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CMA Nos.805 and 813 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2023

PRONOUNCED ON : 09.03.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA Nos.805 & 813 of 2022
and CMP Nos.2136, 5905 & 5784 of 2022

CMA No.805 of 2022

P.Nachimuthu Gounder (Died)

1. N.Ganesan

2. N.Murthy

3. Saraswathy

4. Poongodi

... Appellants/Objectors/Third Parties

Vs.

1. M/s.Terra Manufacturing & Sales,
Proprietorship Concern,
Through Late Smt. Nirmal Kanta Parmar
(since Deceased),
Having Registered Office at,
C-6, 1st Floor, Greater Kailash Enclave,
Part-1, New Delhi – 110 048.

Through her legal heir
Sh.Yogesh Parmar

... Respondent/Decree Holder

Page No.1/21



CMA Nos.805 and 813 of 2022

2. M/s.Alagendiraa Apparels Pvt. Ltd.,
Through its Managing Director,
Sh.N.Ganesan
S.F.No.551, Periakadu Thottam,
Sirupooluvapatti Post,
Tiruppur.

... Respondent/Judgment Debtor

PRAYER: This Civil Miscellaneous Appeal is filed under Order 21 Rule 58(4) of the Code of Civil Procedure, to set aside the fair and decretal order dated 22.12.2021, passed in E.A.No.292 of 2014 in E.P.No.189 of 2014 on the file of the learned Principal District Judge at Tiruppur.

CMA No.813 of 2022

N.Ganesan

... Appellant/Objector/Third Party

Vs.

1. M/s.Terra Manufacturing & Sales,
Proprietorship Concern,
Through Late Smt. Nirmal Kanta Parmar
(since Deceased),
Having Registered Office at,
C-6, 1st Floor, Greater Kailash Enclave,
Part-1, New Delhi – 110 048.

Through her legal heir
Sh.Yogesh Parmar

... Respondent/Decree Holder

2. M/s.Alagendiraa Apparels Pvt. Ltd.,
Through its Managing Director,
Sh.N.Ganesan
S.F.No.551, Periakadu Thottam,
Sirupooluvapatti Post,
Tiruppur.

... Respondent/Judgment Debtor



CMA Nos.805 and 813 of 2022

PRAYER: This Civil Miscellaneous Appeal is filed under Order 21 Rule 58(4) r/w Order 43 Rule 1 of the Code of Civil Procedure, to set aside the fair and decretal order dated 22.12.2021, passed in E.A.No.206 of 2015 in E.P.No.189 of 2014 on the file of the learned Principal District Judge at Tiruppur.

For Appellant (s) : Mr.P.R.Raman, Sr. Counsel
in both cases for Mr.K.Myilsamy

For Respondents : Mr.Sanjay Agnihotri (for R1)
in both cases for Mr.P.K.Rajesh Praveen Kumar
No appearance (for R2)

COMMON JUDGMENT

The third party objectors viz., legal heirs of late P.Nachimuthu Gounder, who filed E.A.No.292 of 2014 in E.P.No.189 of 2014, are the appellants in CMA No.805 of 2022.

2. One another E.A. i.e. E.A.No.206 of 2015 in E.P.No.189 of 2014, was filed by the third party objector viz., N.Ganesan and against the order passed in the said E.A., he has filed CMA No.813 of 2022.

3. Contesting 1st respondent has entered appearance.



CMA Nos.805 and 813 of 2022

WEB COPY

4. The appellant herein N.Ganesan, is the Director of the Judgment Debtor Company. Arbitration proceedings have been initiated before the Delhi High Court, resulted in appointment of an Arbitrator and passing of the award that will be discussed infra and further proceedings under Arbitration and Conciliation Act, 1996, has also concluded.

5. (a) The 1st respondent herein has preferred Execution Petition i.e. E.P.No.189 of 2014, before the Civil Court at New Delhi and claims to have obtained an order of attachment, thereafter, it was transmitted to Tiruppur District for execution.

