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

% *Reserved on: 17th August, 2023*
Date of Decision: 13th December, 2023

\+ **CM(M) 1178/2018 & CM APPL. 40260/2018**

ASHOK H ADVANI ..... Petitioner

Through: Mr. Aseem Mehrotra and Ms. Deeksha, Advocates

versus

MUKESH KUMAR SINGH ...... Respondent

Through: Mr. Akhil Sibal, Sr. Advocate with Mr. Vinod Pandey, Mr. Sandeep and Ms. Sania, Advocates along with Respondent

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 08.05.2018 and 17.07.2018 passed by the Additional District Judge-07, South-East District, Saket Courts, New Delhi in Execution Petition No. 46/2016, titled as **Mukesh Kumar Singh vs. Management of Business India Television International Ltd. & Another** ('Executing Court').

1.1. Vide impugned order dated 08.05.2018 the Executing Court directed the Petitioner herein:

a. To file the details of the bank account of the Petitioner herein for the period of three years (3) prior to passing of the Industrial Award till the date of passing the said order.

b. To file the details of the immovable and movable property held by him (i.e., the Petitioner herein) three (3) years prior to the date of passing of Industrial Award till the date of passing the said order.

c. To file his (i.e., the Petitioner herein) Income Tax Returns ('ITR's') from the assessment year 2002–2003 till 2017-2018.

1.2. Vide impugned order dated 17.07.2018 the Executing Court imposed costs of Rs. 1,00,000/- upon the Petitioner herein for non-compliance of the aforesaid order dated 08.05.2018; and thereafter a final opportunity was given to the Petitioner to comply with the same.

1.3. The Respondent is the original Decree Holder of the Industrial Award passed against the Business India Television International Ltd ('Company' or 'Judgment Debtor'). The Petitioner herein is the director of the said Company.

2. Brief facts leading to filing of present petition are as under:

2.1. The aforesaid execution petition seeks implementation of the award passed by the Industrial Tribunal – II, Karkardooma Courts, Delhi on 12.05.2004 ('Industrial Award') in favour of the workmen of the Company declaring that the lockout imposed by the Company after 14.02.2000 was illegal and unjustified. It was further directed by the Industrial Tribunal that all the workmen of the Company are entitled to the wages w.e.f 14.02.2000 till date or the date from which the resignation of the concerned workmen became enforceable.

2.2. On 09.08.2014 execution proceedings were initiated by the Respondent i.e., Decree Holder and 51 other employees against the Judgment Debtor seeking execution of the Industrial Award.

2.3. On 12.03.2015 an order of warrants of attachment were issued against the immovable property of the Company bearing no. 268, Masjid Moth, Uday Park, New Delhi ('Masjid Moth property'). However, the warrants of attachment could not be executed as the property stood mortgage with Kotak Mahindra Bank Ltd; due to which the Respondent herein filed an application under Order XXI Rule 30 of Civil Procedure Code, 1908 ('CPC') before the Executing Court seeking warrants of arrest and detention of the Directors of the Company.

2.4. Thereafter, on 31.08.2015, the Executing Court directed the Judgment Debtor to file an affidavit disclosing the assets of the Company. In compliance of the same, after the affidavit dated 26.09.2015 was filed by the Petitioner herein, the Decree Holder moved an application under Order XXI Rule 41 of CPC on 16.10.2015 seeking a direction to the Directors of the company to (i) provide bank account details/annual returns of the other subsidiary/ holding companies; and (ii) their personal bank account details from the year 1994 till the date of filing the said application.

2.5. In pursuance to the said application, on 25.05.2016, the Executing Court directed the Directors of the Company to file their personal affidavit containing particulars enlisted at serial nos. (i) to (xii) of the said order. In compliance of the same, an affidavit dated 18.10.2016 was filed by the Petitioner herein, however, on 23.09.2017 the Executing Court directed the Petitioner herein to comply with the direction enlisted at para (iv) of the order dated 25.05.2016 as the said affidavit as per the Executing Court did not comply with the same. Thereafter, on the next dates of hearing as well i.e., 16.12.2017 and 31.03.2018, Executing Court directed the Petitioner herein to comply with the direction issued in term of the order dated

25.05.2016 and imposed cost of Rs. 500/- and Rs. 1000/- respectively on the said dates.

2.6. A further affidavit dated 20.4.2018 was filed by the Petitioner herein, however, after perusal of the same, as per the Executing Court, since the direction in terms of para (iv) of the order dated 25.05.2016 was not complied with, therefore, vide impugned order(s) dated 08.05.2018 and 17.07.2018 the above-mentioned directions set out at paragraphs 1.1 and 1.2 were passed by the Executing Court.

