra has referred to the decision of ***Rajiv Garg Vs. L & T Finance Limited and Anr.*** reported in ***2011 SCC Online Cal 3486*** and a case of ***Sasanapuri Someswara Rao Vs. Shriram City Union Finance Ltd.*** reported in ***2022 SCC OnLine AP 345***.
5. In ***Rajiv Garg*** (supra) dealt with a case of liability of a guarantor in a fiduciary capacity towards the creditor to

account for the loan and accordingly Hon'ble Division Bench of this Court took up the issue within the purview of clause (c) of the first proviso to Section 51 of the Code of Civil Procedure.

6. In ***Sasanapuri Someswara Rao*** (supra) Hon'ble Division Bench of the High Court of Andhra Pradesh observed that scheme of section 51 Civil procedure code is to ensure that sufficient reasons exist for making an order of arrest and detention of a judgment debtor in civil prison in execution proceedings which is flagrantly violative of Article 21 of the Constitution of India unless there is proof of minimal fairness of his willful failure to pay in spite of his sufficient means and willful neglect and refusal to pay the decree – debt .

7. By the assistance of aforementioned principle laid down in the above cases Mr. Mitra has tried to make this court convinced that Learned Chief Judge did not assign any reason in compliance with the Provision of Section 51 of the Code of Civil Procedure before issuance of warrant of arrest.

8. Per contra, Ld. Advocate, Mr. Sanjoy Bose appearing on behalf of the opposite party/deGREE holder has argued that the order impugned clearly shows that reasons have been assigned

taking the conditions envisaged in Section 51 of the Code of Civil Procedure.

9. Mr. Bose has submitted the judgement debtor in spite of having means avoided payment of decretal amount arose out the decree dated 12.03.2021 which remained unchallenged. In support of contention, he has submitted a website document from MCA (Ministry of Corporate Affairs) where name of the judgement debtor appears along with the name of the Three (3) Directors (Uma Bagri, Shankar Lal Bagri & Shyamal Jana). That document further shows the name of the Company (Gladwell Suppliers Limited Liability Partnership) along with the name of the two (2) directors (Uma Bagri & Shankar Lal Bagri).

10. Thereby, Mr. Bose has submitted that by no stretch of imagination it can be presumed that the Directors of the judgment debtor company had no means to pay the decretal amount to the decree holder.

11. In support of his contention, he relied on recent judgement of the Hon'ble Apex Court in a case of **Rahul S. Shah Vs. Jinendra Kumr Gandhi and others** reported in **(2021) 6 Supreme Court Cases 418**.

12. In **Rahul S. Shah** (supra) laid down directions to the executing courts as follows:-

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

1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third

2. party interest and further exercise the power under Order XI 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.

3. 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.

4. After examination of parties under Order X or production of documents under Order XI 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.

5. Under Order XL Rule 1 of 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.

6. The Court must, before passing the decree, pertaining to

7. 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.

8. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.

9. 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.

10. The Court exercising jurisdiction under [Section 47](#) or under Order XXI 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.

11. 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.

12. 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 XXI as well as grant compensatory costs in accordance with [Section 35A](#).

13. Under section 60 of 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.

14. 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.

15. 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 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 stringently in accordance with law.

16. 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.”

13. Having heard the learned advocates appearing on behalf of the parties to this applications as well as materials on record including the website document of MCA and order impugned prima facie I am unable to hold the judgement debtor had no means to pay decretal amount or there is no willful neglect on the part of the judgement debtor in making payment of decretal dues.

14. However, by the impugned order learned chief judge did not pass any order directing civil prison save an except issuing warrant to ensure the presence of judgement debtor before the court.

15. In the aforesaid view of the matter I do not find any reason to interfere with the order impugned invoking power under Article 227 of the constitution of India.

16. The revision application stands dismissed on contest.

There is no order as to costs.

17. Let a copy of this order be communicated to the Learned Chief Judge, City Civil Court, Calcutta for information.

- 18.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 19.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]