



2023:DHC:7859



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

% **Date of order: 12th October, 2023**

+ **C.R.P. 215/2022 & CM APPL. 55812/2022**

SADEESH PREMANANTH Petitioner

Through: **Mr. N. L. Ganapathi, Advocate**

versus

KAMAL KANOJIA Respondent

Through: **Mr. Rakesh Mittal and Mr. Ajay
Harshana, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), has been filed on behalf of the petitioner seeking the following reliefs:

"I. call for the records pertaining to EX. No. 9167/2016 pending in the Court of Sh. Munish Markan, Ld. Additional District Judge-02, South East, District Court, Saket, New Delhi and set aside the Final Order dated 16.11.2022 (Annexure P-1) dismissing the Objections under Section 47 of CPC filed by the Petitioner/JD-2 in EX. No. 9167/2016;

II. award costs of the present Petition in favour of the Petitioner and against the Respondent; and

III. grant such further or other relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."



2. The facts leading to the filing of the instant petition have been reproduced hereunder:

- a) The petitioner is the judgment debtor no. 2/respondent/objector before the learned Executing Court in execution petition bearing EX no. 9167/2016. The petitioner herein is also the managing director of the judgment debtor no. 1, i.e., M/s Kriti Metform Ltd. The respondent herein is the decree holder before the learned Court below.
- b) A petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter “the Act”), was filed by the decree holder against the two judgment debtors and the matter was referred to the Delhi High Court mediation Centre and a Sole Arbitrator was appointed, who passed the Arbitral Award dated 9th May 2015. By way of the said Award, the learned Arbitrator had allowed the claim of the decree holder/claimant against the ‘respondent’.
- c) In the Award, the memo of parties mentioned two respondent/both judgment debtors and the present petitioner/judgment debtor no. 2 was the respondent no. 2. Simultaneously, the counter claim of the ‘respondent’ was rejected. The said Award was further challenged under Section 34 of the Act before the District Judge, Gautam Budh Nagar, Uttar Pradesh and the said petition was dismissed vide order dated 6th August 2016, in Arbitration



Case no. 1/2016. The first appeal filed by the judgment debtors vide case bearing FAFO no. 2761/2016, before the High Court of Allahabad was dismissed in default and the restoration therein, is stated to be pending.

- d) The respondent herein filed EX no. 9167/2016, on 15th January 2016, for execution of Award dated 9th October 2015, against M/s Kriti Metform Ltd. (judgment debtor no. 1) and the present petitioner (judgment debtor no. 2). The respondent in its execution petition sought attachment of the personal assets of the petitioner.
- e) On 11th March 2016, the petitioner filed objections dated 10th March 2016, under Section 47 of the CPC stating that the execution petition was liable to be dismissed against the petitioner as he is not personally liable to pay any money to the decree holder under the Award.
- f) Meanwhile, vide order dated 28th September 2019, the learned ADJ-02 (South East), Saket, Delhi, ordered warrants of attachment in EX no. 9167/2016, against the personal assets of the petitioner. Aggrieved by the said order, the petitioner filed CM (M) no. 1490/2019, under Article 227 of the Constitution of India before this Court and the said petition was dismissed vide order dated 16th October 2019. The said dismissal order of this Court was further challenged before the Hon'ble Supreme Court in SLP (C) no.



25236/2019, and the Hon'ble Court disposed of the said SLP vide order dated 22th October 2019, observing that the Executing Court shall deal with the objections of the petitioner under Section 47 of the CPC independently and uninfluenced by any observations made by this Court in its order dated 16th October 2019.

- g) In the interim, the warrant of attachment issued by the learned Executing Court was issued and the bailiff was appointed on 23rd October 2019. The petitioner filed a Demand Draft for Rs. 59,50,796/- in favour of the respondent, stating that the same was being paid under protest and was subject to the outcome of the objections filed by him under Section 47 of the CPC.
- h) Thereafter, the learned ADJ-02 (South East), Saket, New Delhi, passed the impugned order dated 16th November 2022, dismissing the objections filed by the petitioner under Section 47 of the CPC in EX no. 9167/2016. Aggrieved by the same, the petitioner has approached this Court seeking revision of the above said impugned order.