Arguments of the Petitioner

3. Learned counsel for the Petitioner states that the Executing Court vide order dated 31.08.2015 had directed the Petitioner herein to file an affidavit disclosing the assets of the Company.

3.1. He states that in compliance of the above-mentioned order an affidavit was duly filed by the Petitioner herein on 26.09.2015 along with the balance sheet of the Company for the period ending on 31.03.2012.

3.2. He states that, thereafter, Decree Holder filed an application under Order XXI Rule 41 of CPC on 16.10.2015 seeking a direction to the Directors of the Company to inter-alia disclose their personal bank account details for the year 1994 till 2015. He states pursuant to this application, the Executing Court vide order dated 25.05.2016 directed the Directors of the Company to file their personal affidavit containing particulars enlisted at serial nos. (i) to (xii) of the said order. He states that the Petitioner herein in compliance of the same filed an affidavit dated 18.10.2016 ('first affidavit') disclosing the information directed by the said Court.

3.3. He states that, thereafter, the Executing Court vide orders dated 23.09.2017, 16.12.2017 and 31.03.2018 sought compliance of the direction issued at para (iv) of the order dated 25.05.2016 from the Petitioner herein and, therefore, another affidavit dated 20.04.2018 ('second affidavit') was filed by the Petitioner herein to comply with the directions issued by the said Court in subsequent orders.

3.4. He states that the Executing Court after perusing the affidavit dated 20.04.2018 issued directions to the Petitioner vide impugned order dated 08.05.2018 to file his bank account details and details of movable/immovable property held by him; alongwith ITR's from AY 2002-03 till 2017-18. He states that the Petitioner herein on 17.07.2018 filed a copy of the ITR's in Form V for the years 2008 to 2018 alongwith the details of his bank statement.

3.5. He states that the Executing Court vide impugned order dated 17.07.2018 has observed that the affidavit dated 17.07.2018 is not compliant with the directions issued in the previous orders and therefore directed the Petitioner herein to comply with the order dated 08.05.2018 in letter and spirit. He states that the Petitioner has thereafter filed an affidavit dated 17.08.2018 ('third affidavit') furnishing details of the bank accounts and immovable property held by the Petitioner. He states that thus, the ITR's already stand filed and subsequently the list of assets including details of the bank accounts have been duly furnished.

3.6. He states that the Industrial Award dated 12.05.2004, which is the subject matter of execution has been passed against the Company and the Directors were not impleaded in their individual capacity before the Executing Court. He states that there has been no allegation that the Petitioner has siphoned or mismanaged any funds of the Company. He states, therefore, in the facts of this case, the directions issued by the

Executing Court vide the impugned orders 08.05.2018 and 17.07.2018 are without jurisdiction.

3.7. He states that Petitioner is not in possession of bank statements for the period prior to passing of the Industrial Award i.e., for the period 12.05.2001 to 12.05.2004. He states, it is in these circumstances that the Petitioner herein has been unable to furnish the said particulars for the period 2001-2004.

Arguments of the Respondent

4. Learned senior counsel for the Respondent states that in the facts of this case, it is admitted that though the Industrial Award is dated 12.05.2004 and has not been challenged by the Judgment Debtor, however, the Respondent and 51 other employees have not received any payment of wages despite passage of 19 years.

4.1. He states that the correctness of the third affidavit dated 17.08.2018 filed by the Petitioner herein in compliance with the impugned order dated 17.07.2018 has not been evaluated by the Executing Court due to the filing of this petition.

4.2. He states that the submission of the Petitioner herein that filing of the remaining documents as directed by the Executing Court vide orders dated 25.05.2016, 08.05.2018 and 17.07.2018 is not possible due to unavailability of the said documents, is a submission which should be first adjudicated by the Executing Court. He states that the orders of the Executing Court at this stage are intended for disclosure and there is no order fastening the liability on the Petitioner herein.

4.3. He states that the Petitioner herein is the Promoter Director of the

Company and appraisal of the disclosures/documents as directed by the Executing Court to the Petitioner would assist the Executing Court in determining if there has been any siphoning of funds by the Petitioner. He states that, thus, these orders are in aid of an inquiry which the Executing Court shall undertake.

4.4. He states that the Petitioner is obliged to file the ITR's as directed by the Executing Court vide impugned orders, which are in its possession and in case of its non-filing, the reason for the same should be furnished before the Executing Court.

4.5. He states that the Executing Court has been compelled to issue successive directions, which has been challenged in the present case as the affidavits filed by the Petitioner were not compliant with the earlier directions issued by the Executing Court vide orders dated 25.05.2016, 23.09.2017, 16.12.2017 and 31.03.2018.