(b). In the execution proceedings, some of the properties ie., personal properties of the Director were included and hence, he has moved EA Nos.292 of 2014 and 206 of 2015 for lifting the earlier order of attachment. By an order dated 22.12.2021, the Execution Court [Principal District Judge], Tiruppur has dismissed the applications and hence, these Civil Miscellaneous Appeals.



CMA Nos.805 and 813 of 2022

WEB COPY

6. The learned Senior Advocate appearing for the appellants submitted that the principal issues that arises for consideration in these appeals are as under:

1) Whether the Civil Court at New Delhi can pass an order of attachment in respect of the property at Tiruppur District in Tamil Nadu State and hence, the same lacks territorial jurisdiction to pass such an order?

2) Whether the personal property of the Director be attached in execution in respect of the claim against the Judgment Debtor Company?

3) Admittedly, whether did the Company had any property or not is a different issue?

4) Whether the personal property of the Director of the Judgment Debtor can be attached in execution proceedings, without making them as party either in Arbitration or in Execution Petition?

7. Therefore, the appellants have challenged the findings rendered by the Execution Court at Tiruppur that lifting of corporate veil is not applicable and the same ought to have been taken in the arbitration proceedings. In the absence of any plea during the arbitration proceedings,



CMA Nos.805 and 813 of 2022

such a plea of lifting of the corporate veil cannot be raised for the first time in the execution proceedings. Besides, Directors are not added as party in the Execution Proceedings.

8. The learned counsel Mr.Sanjay Agnihotri appearing for the 1st respondent has made reply, that are discussed infra.

9. The chequered history of this case leading to the filing of these Civil Miscellaneous Appeals are as under.

(a) Between the 1st and 2nd respondent, judgment debtor and decree holder, respectively, there was an arbitrable agreement for supply of equipments on lease in the year 2007. The said agreement captioned as "Equipment lease agreement" was entered into between the parties on 23.05.2007. The Schedule-I that has been annexed to Equipment Lease Agreement was exchanged between the parties.

(b) The decree holder is a partnership concern and the judgment



CMA Nos.805 and 813 of 2022

debtor is the company. In view of certain disputes between the parties, the judgment decree holder had issued a letter dated 23.02.2008, terminating the agreement directing the decree holder to return the equipments along with the spares and accessories. There was reply and exchange of notice and thereafter the 1st respondent filed OMP No.266 of 2008, seeking for appointment of an Arbitrator before the High Court of Delhi and by an order dated 28.08.2008, an Arbitrator was appointed.

(c) It is seen from the records that as against the above said order, there was an appeal marked as FAO (OS) No.439/2008 wherein the Division Bench of the High Court of Delhi was pleased to constitute an Arbitral Tribunal by its order dated 27.01.2009 and it also appears to be a conditional order therein. The said conditional order was also not complied with.

(d) After completion of Arbitral Proceedings, the Arbitrator passed an award in OMP No.266 of 2008 dated 21.12.2010, whereby an award is passed against the Judgment debtor. Further, the appeal under the



CMA Nos.805 and 813 of 2022

WEB COPY

Arbitration Proceedings seems to have been concluded. Thereafter, execution petition appears to have been filed before the High Court of Delhi at New Delhi in EX.P No.334 of 2012 and EA No.743 of 2012, wherein by an order dated 10.10.2012 passed by the High Court at Delhi, four properties in Tiruppur District, Tamil Nadu State, stood attached.

10. It appears that EA No.88 of 2013 in EX.P.No.334 of 2012 was renumbered as EA No.206 of 2015. In the above said Execution Proceedings i.e., EX.P No.334 of 2012, the High Court of Delhi by a decree dated 12.11.2013 has transmitted the case to District Judge, Erode, Tamil Nadu and restricted the order of attachment passed on 10.10.2012 and at paragraph No.4, it is specifically stated that as under:

“The decree holder shall move the District Judge, Erode, Tamil Nadu on or before 10.12.2013. The interim order dated 10.10.2012 will continue to operate till 10.12.2013. In case, the decree holder fails to move the said Court on or before 10.12.2013, the interim order will stand dissolved.”

