

APOT/192/2022
With
EC/55/2019
IA NO: GA/1/2022
GA/2/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

NISHA CHAGLANI ALIAS NISHA S. CHAGLANI
-VS-
APCOTEX INDUSTRIES LTD. AND ORS.

BEFORE:

The Hon'ble JUSTICE HARISH TANDON

The Hon'ble JUSTICE PRASENJIT BISWAS
(COMMERCIAL DIVISION)

Date : 14th March, 2023

Appearance:

Mr. Amitava Mukherjee, Adv.

Ms. Arpita Saha, Adv.

Ms. Ankita Ghosh, Adv.

...for the appellant

Mr. Shuvasish Sengupta, Adv.

Mr. Balarko Sen, Adv.

Mr. Suvradal Chowdhury, Adv.

Mr. Souma Bhattacharya, Adv.

...for the respondent no.1

Mr. Ankan Rai, Adv.

The Court: The appeal is restricted to an order dated 20th September, 2022 passed by the executing court directing appointment of the receiver in

respect of a residential flat in Surya House having found that the alleged execution and registration of two deeds of gift in favour of the applicant is in flagrant violation of the affidavit of assets disclosed before the Bombay High Court as well as the orders passed therein.

The genesis of the dispute can be traced out from an arbitration proceeding initiated against the respondent and the award-debtor which is admittedly a partnership firm. The arbitral proceeding culminated into an award and we are given to understand that no further steps have been taken by the award-debtor before the competent court. However, the award was put into execution and the receiver was appointed to take possession of the office space at Narayani Building which would further be evident from the findings rendered in the impugned order. Subsequently, the receiver was appointed over the residential flat in Surya House which is the subject-matter of challenge in the instant appeal.

Learned advocate appearing for the appellant is very much vocal in his submission that neither they nor their predecessor was a partner of the award-debtor nor any decree has been passed against them and, therefore, appointing a receiver would unjustly encroach upon their legal rights, which is impermissible. It is sought to be contended vociferously that even if the deeds of gift are disregarded, yet the appellants inherited the undivided share in respect of the properties over which their predecessor had an undivided interest and, therefore, the receiver could not be appointed in respect of those properties.

The aforesaid submission is fallacious for the simple reason that the undivided share allegedly claimed is in respect of the office space at Narayani Building over which the receiver had already been appointed and the possession thereof has been taken. The order appointing the receiver over the office space at Narayani Building has not been assailed by the appellant and, therefore, we do not intend to make any comment thereupon as it would have some impact on a contention of the appellant if taken before the executing court.

As indicated above, the impugned order is restricted to the residential flat in Surya House and, therefore, we invited the attention of the respective counsels to disclose whether the predecessor of the present appellant had any subsisting right in respect thereof. The aforesaid query assumes significance for the simple reason that the affidavit of disclosure filed before the Bombay Court by one of the partners of the award-debtor clearly indicates that the said residential flat at Surya House is owned by the deponent therein meaning thereby that apart from the said deponent, no other person had or has any right, title or interest in respect thereof.

Interestingly, when the approach was made by the appellant before the executing court, the foundation was laid on the basis of the deed of gift executed by the mother-in-law of the appellant no.1 in respect of her alleged share in the residential flat at Surya House executed much after the disclosure of the assets before the Bombay High Court. The affidavit of disclosure was filed on 25th October, 2018 and on the other hand, the said

deed of gift was executed on 2nd December, 2020. Learned advocate appearing for the appellants was unable to satisfy as to whether their predecessor had at any point of time subsisting right in respect of the said residential flat. According to him, there was no subsisting right at any point of time and the right flowed from the mother-in-law by virtue of the execution of the deed of gift.

It is no longer *res integra* that any act or a deed executed on the teeth of an order or an undertaking given before the Court is, *per se*, illegal and no right would flow from such deed. The award-debtor cannot be permitted to do certain acts prejudicial to the interest of the award-holder nor any such act would be recognised having intended to defraud the creditor or frustrate the decree passed by the Court. The donor was aware of the fact that an award is passed on 14th September, 2018 and in the execution proceeding, an undertaking was given in the form of the affidavit of disclosure that the said residential flat at Surya House belonged to the deponent therein who is admittedly one of the partners of the award-debtor. Any right, title and interest sprung from an act or the deed being executed to create an interest with an intent to frustrate the decree, the Court shall not recognise such deed to have any legal sanctity nor can be regarded to have legal existence. The possession of the immovable property is one thing than such possession is fortified with the title or the right. The moment the Court noticed that the deeds are executed by the award-debtor on the teeth of the decree being passed against her, such transaction cannot be said to be legally valid and

there is no fatter on the part of the Court to appoint a receiver to take possession thereof. The receiver can be appointed by the Court provided the Court satisfied its conscience that it is just and proper in order to safeguard the interest of the litigating parties. The conduct and the transactions in course of the litigations manifestly give an impression that such deed of gift was executed with an intent to thwart the decree and deprive the holder of the decree of its fruits.

We are reminded of the celebrated observation of Sir V. V. N. Bose, the J. of the Supreme Court wherein He held that the real trouble starts after getting the decree. This is one of the classical examples of such observation and all attempts are sought to be resorted to delay or get away with the decree which is impermissible in law.

We, thus, do not find any infirmity and illegality in the impugned order.

The appeal is dismissed.

There would be no order as to costs.

[HARISH TANDON, J.]

[PRASENJIT BISWAS, J.]