4.6. He states that the Respondent and 51 other employees are entitled for payment for work done w.e.f. 14.02.2000 till the date they continued working or the date from which their resignation are enforceable as per the Industrial Award.

4.7. He states that the Respondent in the application filed under Order XXI Rule 41 of CPC has set out averments, which evidences that the Petitioner herein alongwith other Directors is frustrating the execution of the Industrial Award.

4.8. He states that the proceedings before the Executing Court have been adjourned sine die due to the pendency of this petition.

Findings of this Court

5. This Court has considered the submissions of the learned counsel for the parties and perused the record.

6. In the present case, an Industrial Award dated 12.05.2004 was passed by the Industrial Tribunal declaring that the lock out imposed by the management of the Company on 14.02.2000 was illegal. The Industrial Award granted relief to the workman and directed the management of Company to pay wages w.e.f. 14.02.2000 till date or the date from which the resignation of the workmen concern became enforceable. The said award was accepted by the Judgment Debtor and no appeal was filed. Respondent and 51 other employees are now seeking payments of wages before the Executing Court in terms of the aforesaid Industrial Award passed.

7. Since, the Respondent and the 51 other employees have not been paid the amount due to them as per the Industrial Award passed, therefore, in these circumstances, the Respondent filed the execution proceedings. The Executing Court vide order dated 12.03.2015 issued a warrant of attachment in respect of the immovable Masjid Moth property of the Company. However, the said warrants could not be executed as the Masjid Moth property stood mortgaged with Kotak Mahindra Bank Ltd.

8. The Respondent thereafter filed an application on 16.04.2015 under Order XXI Rule 30 of CPC averring that the Judgement Debtor is delaying the execution proceedings and withholding the material facts with respect to its assets. Therefore, the Respondent in the said application sought arrest

and detention in the civil prison of the Directors of the Company, which included the Petitioner herein i.e., Mr. Ashok H. Advani.

No reply was filed by the Judgment Debtor to the said application and the Executing Court in view of the averments made in the said application vide order dated 31.08.2015 directed the Petitioner herein to file its affidavit disclosing the assets of the Company.

9. The Respondent thereafter filed an application under Order XXI Rule 41 of CPC on 16.10.2015 seeking a direction to the Directors of the Company to furnish information about the bank account details/ annual returns of other subsidiary/holding companies including their personal bank account details for the year 1994 till the date of filing the said application. It was averred in the application that the Judgment Debtor was withholding information with respect to status of mortgage of the Masjid Moth property. The arguments on the said application were heard by the Executing Court on 25.05.2016.

10. The Executing Court by its order dated 25.05.2016 returned a finding that the affidavit dated 26.09.2015 filed by the Company (through the Petitioner) to disclose its assets was not compliant with the order dated 31.08.2015. Therefore, relying upon para 14 of the judgement of learned Single Judge of this Court in **M/s. Bhandari Engineers and Builders Pvt. Ltd. vs. Maharia Raj Joint Venture and Ors.**, decided on 11.01.2016 and reported in **2016 SCC OnLine Del 182** the Executing Court directed the Petitioner herein and the other Directors of the Company to file their personal affidavits furnishing the particulars set out in the said order.

11. The Petitioner herein filed his first affidavit dated 18.10.2016 in compliance with the order dated 25.05.2016. The Petitioner filed his second

affidavit dated 20.04.2018 in compliance with the orders dated 23.09.2017, 16.12.2017 and 31.03.2018. The Petitioner filed additional document on 17.07.2018 to comply with impugned order dated 08.05.2018. The Petitioner further filed his third affidavit dated 17.08.2018 in compliance with the impugned order dated 17.07.2018.

12. The directions issued by the Executing Court vide impugned orders dated 08.05.2018 and 17.07.2018 all emanate from the order dated 25.05.2016, wherein the Executing Court first time directed the Directors of the Judgment Debtor to file their personal affidavits following the judgement in **M/s. Bhandari Engineers and Builders Pvt. Ltd. (2016) (Supra).** The impugned orders are, therefore, in continuation of the earlier order dated 25.05.2016. The Executing Court issued these directions on 25.05.2016 to the Directors relying upon the aforesaid judgement and without returning any finding on the personal liability of the Petitioner and of the other Directors towards payment of the amount due to the workman of the Company under the Industrial Award passed.