11. This order is passed on 12.11.2013. It reveals from the record



CMA Nos.805 and 813 of 2022

that EP No.189 of 2014 was filed before the learned Principal District Judge, Tiruppur in the Arbitration Case No.1 of 2009 only on 25.09.2014 and hence, I find that as per the orders passed by the Delhi High Court, the interim order stands dissolved on 10.12.2013 itself and on the date of filing of the execution petition before the learned Principal District Judge, Tiruppur i.e. on 25.09.2014, there was no order of attachment.

12. The lower Court records reveal that, suppressing the above material fact, the decree holder appears to have clandestinely paid the attachment batta and furthermore, it also reveals from the records that the learned Principal District Judge, without perusing the records had mechanically taken the batta on file and passed an order on 16.04.2015 as under:

“Attachment batta paid.
Attachment by 06.06.2015.”

Hence, I find that there is no adjudication, except, accepting the batta and ordering the attachment, as if, there is an order of attachment.

13. As per the orders of the High Court at Delhi, the interim protection given to the decree holder stands absolved on 10.12.2013 itself.



CMA Nos.805 and 813 of 2022

Suppressing the same, he filed the present attachment batta. Hence, the order passed by the learned Principal District Judge on 16.04.2015 as if there is an attachment, is invalid and legally unsustainable, especially when EA Nos. 291/14, 293/14 and 234/14 by the objectors are pending and ***hence, the docket entry dated 16.04.2015, stands vacated.***

14. As against the order passed in EP No.189/14 dated 20.10.2016, the decree holder also filed CRP (PD) No.407 of 2018 and the same was dismissed with a direction to pass orders in EP on merits.

15. The 3rd party claim petitioner, J.Saranya filed EA No.---/2022 under Order 21 Rule 58 r/w Section 151 of Code of Civil Procedure, for lifting the attachment order passed by the Execution Court on the footing that her father, the Managing Director of the Company, in his personal capacity, had settled an extent of 2 acres out of 16 acres of the land, in her favour by the settlement deed viz., Document No.1909 of 2015 and hence wanted to stall the sale of the property.



CMA Nos.805 and 813 of 2022

WEB COPY

16. The contention of the 3rd party objector, viz., N. Ganesan, is to the effect that he is a third party to the arbitration proceedings. Property has been settled by his father in his name on 29.04.1987 and hence, this property has to be excluded from the sale proceedings.

17. It appears that by an order dated 27.04.2015, the E.A.C.F.R. Nos.4190/2005 and 4191/15 seeking for stay of all further proceedings in the above order of attachment proceedings, was dismissed by the Principal District Judge and as against the same, she also preferred Civil Revision Petitions viz., CRP No.2109 and 2110 of 2015. The same was dismissed for default on 02.08.2018.

18. (a). It remains to be stated that the learned Principal District Judge in the said order has observed that in the execution proceedings in FAO/OS/439/2008, the High Court of Delhi has ordered on 10.10.2012 for attachment and proclamation of properties mentioned in the petitions.



CMA Nos.805 and 813 of 2022

WEB COPY

(b). As stated supra, by virtue of the subsequent order passed by the High Court on 12.11.2013, the attachment order stands absolved on 10.12.2013 itself and hence the observation made by the learned Principal District Judge in the order is factually incorrect.

19. The settlement deed was executed by one of the Directors in his personal capacity in favour of his daughter on 21.04.2015, whereby 2 acres of land appears to have been settled out of total extent of 16 acres, for which the daughter has filed this application for lifting the attachment order in respect of the portion covered under the settlement deed.

20.(a). It remains to be stated that before the execution Court, the Directors were not impleaded in their personal capacity. They have been impleaded only in their official capacity. The fact that neither in the arbitration proceedings nor in the execution proceedings, the Directors were impleaded in the personal capacity, assumes significance.

(b). In this regard, in the appeal filed against the award passed by the Arbitrator, during the first appeal, heard by the Division Bench of Delhi



CMA Nos.805 and 813 of 2022

High Court, the Directors have disclosed the fact that the Company does not own any property and only the personal property can be granted as a security, hence I find that even several years before, the decree holder were aware of the fact that the Company is not holding any land or property and the property held by them are in their personal capacity only. However, for the reasons best known, the Directors in their personal capacity, was neither impleaded in the original arbitration proceedings nor in the appeal or in execution proceedings.

