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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 503 of 2023
(WRIT PETITION NO.2480 OF 2021 (F))

1. MR. DEEPAK MATHUR,
AGE 60 YEARS, S/O. SANT PRASAD
MATHUR, INDIAN NATIONAL,
RESIDENT OF 203, PRIME HARMONY
AIRPORT ROAD, CHICALIM, VASCO,
GOA-403711.

2. MR. NARESH KUMAR BANARSI
DAS AGARWAL,
AGE 49 YEARS, S/O. BANARSI DAS
AGARWAL, INDIAN NATIONAL,
RESIDENT OF HOUSE NO. 150/1-68,
CHOWGULE GARDENS, ZARI,
ZUARINAGAR, GOA-403726

3. MR. SUSHIL SATNARAYAN
KHAITAN,
AGE 61 YEARS, S/O. SATYANARAYAN
KHAITAN, INDIAN NATIONAL,
RESIDENT OF 33G, DESHMUKH MARG
MUMBAI-400026. ... Petitioners.

Versus

1. ST. ANTHONY'S TIMBERS,
THODAPARAMBU, KOOVAPPADY
VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT, KERALA,
REP. BY ITS MANAGING PARTNER
MR. DAVID T.E. S/O. ESTHAPANOSE
THAPPLIAN HOUSE, PERUMBAVOOR
VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM, KERALA.

2. M/S. META COPPER ALLOYS LTD.
36/37 Mittal Chambers, Nariman Point ... Respondents.
MUMBAI-400021.

Mr Subodh Kantak, Senior Advocate with Mr Jitendra Supekar, Ms Yulette Coutinho, Mr Kher Simoes and Ms Neha Kholkar Advocates for the Petitioners.

Mr Dhaval Zaveri with Mr Nehal Govekar and Mr S. Kamulkar, Advocates for the Respondent No.1.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 10 August, 2023

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final disposal at the admission stage itself.

2. Though all office objections are removed, the matter is still on the filing number. The office is directed to register it immediately and issue regular number before showing it as disposed of.

3. Heard the learned Senior Advocate Mr Kantak appearing along with Mr Supekar Ms Coutinho, Mr Simoes and Ms Kholkar for the Petitioners and Mr Zaveri who appears along with Mr Govekar and Mr Kamulkar for Respondent No.1.

4. The petition is challenging the impugned order dated 05.03.2021 in Regular Execution No.7/2014 whereby the learned Executing Court issued arrest warrant against the Managing Director/CEO or the Judgment Debtors on the ground that the decree remained to be satisfied.

5. Mr Kantak, learned Senior Counsel for the Petitioners would submit that inspite of compliance of Order 21 Rule 41 by submitting the list of assets, warrant has been issued against the Managing Director/CEO without giving any reasons. Mr Kantak would submit that the only option with the Trial Court is when the Judgment Debtor fails to comply the directions issued under Order 21 Rule 41 for disclosing assets and not otherwise. He submits that the impugned order nowhere discloses about any default committed by the Judgment Debtors or its Directors in submitting/furnishing the assets.

6. Mr Kantak, learned Senior Counsel further submits that the Judgment Debtor is a company and warrant has been issued against the Managing Director without seeking the details of assets of the Managing Director personally and giving him opportunity to defend himself in the execution of decree. On this line, the learned Senior Counsel Mr Kantak submits that the impugned order which is against principles of natural justice, stands vitiated and also needs to be quashed and set aside for want of powers to issue such warrant in non-compliance of Order 21 Rule 41 CPC.

7. Per contra, Mr Zaveri appearing for Respondent No.1 forcefully submitted that principle of piercing corporate veil would apply in the present matter and in this respect, he placed reliance on the Judgment of the Division Bench of this Court in the case of ***Bhatia Industries &***

Infrastructure Limited vs. Asian Natural Resources (India) Limited & Anr.*; 2016 SCC OnLine Bom 10695.*

8. Mr Zaveri further pointed out that this Court directed the Judgment Debtor/Petitioners to deposit an amount of ₹5,00,000/- as per order dated 01.12.2021 and allowed Respondent No.1 to withdraw the said amount as per order dated 24.01.2022. He submits that in case the Court is not with him, such amount be protected till the disposal of execution proceedings or till order is passed by the Executing Court for the recovery of the remaining decretal amount. According to Mr Zaveri, the initial decretal amount was only ₹10,00,000/-, however, with interest, the same is now equivated to around ₹28,00,000/-.

9. Rival contentions fall for the determination of this Court as under.

10. The execution proceedings are pending from the year 2014 and that too on the basis of compromise decree. Mr Zaveri pointed out that Respondent No.1/Decree Holder is unable to recover the amount inspite of all efforts and therefore, application was filed for disclosing assets of the Judgment Debtor. He further submitted that though such application was allowed, Judgment Debtor failed to disclose the assets. According to him, the Managing Director played fraud on the Court and though the assets were available at the time of filing of the execution, the same have been siphoned off systematically in order to frustrate the entire decree.