13. The judgement of **M/s. Bhandari Engineers and Builders Pvt. Ltd. (2016) (Supra)** has been clarified by this Court in **Anirban Roy and Another vs. Ram Kishan Gupta and Another; 2017 SCC OnLine Del 12867** to hold that it is not the ratio of the judgement that in a decree for money against a Company, the directions to the Directors of the Company to furnish details of their personal properties will follow as a matter of course. The relevant portion of the judgement reads as under: -

> *"14. <u>As far as reference to Bhandari Engineers & Builders Pvt. Ltd. supra is concerned, a perusal thereof does not show this Court to have held that in every case of execution of a money decree against a company, the Directors of the judgment debtor company are required to furnish details of their</u>*

*personal properties. **The direction to the Directors, in Bhandari Engineers & Builders Pvt. Ltd. supra, was on account of the business relationship as found therein. There is no such finding in the present case.**"*

('Emphasis Supplied')

13.1. The aforesaid position of law has been reaffirmed by this Court in a subsequent judgement titled **G.S. Sandhu & Anr. vs. Geeta Aggarwal** decided on 14.01.2022 reported in **2022 SCC Online Del 111** wherein, the relevant portion reads as under: -

*"1. The present petition under Article 227 of the Constitution of India impugns the order dated 13th August, 2019 passed by the District Judge, Patiala House Courts in Execution No.5359/2016, whereby the petitioners, being the directors of M/s. Silver Fern Hotels Private Limited [hereinafter 'judgment debtor company'] have been directed to file affidavits of assets in pursuance of the judgment of this Court in **Bhandari Engineers and Builders Pvt. Ltd. Vs. Maharia Raj Joint Venture and Ors., 227 (2016) DLT 302.***

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*14. **In Bhandari Engineers and Builders Pvt. Ltd.** (supra), a Single Bench of this Court directed that in cases of execution of money decrees, the judgment debtor, at the initial stage itself should be directed to file particulars of assets as on the date of the institution of the suit as well as of the current date under Order XXI Rule 41(2) of the CPC along with the statement of the bank accounts for the last three years. It was further provided that if the judgment debtor's affidavit does not sufficiently disclose assets, a further affidavit may also be directed to be filed and the judgment debtor be also examined orally under Order XXI Rule 41(1) of the CPC. This constituted the dicta of **Bhandari Engineers and Builders Pvt. Ltd.** (supra). Thereafter, the Court in **Bhandari Engineers and Builders Pvt. Ltd.** (supra) directed, inter alia, the directors of the judgment debtor company therein to file the details of their personal assets. **However, the aforesaid directions with regard to the directors filing affidavits of their personal assets was only in the facts and circumstances of the said case and was not the dicta of the said case.** Therefore, the reliance placed by the Executing Court on the judgment in **Bhandari Engineers and Builders Pvt. Ltd.** (supra) for directing the petitioners to file their affidavit of personal assets is clearly erroneous.*

*15. In this regard, reference may be made to the observations made by a Single Bench of this Court in **Anirban Roy and Ors.** (supra), wherein this aspect of the judgment in **Bhandari Engineers and Builders Pvt. Ltd.** (supra) was* *considered. The relevant observations are set out below:*

> *"14. As far as reference to Bhandari Engineers & Builders Pvt.Ltd. supra is concerned, a perusal thereof does not show this Court to have held that in every case of execution of a money decree against a company, the Directors of the judgment debtor company are required to furnish details of their personal properties. The direction to the Directors, in Bhandari Engineers & Builders Pvt. Ltd. supra, was on account of the business relationship as found therein. There is no such finding in the present case."*
> ……..
> ……..

18. At this stage, reference may also be made to the judgment in Anirban Roy and Ors. (supra). In the said case also, this Court was dealing with a petition under Article 227 of the Constitution of India impugning an order passed in execution proceedings in exercise of powers under Order XXI Rule 41 of the CPC directing the petitioners therein, being directors of the judgment debtors company, to disclose their personal assets in terms of judgment dated 11th January, 2016 in Bhandari Engineers and Builders Pvt. Ltd. (supra).