3. Learned counsel appearing on behalf of the petitioner/objector/judgment debtor no. 2 submitted that the learned Executing Court had erred in passing the impugned order dated 16th November 2022, and had further committed nonfeasance by wrongly exercising the jurisdiction conferred to it in exercising its powers under



Section 47 of the CPC.

4. It is submitted that the learned Court below failed to appreciate the objections raised before it under the purview of Section 47 of the CPC, by not taking into consideration the entire facts and circumstances of the matter in hand.

5. It is submitted that the Award dated 9th October 2015, cannot be executed against the petitioner and the learned Court below failed to determine the question/objection raised by the petitioner that whether on the fact of the Award, the petitioner was personally/jointly and severally liable to pay the amount awarded to the decree holder.

6. It is submitted that the learned Court below erred by not taking into consideration the documents such as the letter of intent dated 10th October 2009, pre-arbitration legal notice dated 30th April 2010 and the arbitration notice dated 25th August 2011, all of which are only between the present respondent and M/s Kriti Metform Ltd., and not the petitioner.

7. It is submitted that if the learned Executing Court had analysed the Award, it would have come to the irresistible conclusion that that there was nothing in the Award which would even remotely suggest that the petitioner is jointly and severally liable with M/s Kriti Metform Ltd./Judgment debtor no. 1.

8. It is also submitted that the learned Court below failed to consider that even otherwise the petitioner cannot be said to be personally liable under the Award, and consequently, EX no. 9167/2016, is liable to be dismissed against the petitioner/judgment debtor no. 2, and the petitioner is entitled to



refund of Rs. 59,50,796/-, paid by the petitioner to the respondent herein on 24th October 2019 under protest.

9. It is submitted that this Court was pleased to dismiss CM(M) No.1490/2019, by placing reliance on the Order dated 6th October 2016, passed by the District Judge, Gautam Buddh Nagar in Arbitration Case No.1/2016, and subsequently, the learned Executing Court has also passed the impugned order relying upon the very same order of 6th October 2016. It is thus submitted that the learned Court below has not passed the impugned order uninfluenced by the observations made by this Court in the order dated 16th October 2019.

10. It is submitted that the learned Executing Court committed a serious error by not complying with the order dated 22nd October 2019 passed by the Hon'ble Supreme Court, whereby, the Hon'ble Court had directed the learned Executing Court to deal with the objections of the petitioner independently and uninfluenced by any of the observations made by this Court in its order dated 16th October 2049, in CM(M) No.1490/2019

11. It is submitted that learned Court below failed to appreciate that in exercising its jurisdiction under Section 47 of the CPC, the Award dated 9th October 2015, alone had to be looked into to see if the petitioner was personally/jointly and severally liable under the Award, particularly when the dismissal of the objections under Section 34 of the Act and the dismissal in default of the Appeal under Section 37 of the Act had not in any manner altered the said Award.

12. It is further submitted that the impugned order is not only beyond the



scope of the Award dated 9th October 2015, but has also resulted in grave miscarriage of justice to the petitioner as his civil and property rights have been seriously prejudiced.

13. Therefore, the learned counsel in view of the foregoing submissions on part of the petitioner, concluded by submitting that the impugned order is liable to be set aside and accordingly the instant petition may be allowed.

14. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant civil revision petition and submitted that the same is liable to be dismissed being devoid of any merits.

15. It is submitted that the learned Court below had rightly passed the impugned order after taking into consideration the documents, reply, and the averments made on behalf of the parties in their pleadings.

16. It is also submitted that the learned Executing Court passed the impugned order as per the settled legal principles of law and there is no infirmity within the impugned order. It is further submitted that the instant petition is merely an abuse of process of law with the sole purpose of harassing the respondent.

17. It is submitted that the petitioner preferred the SLP against the order dated 6th October 2016, passed by this Court which was disposed of without issuing notice to the respondent, observing therein, that the remedy of the petitioner was to approach the Executing Court.

