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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 04th May, 2023*

\+ C.R.P. 108/2023

RAKBRO INDUSTRIAL CORPORATION & ANR. ..... Petitioners

Through: Mr. Shrey Kumar, Advocate

versus

SURAJ AUTO STORES & ANR. ..... Respondents

Through: None.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 22672/2023 *(exemption)*

Allowed, subject to all just exceptions.

Application stands disposed of.

C.R.P. 108/2023

1. Present revision petition is directed against the impugned order dated 01.03.2023, passed by the Executing Court in Ex. No.25/2015 dismissing the objections of the Petitioners herein under Section 47 CPC. Petitioners were the Judgment Debtors before the Executing Court and Respondents were the Decree Holders and parties are referred to hereinafter by their litigating status before this Court.

2. Shorn of unnecessary details, the facts which emerge from a reading of the present petition are that Petitioner No.1 is a manufacturing unit which came into existence in 1977 and a proprietorship concern whereof Petitioner No.2 is the proprietor. It is averred that over three decades of enterprise, experience and expertise, Petitioner No.1 has emerged as one of the leading construction equipment manufacturing companies in India and plays a major role in

the road construction and building industry. Respondents are erstwhile authorized distributors of Hindustan Composites Ltd., the OEM of various friction materials in India such as brake lining, clutch facing, etc. Being a DGS&D rate contract supplier, Petitioners preferred to purchase all their friction materials directly from Hindustan Composites Ltd., to ensure quality and genuineness of the parts.

3. It is stated that a verbal purchase order was placed on Hindustan Composites Ltd., in September, 2010, for purchase of friction sheets of various sizes and dimensions and the company directed the Petitioners to its authorized distributors i.e. the Respondents herein, which offer was rejected by the Petitioners as they did not want to do any direct business with the Respondents. Later, on confirmation between the Petitioners and Hindustan Composites Ltd., an advance payment of Rs.76,844/- was paid to Hindustan Composites Ltd., after which subject materials were dispatched from Maharashtra and delivered to the Petitioners on 04.10.2010. The transporters handed over copy of the consignment note dated 04.10.2020 which, according to the Petitioners, reflects the transaction/sale of goods between the two parties, and also the fact that Respondents had no role in this transaction. The absence of the Respondents in the transaction is also evident from the fact that the freight charges were paid by Hindustan Composites Ltd. who were the owners/manufacturers of the friction sheets.

4. It is averred that after receiving the materials, Petitioners submitted Form ‘C’ under the Central Sales Tax Act, 1957 in the name of Hindustan Composites Ltd. to seek the tax relief. The counterfoil receipt of this Form ‘C’ also reflected the name of Hindustan Composites Ltd. for the subject transaction. However, for reasons unknown, Respondents filed the Civil Suit being CS

No.15373/2013 against the Petitioners premised on false, fabricated and frivolous documents including invoices showcasing an alleged transaction in October, 2010 as one between the Petitioners and the Respondents. The suit was decreed *ex parte* on 30.08.2014 for a sum of Rs.1,18,340/- along with interest @ 6% p.a. in favour of the Respondents.

5. On learning of the *ex parte* decree, Petitioners filed an application under Order IX Rule 13 CPC, which was dismissed on 03.01.2015 and the appeal against the said order was also dismissed on 29.07.2015. On account of wrong advice, Petitioners did not file a second appeal before this Court. Respondents thereafter filed an Execution Petition being Ex. P. No.5079/2016 for execution of the decree dated 30.08.2014. Objections filed by the Petitioners under Section 47 CPC were dismissed by the impugned order.

6. Learned counsel for the Petitioners contends that there is glaring illegality in the impugned order as the entire case of the Respondents was based on retail invoices and once their veracity and genuineness was questioned, the entire decree became a nullity. The suit filed by the Respondents was even otherwise time barred. It is strenuously contended that the entire case of the Respondents was predicated on retail invoice/bill dated 12.10.2010, on which the Serial and Book number were initially mentioned as 3097 and 62 respectively, however, there was clearly an overwriting and the numbers were changed to 2562 and 52. This correction was made to ante-date the bill, in order to bring the suit within the period of limitation.

7. It is also contended that no purchase order was placed by the Petitioners on the Respondents and thus, there was no transaction or privity of contract between the said parties. The contract was between

the Petitioners and Hindustan Composites Ltd. and the latter delivered the material and accepted payments. This is duly supported by Form 'C' and the fact that Petitioners are a DGS&D Rate Contract Supplier for the Defence Ministry. The retail invoices filed by the Respondents were forged and fabricated which is supported by the consignment note recording that the freight charges were paid by Hindustan Composites Ltd. The invoices were not proved in terms of Section 3 of the Indian Evidence Act, 1872.

8. The Executing Court has erred in placing reliance on fabricated retail invoices and has further erred in dismissing the objections despite bringing to the Court's notice that a decree passed on forged and fabricated documents is a fraud on the Court and a nullity. Failure of the Executing Court to take judicial notice of the forgery amounts to material irregularity and therefore, the impugned order be set aside directing the Executing Court to hear the objections of the Petitioners on merits.