11. Mr Zaveri candidly accepted that such aspect is not found recorded in the order of the Trial Court. However, he submits that all these aspects are already placed before the Executing Court.

12. Be that as it may, the present petition is challenging the impugned order dated 05.10.2021 which is found in the Roznama order dated 05.03.2021 below Exhibit 46 (application for recall of warrant) and the order dated 22.11.2019 below Exhibits 34 and 37 for arrest of Managing Director of the Judgment Debtor.

13. Perusal of order dated 22.11.2019, which is the main order passed by the Executing Court issuing warrant or arrest against the Managing Director/CEO, would go to show that such application was filed by the Decree Holder on the premise that though the list of assets along with balance sheet of the Judgment Debtor company were placed on record, the Judgment Debtor failed to produce balance sheet and I.T. returns for the financial year ending on 31.03.2017.

14. Mr Kantak, learned Senior Counsel appearing for the Petitioner pointed out that reply was filed to such application giving reasons as to why such I.T. returns were not filed since the company was not operating and there was no business transactions at the relevant time.

15. The impugned order nowhere discloses that the learned Trial Court considered any disobedience on the part of Judgment Debtor of its earlier order of submitting assets on affidavit thereby inviting issuance of arrest warrant.

16. Admittedly, the application was filed under Order 21 Rule 41 CPC wherein the powers of the Court is to direct the Judgment Debtor to submit the assets on affidavit and only for disobedience of such directions to issue warrant of arrest by detaining the Judgment Debtor in civil prison not exceeding three months.

17. The application filed by the Decree Holder for arrest of the Managing Director is dated 17.09.2019. The contents of said application would show that order was passed on Exhibit 28 by the Executing Court directing the Judgment Debtor to file correct affidavit as regards the list of assets along with the balance sheet of the company and tax returns for last three years. It further shows that since the Judgment Debtor failed to comply with the said order, it was prayed for issuance of warrant.

18. In the light of above contents of the application, it was expected of the Trial Court to at least observe about non-compliance of such order and only then proceed to issue warrant. One more aspect which needs to be taken into account is the fact that the Managing Director/CEO of the Judgment Debtor was not called upon to submit his/her list of assets on affidavit, excluding the assets of the Judgment Debtor company, in order to ascertain whether the Managing Director/CEO is liable to satisfy the decree passed against the company, independently.

19. Record shows that no such application was filed by the Decree Holder seeking directions from the Executing Court to the Managing Director/CEO to disclose assets on affidavit.

20. Sending the Judgment Debtor or person connected to the Judgment Debtor to civil imprisonment in default of compliance of a decree is considered to be a harsh step and must be exercised as a last resort. The Executing Court must try to satisfy the decree by all other means and only if the decree remains unsatisfied and if it is found that the Judgment Debtor or the officer of Judgment Debtor is responsible deliberately to avoid the performance, then only a warrant for sending such Judgment Debtor to civil prison could be resorted to, that too by giving sufficient reasons.

21. The Managing Director/CEO is not made a party as Judgment Debtor in his personal capacity in the execution proceedings. No notice was issued to the Managing Director/CEO personally asking to show cause as to why he should not be sent to civil prison, in default of the satisfaction of the decree. Therefore, it clearly violates the principles of natural justice.

22. There is no quarrel with regard to the proposition as found laid down by this Court in the case of *Bhatia Industries* (supra), however, the Trial Court is duty-bound to adopt the procedure as laid down under Order 21 CPC while executing the decree. There has to be finding regarding disobedience of the directions issued by the Trial Court under Order 21 Rule 41 CPC and only then warrant could be issued for sending the Judgment Debtor to civil prison.

23. The impugned order nowhere discloses any such finding, particularly against the Managing Director/CEO. Therefore, the impugned order suffers from perversity and it also shows non-application of mind. Accordingly, the impugned orders needs to be interfered with under the supervisory jurisdiction of this Court.

24. However, the Decree Holder is free to demonstrate before the Executing Court about the alleged fraud played by the Managing Director or any other officer of the Decree Holder so as to take appropriate steps towards satisfaction of the decree.

25. The amount which has been deposited by the Petitioners before this Court and subsequently withdrawn by Respondent No.1 shall remain with Respondent No.1 till the disposal of the execution application on merit by the Trial Court. This amount shall be adjusted if found legally recoverable from the present Petitioners towards the satisfaction of the decree. In case the Executing Court considers that the present Petitioners are no liable, in that case, the Executing Court can pass necessary orders but after hearing the Petitioners and the original Decree Holder.

26. With the above observations, the impugned orders are hereby quashed and set aside. Rule is made absolute in above terms.

27. Since the execution proceedings are of the year 2014, the Executing Court is hereby directed to decide the same as expeditiously as possible and within a period of one year from today. The Decree Holder as well as the Judgment Debtors shall cooperate with the Executing Court and shall not ask for unnecessary adjournments.

28. Petition stands disposed of accordingly.

BHARAT P. DESHPANDE, J.