18. It is submitted that in the petition under Section 9 of the Act, which is the starting point of the litigation, both the company as well as the present petitioner/objector were arrayed as parties and even the memo of parties of



the award dated 9th October 2015 mentions both the ‘respondents’/judgment debtors.

19. It is submitted that in the claim petition as well, in paragraph no. 5, it was stated that both the judgment debtors are jointly and severally liable for the execution of the money decree.

20. It is further submitted that the petitioner never raised the plea of him not being a necessary party before any judicial forum.

21. It is submitted that in the petition filed under Section 34 of the Act, the District Court, Gautam Buddh Nagar, dealt and dismissed the petitioner’s plea with regard to his main contention that he is not jointly and severally liable in the execution petition.

22. It is therefore submitted that in view of the above submissions, the instant petition may be dismissed.

23. Heard the learned counsel appearing on behalf of the parties and perused the record.

24. By the present revision petition, the petitioner assails the impugned order dated 16th November 2022, passed in the execution petition bearing Ex. No. 9167/2016, dismissing the objections filed by the petitioner under Section 47 of the CPC, pertaining to an arbitration award dated 9th October 2015.

25. It is the case of the petitioner that he cannot be made personally, jointly and severally liable along with the company i.e., M/s Kriti Metform Ltd. since the company is a distinct legal entity and the petitioner cannot be made personally liable for the claims against the company. Further the claim



allowed by the learned Arbitrator in the Award, on the fact of it, is only against the company and there is nothing the Award which would even remotely suggest that the petitioner is personally liable for the enforcement of the terms of the Award.

26. During the course of the arguments, learned counsel appearing on behalf of the respondent draws the attention of the Court to an order dated 16th October 2019, passed by a coordinate bench of this Court in CM(M) no. 1490/2019. In the said petition, the petitioner herein had laid a challenge to an order dated 28th September 2019 passed by the learned Executing Court, thereby, issuing warrants of attachment of the properties of the petitioner. Learned Counsel for the respondent submitted that even in the said matter, the petitioner had raised the plea that he could not be made personally liable under the arbitration award, pertaining to which the execution was filed as he was arrayed as a party in the arbitration only in his capacity as a Managing Director of the Company, i.e. M/s Kriti Metform Ltd. This objection was rejected by this Court in the said CM (M) no. 1490/2019, based on the order of dismissal of petitioner's Section 34 petition passed by the District Judge, Gautam Budh Nagar, U.P., upheld by the Allahabad High Court and therefore, the respondent herein urged this Court that it is not open for the petitioner to agitate the same ground again.

27. In rival submissions, the learned counsel for the petitioner submitted that the order dated 16th October 2019, passed by this Court, as aforementioned, was challenged before the Hon'ble Supreme Court in SLP (C) no. 25236/2019, and vide the order dated 22nd October 2019, the



Hon'ble Supreme Court had observed that the remedy of the petitioner was to approach the Executing Court and having so observed, the Hon'ble Supreme Court directed the Executing Court to deal with the objections raised before it by the petitioner, independently and uninfluenced by the observations of this Court in CM (M) no. 1490/2019. Hence, there is no merit in the contentions of the respondent.

28. The learned Executing Court passed the impugned order dated 16th November 2022, and recorded its findings in paragraph no. 7 of the said impugned order, which has been reproduced as under:

“In my considered opinion, the executing court cannot sit in appeal against the order of Ld. District Judge, Gautam Budh Nagar, UP passed in proceedings u/s 34 of The Arbitration and Conciliation Act specifically dealing with liability of the JD No.2 in his personal capacity. What cannot be directly should not be done indirectly. Therefore, in view of the order dated 06.08.2016, there is no ambiguity regarding the liability of the JD No.2. Therefore, I find no merit in the objections. Objections are accordingly dismissed.”