9. I have heard the learned counsel for the Petitioners and perused the impugned order, which shows that the Executing Court, before examining the objections on merits, has detailed the scope and ambit of the powers of an Executing Court under Section 47(1) CPC that an Executing Court cannot go behind a decree except where it is a nullity or suffers from jurisdictional infirmities or is unenforceable. Court thereafter examined the objections raised to the decree and dismissed the objections on the grounds: (a) the main allegations of the Petitioners that there is a forgery/fabrication in the documents was not taken at any earlier point in time, either in the application seeking setting aside of the *ex parte* decree or the First Appeal against the order dismissing the said application; (b) application for setting aside the *ex parte* decree was dismissed and the order was unsuccessfully

challenged in an appeal, which was dismissed on 29.07.2015 and the orders have attained finality; (c) the grounds of forgery and fabrication of retail invoices not having been taken in these proceedings, cannot be taken by way of objections to the Execution Petition; and (d) the objections have been filed only with a view to delay the execution of the decree. On this basis, the Executing Court issued warrants of attachment qua the decretal amount and listed the matter for appointment of Bailiff.

10. It is trite and hardly needs a reiteration that powers of an Executing Court are circumscribed by provisions of Section 47(1) CPC. For ready reference, Section 47(1) CPC is extracted hereunder:-

> *"(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit…."*

11. It is clear from a reading of the provision itself that an Executing Court can determine questions arising between the parties to a suit relating to execution, discharge or satisfaction of the decree. In ***Brakewel Automotive Components (India) Private Limited v. P.R. Selvam Alagappan, (2017) 5 SCC 371,*** Supreme Court has delineated the scope of the Executing Court and held as under:-

> *"21. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.*
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> *22. Judicial precedents to the effect that the purview of scrutiny under Section 47 of the Code qua a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness are plethoric. This Court, amongst others in **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, (1970) 1 SCC 670** in essence*

> *enunciated that only a decree which is a nullity can be the subject-matter of objection under Section 47 of the Code and not one which is erroneous either in law or on facts. The following extract from this decision seems apt: (SCC pp. 672-73, paras 6-7)*
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> > *"6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.*
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> > *7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.""*

12. From a reading of the aforesaid judgment, it is clear that there are limitations to the jurisdiction of an Executing Court and while adjudicating objections under Section 47(1) CPC, Court cannot go behind the decree, save and except, where a decree is not executable or is a nullity, as in the illustrations set out by the Supreme Court in the aforementioned judgment. The Supreme Court has cautioned that where the objections require examination of the questions raised and decided at the trial or which could have been raised but were not raised, Executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.

13. Coming to the facts of the present case, the main allegation of the Petitioners is that in order to bring the suit within limitation,

Respondents have forged/fabricated the invoices/bills, which goes to the root of the decree and makes it a nullity. It is on this score that Petitioners sought interference by the Executing Court by filing objections against the decree in addition to urging that there was no privity of contract of the Petitioners with the other parties to the *lis*. In my view, Executing Court has rightly noted that the allegations of fabrication of the invoices/bills was never taken by the Petitioners either in the application seeking setting aside of the *ex parte* decree or even in the appeal against the order dismissing the said application and therefore, it was not open to the Petitioners to rake up this issue for the first time in the Execution Petition. For unknown reasons, Petitioners have not filed copy of the application under Order IX Rule 13 CPC or of the appeal before the First Appellate Court. Be that as it may, careful reading of the Revision Petition shows that Petitioners have not traversed or controverted the findings of the Executing Court that the issue of fabrication/forgery was never taken in the earlier proceedings. Nevertheless, no infirmity can be found with the impugned order of the Executing Court that the objection with regard to fabrication of the invoices or the bills and/or privity of contract are issues beyond the jurisdiction of the Executing Court. It is open to the Petitioners to have raised these issues before the First Appellate Court, which they failed to do and admittedly, the Appellate Order has remained unchallenged till date.

14. The issues sought to be raised by the Petitioners that no purchase order was placed by the Petitioners on the Respondents and, on the contrary, was placed on Hindustan Composites Ltd., who accepted the payment and delivered the material; that there was no privity of contract between the Petitioners and the Respondents; the retail invoices filed by the Respondents were not as per the format

under the Central Sales Tax Act, 1956; payment of freight charges by Hindustan Composites Ltd., etc. are all issues which, to my mind, amount to retrial of the suit, which is impermissible in the scope and ambit of the jurisdiction of the Executing Court. Be it noted that the Executing Court has also penned down that the decree was passed way back in 2014 and the Judgment Debtors/Petitioners herein have made every effort over the years to deprive the Decree Holders of the fruit of the decree for a long time and this Court entirely agrees with the observation, after perusing the chronology of facts and events detailed in the Revision Petition.

15. For all the aforesaid reasons, this Court finds no infirmity in the impugned order passed by the Executing Court. Revision Petition is accordingly dismissed.

JYOTI SINGH, J

MAY 04, 2023/kks