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A.No.3686 of 2023

Application No.3686 of 2023
in
Application No.2195 of 2023

ABDUL QUDDHOSE, J.

AST Enterprises Inc.,
Rep. By its Law Officer
Mr.Shaunak Hitesh Sayta,
Dubai, UAE.
Also at, Napean Sea Road,
Mumbai – 400 006.

... Applicant

Versus

Qualit Agro Processors
Mr.K.Valliyinselvan, Sole Proprietor,
Plot No.82, CCCL Peral City Foodport,
Sekkarakudi,
Tuticorin – 628002.

... Respondent

This application has been filed under Order XXI Rule 41(3) of the Civil Procedure Code (CPC) to detain the respondent in Civil Prison for disobeying the order of this Court dated 08.06.2023 passed in A.No.2195 of 2023 in E.P.DR.No.120185 of 2022.

2. The applicant is having a foreign arbitral award dated 12.10.2018 in its favour against the respondent. Since the respondent had failed to satisfy the foreign arbitral award, the applicant had filed an application



A.No.3686 of 2023

under Section 47 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) in Arb.O.P.No.117 of 2021 and this Court, vide its order dated 20.10.2021, allowed the said petition and declared the said foreign arbitral award to be a decree of this Court under Section 49 of the Act. The decree passed in favour of the applicant under Section 49 of the Act has now attained finality, as no challenge has been made to the same by the respondent.

3. The applicant had earlier filed an application under Order XXI Rule 41(2) of CPC in A.No.2195 of 2023 in E.P.DR.No.120185 of 2022 seeking for a direction to the respondent to disclose his assets/liabilities. In the said application, the respondent was served with a notice, but, despite the same, he had failed to defend the said application by entering appearance and raising objections if any. This Court, by its order dated 08.06.2023, allowed the said application as prayed for by directing the respondent to disclose his assets/liabilities on or before 27.06.2023. The said order dated 08.06.2023 was also served on the respondent. But, despite the same, the respondent has not till date disclosed his assets/liabilities in compliance with the directions of this Court dated 08.06.2023.



A.No.3686 of 2023

WEB COPY

4. Since the respondent has disobeyed the order of this Court dated 08.06.2023 passed in A.No.2195 of 2023 in E.P.DR.No.120185 of 2022 under Order XXI Rule 41(2) of CPC, the applicant has filed this consequential application under Order XXI Rule 41(3) of CPC seeking for a direction to detain the respondent in Civil Prison.

5. Despite the service of notice, no one has entered appearance on behalf of the respondent even in this application. Even in the earlier order passed by this Court dated 08.06.2023, the respondent remained unrepresented despite receiving notice in the said application.

6. Order 21 Rule 41 of CPC is extracted hereunder:-

41. Examination of judgment-debtor as to his property.-

(1) Where a decree is for the payment of money the decree-holder may apply to the Court for an order that-

(a) the judgment-debtor, or

(b) any officer thereof, or



WEB COPY



A.No.3686 of 2023

(c) any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment- debtor, or officer or other person, and for the production of any books or documents.

(2) Where a decree for the payment of money has remained un-satisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(3) In case of disobedience of any order made under sub-rule(2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.



A.No.3686 of 2023

WEB COPY

7. Order XXI Rule 41(2) empowers the decree holder to file an application before the executing court to require the judgment debtor or where the judgment debtor is a corporation, any officer, to file an affidavit stating the particulars of the assets of the judgment debtor. Order XXI Rule 41(3) provides that in case of disobedience of any order made under Order XXI Rule 41(2), the Court may direct civil imprisonment of the person disobeying the said order.

8. In the instant case, it is undoubtedly clear that the foreign arbitral award passed in favour of the applicant has been converted into a decree under Section 49 of the Act and the said decree has also attained finality, as admittedly no challenge has been made to the said foreign arbitral award by the respondent. The applicant had earlier filed an application under Order XXI Rule 41(2) of CPC seeking for a direction to the respondent to disclose his assets/liabilities. This Court, by its order dated 08.06.2023, directed the respondent to disclose his assets/liabilities on or before 27.06.2023. Admittedly, the respondent has not complied with the directions of this Court dated 08.06.2023 by disclosing his assets/liabilities on or before



A.No.3686 of 2023

27.06.2023. It is only under those circumstances, the present application, namely, A.No.3686 of 2023, has been filed under Order XXI Rule 41(3) of CPC. As per the said provision, in case of disobedience of any order made by this Court under Order XXI Rule 41(2) of CPC, this Court is having the power to detain the judgment debtor in Civil Prison. Admittedly, the respondent/judgment debtor having received a copy of the order dated 08.06.2023 passed in A.No.2195 of 2023 in E.P.DR.No.120185 of 2022 has not complied with the said direction by disclosing his assets/liabilities on or before 27.06.2023.

9. In an identical matter, this Court, in the case of ***Samson Maritime Limited Vs. hardy Exploration & Production (India) Inc. and others [2019 (2) CTC 864]***, had directed the judgment debtor to be detained in Civil Prison for a period of 15 days for the disobedience of the order passed by this Court under Order XXI Rule 41(2) of CPC for non-disclosure of assets/liabilities.

10. Since the applicant has satisfied the requirements of Order XXI Rule 41(3) of CPC and it is clear that the respondent/judgment debtor has



A.No.3686 of 2023

disobeyed the order dated 08.06.2023 passed by this Court under Order XXI Rule 41(2) of CPC in A.No.2195 of 2023 in E.P.DR.No.120185 of 2022, this application filed under Order XXI Rule 41(3) of CPC will have to be allowed as prayed for. Accordingly, this application is allowed with a direction to detain the respondent in Civil Prison for a period of 15 days. The Registry is directed to issue a warrant of arrest to the sole proprietor of the respondent Mr.K.Valliyinselvan after a period of 10 days from today. No Costs.

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04.08.2023



WEB COPY



A.No.3686 of 2023

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