29. Upon perusal of the impugned order, it is observed by this Court that the learned Executing Court whilst passing the impugned order was of the view that the petitioner had raised the same objections before the Court dealing with the challenge to the arbitration Award under Section 34 of the Act, and in view of the same the Executing Court cannot sit in an appeal against the order passed in Section 34 of the Act which has specifically dealt with the liability of the judgment debtor no. 2 i.e., the present petitioner, in his personal capacity. Considering such circumstances, the learned Court



below dismissed the petitioner's objections and hence, the present petition.

30. Since, the relevant facts have been discussed in the aforementioned paragraphs, this Court will briefly revisit the scope and extent of Section 115 of the CPC, which has been invoked by the petitioner in the present petition, thereby, asking this Court to exercise its revisional powers by deciding whether the learned Court below had exercised its jurisdiction illegally or irregularly.

31. It is a settled principle of law that if the erroneous decision by a subordinate Court result in exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises and, in such circumstances, the Court must exercise its revisional powers, but not otherwise. The same has been enunciated by the Hon'ble Supreme Court in the judgment of *Manindra Land and Building Corpn. v. Bhutnath Banerjee*, (1964) 3 SCR 495.

32. Further, the Hon'ble Supreme Court has reiterated the scope of Section 115 of the CPC, in *Baldevdas Shivlal v. Filmistan Distributors (India) (P) Ltd.*, (1969) 2 SCC 201, which was followed by the Hon'ble Court in *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633. It held that the said provision includes jurisdiction alone, the irregular exercise, or non-exercise of it, or the illegal assumption of it. The mere fact that the decision of the trial court is erroneous due to a question of fact or of law does not amount to illegality or material irregularity. It embarks a peculiar kind of limitation that needs to be followed in its true letter and spirit. The High Court shall not interfere



merely, because the Court below has wrongly decided a particular application in a suit being not maintainable.

33. This Court is of the view that the plea of the revisionist can only be held to be maintainable where it is found that if the impugned order is allowed to stand, it would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

34. In view of the judgments mentioned above, it becomes evident that this Court has limited powers which can be exercised under Section 115 of the CPC. It is also prudent to apply the ratio observed in the judgments of the Hon'ble Supreme Court, by way of which, this Court finds that not every order of the learned Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of the High Court.

35. The petitioner had filed his objections under Section 47 of the CPC, which contains the salutary principle that the Execution Court cannot go behind the Decree passed by the Court of competent jurisdiction. Section 47 of the CPC, stipulates that all questions arising between the parties to suit, in which the decree was passed, shall be determined by the Court executing the decree. It reads as under:

“47. Questions to be determined by the Court executing decree.—(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.



Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation I.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]”

36. The scope of interference by the Executing Court in a decree passed by a competent Court has been recounted in ***Darshan Singh v. State of Punjab***, (2007) 14 SCC 262, paragraph 16 and 17 of which are reproduced below:

“16. This Court held in Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, (1970) 1 SCC 670 that the executing court cannot go behind the decree unless it is shown that it was passed by a court inherently lacking jurisdiction and thus was a nullity. The aforesaid decision of this Court squarely applies to the facts of the present case. This is not a case in which the decree on the face of it was shown to be without jurisdiction. It is not the case of the respondent that the court which passed the decree was lacking inherent jurisdiction to pass such a decree.

17. This Court in Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises, (1999) 1 SCC 558 and in C.



Gangacharan v. C. Narayanan, (2000) 1 SCC 459 has also taken the same view that the executing court cannot go behind the decree of a court of competent jurisdiction except in the decrees void ab initio without jurisdiction.”

37. In ***Brakewel Automotive Components (India) Private Limited v. P.R. Selvam Alagappan, (2017) 5 SCC 371***, the Hon’ble 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.

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)

“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.

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.””

38. This Court, upon going through the above judgments is of the view that there are well advised limitations to the jurisdiction of an Executing Court and while adjudicating objections under Section 47 of the CPC, the Court cannot go beyond the decree, save and except, where a decree is not executable or is a nullity, as in the illustrations set out by the Hon’ble Supreme Court in the aforementioned judgment.