21. In the above factual background, the decree holder ought to have impleaded the Directors in their personal capacity in the execution Proceedings. Without impleading them in the personal capacity, the *doctrine of piercing the corporate veil* does not arise. It appears that the learned Principal District Judge, on an erroneous view of the matter has dismissed the applications to lift the attachment of property in respect of the land given to the 3rd party objector.

22. The award was passed by the Arbitral Tribunal on 21.12.2010 and in the Contempt Appeal No.19/11 in Delhi High Court dated



CMA Nos.805 and 813 of 2022

01.11.2011, it is specifically reflected that the company is not having any property and only the personal properties of the Directors in their personal capacity are available and therefore, they are unable to furnish the sureties as ordered by the Court. Accordingly, the Division Bench of Delhi High Court has categorically recorded that the Arbitrator refused to accept the personal guarantee by Appellant No.1 as security. Hence, I find that even on the date of the passing of the above said order dated 01.11.2011, the decree holder is very much aware and had knowledge that the company is not having any property. Only the Directors in their personal capacity had certain lands and in spite of the said knowledge, he has not added the Directors of the company in their personal capacity in the Execution Petitions.

23. Without impleading the Directors in their personal capacity, an order of interim attachment was obtained from the High Court of Delhi. However by the subsequent order dated 10.10.2013, the same was restricted upto 10.12.2013 only. Even the E.P before the learned Principal District Judge, Tiruppur, was filed 1 ½ years after the dissolution of the interim



CMA Nos.805 and 813 of 2022

order, and hence, viewing from any angle, I find that the order passed by the learned Principal District Judge that, there is an order of attachment by the Delhi High Court, is found to be factually incorrect and the learned Principal District Judge has failed to note the above factum of expiration of interim order of attachment. The execution proceedings in the schedule is mentioned as only the movable properties and not immovable properties.

24. In the decision reported in *V.K.Uppal Vs. Akshay International Pvt Ltd.*, reported in 2010 SCC OnLine (Del) 558, it is held as follows

(i) that there is no provision in the CPC for execution of a money decree against a Pvt. Ltd. company, against its directors; (ii) that though Order XXI Rule 50 of the CPC does provide for execution of a money decree against a firm, from the assets of the partners of the said firm mentioned in the said Rule but there is no provision with respect to directors of a company; (iii) that the Executing Court cannot go behind the decree and can execute the same as per its form only; (iv) that if the decree is against the company, the executing Court cannot execute the decree against anyone other than the judgment-debtor company or against the assets and properties of anyone other than the judgment-debtor company; (v) that the identity of a director or a shareholder of a company is distinct from that of the company-that is the very genesis of a company or a



WEB COPY



CMA Nos.805 and 813 of 2022

corporate identity or a juristic person; (vi) the classic exposition of law in this regard is contained in *Solomon v. Solomon & Co. Ltd.* 1897 AC 22 where the House of Lords held that in law, a company is a person all together different from its shareholders and directors and the shareholders and Directors of the company are not liable for the debts of the company except to the extent permissible; (vii) that though a Single Judge of this Court in *Jawahar Lal Nehru Hockey Tournament v. Radiant Sports Management* MANU/DE/1756/2008 : 149(2008) DLT 749 observed that there could be a case where the Court even in a execution proceeding lifts the veil of a closely held company, particularly a Pvt. Ltd. company and in order to satisfy a decree, proceed against the personal assets of its directors and shareholders but the said judgment was over ruled by the Division Bench EFA(OS) No. 17/2008 decided on 7th November, 2008 and reported as MANU/DE/1756/2008 : , finding that the director of the company had agreed to be personally liable to satisfy the decree and for this reason holding him liable; however the Division Bench refrained from commenting authoritatively on the aspect of lifting of the corporate veil in execution; (viii) that though Section 53 of the Transfer of the Property Act, 1882 allows the creditors to have a transfer of property made with an intent to defeat the creditors set aside but a case therefor has to be pleaded; (ix) that it cannot be laid as a general proposition that whenever the decree is against a company, its Directors/shareholders would also be liable-to hold so would be contrary to the very concept of limited liability and obliterate the distinction between a partnership and a company; (x) that though the Courts have watered down the principle in *Solomon supra* to cover the cases of a fraud, improper conduct, etc. as laid down in *Singer India Ltd. v. Chander Mohan Chadha* MANU/SC/0626/2004 : (2004) SCC 1 but a case



