

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6262 OF 2014

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Hotel Surya Private Limited

... Petitioner

V/s.

Inn Venue Hospitality Management
Pvt. Ltd.

... Respondent

Mr. Shailendra S. Kanetkar for the petitioner.

Mr. Milind Hartalkar for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 5, 2023

PC.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging order dated 24 March 2014 passed by the 4th Joint Civil Judge Senior Division, Pune below Exhibit 10 in Special Darkhast No.58 of 2013 and order dated 9 April 2014 passed below Exhibit 11.

2. The respondent filed Summary Suit No.78 of 2012 before Civil Judge Senior Division, Pune for recovery of amount of Rs.18,12,593/- along with future interest at the rate of 12% per annum. Parties arrived at compromise. Compromise decree was passed on 12 February 2013. As per compromise, defendant was required to pay amount of Rs.19,32,894/- as and by way of full and final settlement before 20 March 2013. On failure to pay the

amount before 20 March 2013, defendant was under obligation to pay interest at the rate of 24% per annum till realization of the entire amount.

3. On failure of the defendant to pay the amount, the plaintiff/decree-holder filed Special Darkhast No.58 of 2013. The judgment debtor filed an application below Exhibit 10 raising objection as regards executability of the decree. The said application is rejected by the impugned order. Hence, the judgment debtor has filed present writ petition.

4. Learned advocate for the petitioner submitted that the necessary ingredients of Order 37 Rule 3 of the Code of Civil Procedure, 1908 ("CPC" for short) which entitles a person to file summary suit are not fulfilled in the present case. In absence of satisfaction regarding ingredients of Order 37 Rule 3 of the CPC, the decree passed by the Trial Court was without jurisdiction. Therefore, the decree cannot be executed.

5. The issue regarding maintainability of objection is no longer *res integra* in view of judgment of the Apex Court in **Dhurandhar Prasad Singh v. Jai Prakash University & Ors.** reported in (2001) 6 SCC 534 and also in **Government of Orissa v. Ashok Transport Agency** reported in (2005) 1 SCC 536. The distinction between void and illegal decree has been delineated by another judgment of the Apex Court in **Rafique Bibi (D) by LRs v. Syed Waliuddin (D) by LRs. & Ors.** reported in (2004) 1 SCC 287. The Apex Court has held that the decree suffering from illegality or irregularity of procedure cannot

be termed executability by the Executing Court and remedy of aggrieved person is to set aside such decree in duly constituted proceedings before superior Court. Lack of jurisdiction in the Court passing decree must be obtained on its face in order to enable the Executing Court to take cognizance of such nullity based on want of jurisdiction.

6. In the facts of the present case, whether the ingredients of Order 37 Rule 3 of the CPC are fulfilled or not was a question of fact which was required to be decided by the Court passing the decree or the superior Court where challenge to such decree is raised. The Executing Court in its limited jurisdiction under Section 47 of the CPC which has been held to be a microscopic jurisdiction cannot enter into arena of adjudication of facts or illegality of the decree.

7. In my opinion, therefore, there is no infirmity in the impugned order. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)