39. The provision determines its meaning in the sense that the court has the power to enforce a decree, and the said power is restricted by the conditions prescribed in the decree. In other words, notwithstanding the range of powers the Executing Court has been equipped with, it is not open



to such Court to go beyond the terms of the decree. Under Section 47 of the CPC, which has been relied upon by the petitioner, the Executing Court is empowered to determine all questions between the parties in relation to execution, discharge or satisfaction of the decree. The said provision allows the Executing Court to tailor its jurisdiction of enforcement to the specific circumstances of each case, in order to ensure that a decree is enforced effectively. However, under this provision, jurisdiction is limited to deciding objections *qua* executability, on the ground of jurisdictional infirmity or voidness.

40. Now advertent to the facts of the present petition.

41. This Court has perused the entire record and has observed that initial litigation among the parties was filing of the petition under Section 9 of the Act, and in that petition, both the company and the present petitioner were arrayed as parties. Furthermore, the perusal of the Award dated 9th October 2015, reflects that the petitioner, i.e., the objector before the learned Court below was the respondent no. 2 before the Arbitral Tribunal. The challenge to the said Award was made by the company and the petitioner both, and the District Court, Gautam Buddh Nagar, UP., specifically dealt with the petitioner's objections, and proceeded to negate the said contention of the petitioner that he has no liability.

42. The District Court, Uttar Pradesh, adjudicating upon the petition filed under Section 34 of the Act, observed in its order dated 6th August 2016, that both the company and the petitioner had filed the said petition before the District Court and also in the application for arbitration filed before this



Court, both M/s Kriti Metform Ltd. and Mr. Sadeesh Premananth (petitioner herein) were parties, against whom the Award has been passed. In view of the said circumstance, the Court held that the company and the director are liable jointly and severally and therefore, it cannot be said that the Award cannot be executed against Mr. Sadeesh Premananth. The Court further observed particularly that the Mr. Sadeesh Premananth had represented himself as the director and the whole-sole of the company and hence, personally liable in the execution of the Award.

43. In the present case, the petitioner had already raised similar grounds of challenge/objections in the petition under Section 34 of the Act, against the arbitral Award. The grounds of challenge and objections raised before the Executing Court in the objections under Section 47 of the CPC are on the same lines. The petitioner cannot be permitted to reopen what has already been settled by the Court dismissing the objections under Section 34 of the Act.

44. This Court is of the view that that once the party has lost its round in a petition under Section 34 of the Act, re-agitating the same grounds by way of objections, now under the CPC, cannot be permitted since the same would tantamount to abuse of the process of law and against the settle legal principles.

45. This Court is of the considered view that while adjudicating upon the objections filed under Section 47 of the CPC, the Executing Court can neither travel behind the decree, sit in appeal over the decree, nor pass an order jeopardizing right of parties as laid out thereunder. Only in limited



cases - where the decree is by a Court lacking inherent jurisdiction or is in nullity - can the decree be rendered *non-est* and inexecutable by the executing court. Therefore, the Executing Court, in its endeavour to provide relief to the parties, cannot use any discretion which would tantamount to modifying or altering the decree itself.

46. This Court is further of the view that passing an order contrary to what has been passed in the impugned order would have certainly modified the order passed while adjudicating the petition under Section 34 of the Act, and the same is against the settled legal propositions.

47. In light of the aforementioned paragraphs, this Court, does not find any force in the propositions put forth by the petitioner and, is of the view that the petitioner has failed to make out his case to seek the intervention of this Court under its revisional jurisdiction.

48. There is nothing in the impugned order which suggests that there is any error of jurisdiction or other error which goes to the root of the matter, therefore, calling for the intervention of this Court under Section 115 of the CPC.

49. In view of the above discussions of facts and law, this Court finds no infirmity in the impugned order dated 16th November 2022, passed by the learned ADJ-02 (South East), Saket, New Delhi, thereby, dismissing the objections filed by the petitioner under Section 47 of the CPC, in execution petition bearing EX no. 9167/2016.

50. For all the aforesaid reasons, no merit is found in this revision petition and the same is accordingly dismissed along with the pending applications,



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if any.

51. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 12, 2023
gs/ryp/ds

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 11.10.2023
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