CMA Nos.805 and 813 of 2022

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therefor has to be made out; (xi) that the decree holders in that case had not made out any case therefor; the directors were not parties to the proceedings in which decree was passed and were not impleaded in the execution petition also and there were no averments in the execution petition of fraud or improper conduct or of incorporation of the company to evade obligations imposed by law and in which situations Supreme Court in *Singer India Ltd. supra* has held that the corporate veil must be disregarded.

25. Further, Mr.P.R.Raman, learned senior counsel relied upon the decision of our Hon'ble Supreme Court, in ***Balwant Rai Saluja and Another Vs. Air India Limited and Others***, reported in (2014) 9 SCC 407, wherein it is held as follows:

“74.Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the Court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case.”



CMA Nos.805 and 813 of 2022

WEB COPY

26. As stated supra, the order of attachment passed by the Delhi High Court on 12.11.2013, with a specific clause that the interim order will stand dissolved on 10.12.2013 and while the execution proceedings have been initiated before the learned Principal District Judge, Tiruppur only on 25.09.2014, when there is no order of attachment and hence, on misconception of fact, without noticing the subsequent order passed by the Delhi High Court dated 12.11.2013, the attachment batta paid by the decree holder was taken on file and attachment was effected and hence, the docket entry dated 16.04.2015 stands vacated as discussed supra.

27. Therefore, I find that there is no valid order of attachment and the settlement deed executed by one of the Director in favour of his daughter, is after the period of expiration of this attachment order and hence, in the absence of any valid attachment, the settlement deed is valid.

28. It is to be stated that though the decree holder had the knowledge of the fact that the company does not own any immovable property as early as on in the year 2011 itself, for the reasons best known,



CMA Nos.805 and 813 of 2022

the Directors (in their personal capacity) were neither impleaded in the original arbitration proceedings nor in the appeal nor in the execution proceedings and hence, personal properties of the Directors in the absence of them being made as a party, cannot be attached and the plea of lifting the corporate veil which was neither raised during the arbitration proceedings nor in the appeal proceedings, either before the Delhi High Court or in the execution proceedings filed in the High Court or in the execution proceedings filed before the Tiruppur Court, cannot be accepted. Hence, I find that in the absence of impleadment of a person on whose name the property stands, there cannot be an order of attachment nor a third party's property could be sold in execution of the decree.

29. In this view of the matter, the other points raised by the appellant's counsel are all held to be unnecessary and on the above factual background, I am inclined to allow these appeals.

30. Accordingly, it is ordered as under:

(i) Both the Civil Miscellaneous Appeals are allowed. No Costs.



CMA Nos.805 and 813 of 2022

Consequently, the connected Civil Miscellaneous Petitions are closed.

(ii) The common order dated 22.12.2021 made in E.A.Nos.292 of 2014 and 206 of 2015 in E.P.No.189 of 2014, on the file of the learned Principal District Judge at Tiruppur, is set aside.

(iii) Consequently, E.A.Nos.292 of 2014 and 206 of 2015 in E.P.No.189 of 2014, on the file of the learned Principal District Judge at Tiruppur, stands allowed.

09.03.2023

Index : Yes/No
Neutral Citation : Yes/No.
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To

The Principal District Judge,
Tiruppur.

RMT.TEEKAA RAMAN,J.,

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CMA Nos.805 and 813 of 2022

Pre-delivery common judgment in
CMA Nos.805 & 813 of 2022
and CMP Nos.2136, 5905 & 5784 of 2022

09.03.2023