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*22. **In view of the above, the directions contained in the impugned order dated 13th August, 2019 directing the petitioners to file an affidavit disclosing their personal assets cannot be sustained and are set aside**."*

(Emphasis Supplied)

14. The learned single Judge of this Court in the case **Anirban Roy and Another vs. Ram Kishan Gupta (supra)** as well as in the case **G.S. Sandhu & Anr. vs. Geeta Aggarwal (supra)** have in identical circumstances set aside the orders passed by the Executing Court directing the Directors of the Company to file affidavits of their personal assets by only relying upon the judgement of **M/s. Bhandari Engineers and Builders Pvt. Ltd. (2016) (Supra).**

15. The judgment of **M/s. Bhandari Engineers and Builders Pvt. Ltd. (2016) (Supra)** as well as subsequent judgement of the learned Single Judge of this Court in **M/s. Bhandari Engineers and Builders Pvt. Ltd.**

vs. Maharia Raj Joint Venture and Ors., decided on 05.02.2019 reported in **2019 SCC OnLine Del 11879** has been expressly overruled by a Division Bench of this Court in **Delhi Chemicals and Pharmaceutical Works Pvt. Ltd. and Another vs. Himgiri Realtors Pvt. Ltd. and Another** reported in **2021 SCC OnLine Del 3603,** wherein, at paragraph 57 and 58 it was held as under:-

> *"45. As aforesaid, challenge to the merits of the impugned orders would require us to deal with **Bhandari Engineers & Builders Pvt. Ltd. supra. (pronounced on 5 December, 2019) as well as judgments/orders therein, dated 11 January, 2016 reported as 2016 SCC OnLine Del 182, dated 5 February, 2019 reported as 2019 SCC OnLine Del 11879, and dated 5 August, 2020**. Having gone through all the four, we cull out hereunder the conclusions and the law laid down in the four judgments.*
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> ……..
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> …….
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> *57. We are thus of the view that Bhandari Engineers & Builders Pvt. Ltd. supra, to the extent extends what is laid down therein to execution proceedings pertaining to all money decrees and to all courts executing a money decree, cannot said to be good law. Axiomatically, what is held in Bhandari Engineers & Builders Pvt. Ltd. supra could not have been followed in the execution proceedings from which this appeal arises.*
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> *58. Once it is so, the impugned orders have no other reason whatsoever for directing the judgment debtors to file the affidavits and which are liable to be set aside on this ground alone."*
>
> ('Emphasis Supplied')

16. In the opinion of this Court and in view of the authoritative and binding judgement passed by Division Bench of this Court overruling **M/s. Bhandari Engineers and Builders Pvt. Ltd. (2016) (Supra)**, the impugned orders dated 08.05.2018 and 17.07.2018 as well as the order dated 25.05.2016 passed by the Executing Court to the extent that it directs the Petitioner and the other Directors of the Company to file affidavits with respect to their personal assets cannot be sustained and are hereby set aside. For the reason, the said orders have been passed by the Executing Court

with reference to **M/s. Bhandari Engineers and Builders Pvt. Ltd. (2016) (Supra).**

17. The submission of the Respondent that the Executing Court by these orders is undertaking an exercise to examine if Directors have siphoned or mismanaged any funds of the Company cannot be accepted as this submission is not borne out from the orders of the Executing Court. Moreover, there is no clear finding of the Executing Court as well in its order dated 25.05.2016 as regards to the siphoning of funds by the Directors of the Company[1].

18. However, it is directed that the Petitioner's affidavits dated 18.10.2016, 20.04.2018 and 17.08.2018 as well as the additional documents filed on 17.07.2018 shall continue to remain as a part of the record of the Executing Court and the Petitioner herein shall remain bound by the disclosures made therein. Similarly, other directors shall remain bound by the contents of the affidavits of personal assets filed by them. In view of the fact that the Industrial Award dated 12.05.2004 has not been satisfied, therefore, the Executing Court is directed to proceed to decide the pending applications filed by the Respondent under Order XXI Rule 30 of CPC dated 16.04.2015 and application filed under Order XXI Rule 41 of CPC dated 16.10.2015 in accordance with law. It is further clarified that the Decree Holder will be at liberty to file further application under the provisions of the CPC, as advised for the execution of the decree.

19. This Court vide order dated 11.01.2019 had directed the Petitioner herein to deposit the costs of Rs. 1 lakh imposed vide order dated

[1] Balmer Lawrie & Company Ltd. v Saraswathi Chemicals Proprietors Saraswathi Leather Chemicals (P) Ltd., 2017 SCC OnLine Del 7519: (2017) 239 DLT 217; V.K. Uppal v. M/s Akshay International Pvt. Ltd., 2010 SCC OnLine del 538

17.07.2018 by the Executing Court. The Petitioner has since deposited the said costs. In the facts of this case, since the dues of the Respondent and the 51 employees remains outstanding, it is directed that the payment of said costs will not be interfered with on the basis of this order and the costs will be payable as per the impugned order.

20. This petition is according allowed in the aforesaid terms. Pending applications, if any, stand disposed of. Interim order dated 11.01.2019 stands vacated.

MANMEET PRITAM SINGH ARORA
(JUDGE)

DECEMBER 13, 2023/*rhc***/**hp**/**ms