

27.06.2023
Sl. No.39(DL)
srm

C.O. No. 1703 of 2023
Vijay Agarwal
Versus
M/s. Ekta Ispat & Power Private Limited & Anr.

Mr. Suddhastwa Banerjee,
Mr. Anuraag Mitra,
Mr. Tamoghna Saha

...for the Petitioner.

Mr. Tapas Maity,
Mr. Rakesh Kumar Soni

...for the Opposite Party No.1.

The petitioner is aggrieved by an order directing issuance of writ of sale in respect of the immovable property of the judgment debtor which had been attached.

The petitioner filed an application for amendment of the schedule of the immoveable property, which was part of Money Execution Case No.108 of 2016, now renumbered as 16 of 2016. The execution case was filed by the decree-holder. Deletion of premises No.P-70, CIT Road, Scheme VIM, P.S. Phoolbagan, Kolkata-700054 was prayed for.

The execution was filed for satisfaction of an Arbitral Award passed in an arbitration proceeding on July 15, 2013.

The petitioner claims to be the absolute owner of the property, which was included in the schedule of the execution case, namely property situated at P-70 CIT Road, Scheme VIM.

The petitioner claims that the property is the personal property of the petitioner and did not belong to the judgment debtor company. The petitioner was a director in the judgment-debtor company and contended that he had no connection with the said company over last 6 to 7 years. The private property should not be made a part of the execution proceeding for satisfaction of the decree against the company. With these averments, the application was filed to expunge and/or delete the premises of the petitioner from the schedule of the execution case. The petitioner's specific averment is that the arbitral award would not be applicable in respect of the personal property of the petitioner as the petitioner did not have any business with the judgment-debtor company. It is alleged that the execution proceeding could not proceed and direction to issue writ of sale could not be issued.

Mr. Rakesh Kumar Soni, learned Advocate appearing on behalf of the decree-holder, submits that the petitioner in connivance with the judgment-debtor filed the frivolous application only to prevent the decree holder from getting the decree satisfied. That the decree-holder has been suffering from 2013 and is being deprived of the legitimate claim. It is submitted that by execution of a fraudulent deed of gift, the petitioner became the alleged owner of the flat. The share of

Anand Kumar Agarwal in the property in question, was wrongly transferred to the petitioner. That the said property used to be the registered office of the judgment-debtor company and hence the petitioner did not have any private or personal interest in the same. The property was a part and parcel of the property belonging to the judgment-debtor and was rightly included in the schedule of the execution case. Still the company uses such property.

That false and frivolous tenancy certificates have been produced which should not affect the merits of the execution proceeding.

Having heard the learned Advocate for the respective parties, this Court is of the view that before the sale takes place, an opportunity should be given to the petitioner to get his application heard and disposed of on merits.

Mr. Soni submits that written objection to the said application has already been filed. Thus, on the next date, i.e. August 17, 2023, the application filed by Mr. Banerjee's client in connection with Money Execution Case No.16 of 2016, which is pending before the learned Additional District Judge, 6th Court at Alipore shall be disposed of upon hearing the parties. Thereafter, the money execution case shall proceed in accordance with law. Non-appearance of any of the directors

of the judgment debtor company, shall not be a cogent ground for stalling the execution case. No adjournment shall be allowed.

The order impugned is set aside.

The revisional application is, thus, disposed of.

There will be, however, no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)