

**Item No.6**  
06.03.2024  
Court. No. 19  
GB

C.O.626 of 2024

Vijay Agarwal  
VS

M/s. Ekta Ispat & Power Private Limited & Anr.

*Mr. Suddhastva Banerjee,*  
*Mr. Sourajit Dasgupta,*  
*Mrs. Uma Bagree,*  
*Mr. Arindam Paul,*  
*Ms. Debarati Das*

*... for the Petitioner.*

*Mr. Sumanto Datta,*  
*Mr. Rakesh Kumar soni,*  
*Mr. Tapas Maity*

*... for the Opposite Parties.*

1. The instant application has been filed, assailing the propriety of an Order No.68, dated January 15, 2024, passed by the learned Additional District Judge, 6<sup>th</sup> Court at Alipore in Money Execution Case No.16 of 2016. The learned executing court dismissed the petitioner's application for deletion of a property situated at P-70, CIT Road, Scheme VIM, P.S. – Phoolbagan, Kolkata from the schedule of immovable properties attached in the execution proceeding.
2. The learned advocate for the opposite parties/decreed-holders have raised the question of maintainability of the revisional application. Mr. Datta, learned advocate appearing on behalf of the opposite parties submits that the relief claimed in the application before the learned executing court,

would indicate that the petitioner filed the application for adjudication of the issue that the property situated at P-70, CIT Scheme VIM, P.S. Phoolbagan, P.O. Kankurgachi, Kolkata – 700054, was not liable to be attached. Although the provision of law was not mentioned in the application, but the relief claimed would prove that the application was filed under Order 21 Rule 58 of the Code of Civil Procedure. It was an objection to the order of attachment of the property.

3. According to Mr. Datta, when the claim or the objection of the petitioner was adjudicated under Rule 58 of Order 21 of the Code of Civil Procedure, the order impugned was a deemed decree and a miscellaneous appeal would lie therefrom. It is further submitted that by not mentioning the provision of law under which the said application was filed, the petitioner was only trying to divert the court from an adjudication under the said provisions of the Code of Civil Procedure. In essence, the reliefs claimed and the contentions in the application filed by the petitioner would indicate that the court was approached for an order of release of the property belonging to the petitioner. Such adjudication would be an adjudication under Sub-Rule 4 of Rule 58 of Order 21 of the Code. Not mentioning the provision of law under which the

application was filed, would not change the very character and essence of the application. The application will be deemed as an objection under Order 21 Rule 58 of the Code.

4. Mr. Banerjee, learned advocate for the petitioner submits that the point of maintainability would not be available in this case because the order impugned would indicate that there was no adjudication as contemplated under law. Earlier, this Court had directed the learned executing court to decide the said application and the objection raised therein upon evidence, but the learned court instead of either following or complying with the decision of the High Court, held that as a meeting which was held in the premises in 2020, the premises belonged to the company. There was no adjudication.
5. Under such circumstances, the order suffers from perversity. The learned court failed to conform to the procedure established by law in deciding the application. Assuming that the said application was one under Order 21 Rule 58 of the Code, even then, the learned court had failed to exercise jurisdiction vested upon him by law, by not asking the parties to adduce evidence so that an adjudication could be made.

6. It is further contended by Mr. Banerjee that the records would reveal that the decree-holders also could not establish that the property belonged to the company and was one of the assets of the company.
7. Having considered the rival contentions of the parties, this Court finds that the application was filed by the petitioner for adjudication of the objection. He prayed that the property was not liable to be attached and should be deleted from the list of attached property.
8. The judgment debtor was not before the court, but the petitioner claiming to be the owner of the property had preferred the objection. The petitioner claimed to be the absolute owner of the property and the company was a tenant. Thus, the application required an adjudication.
9. On an earlier occasion, aggrieved by a sale notice in respect of the said premises, the petitioner approached this Court under Article 227 of the Constitution of India by filing C.O. 1703 of 2023. This Court, upon hearing the parties had directed that as the petitioner claimed to be the absolute owner of the property in question, the application of the petitioner should be decided and disposed of on merits. The order records that the petitioner had claimed title to the property and had stated that the

property was the personal property of the petitioner and did not belong to the judgment debtor. The petitioner was the Director in the company, but had resigned in 2011. The petitioner's claim was that such private property could not be a part of the execution proceeding.

10. Mr. Soni, learned advocate who had appeared for the decree-holders had raised an objection, inter alia, stating that the petitioner had created false certificates and receipt in order to establish that the judgment debtor was a tenant under the petitioner. It was a family run business and the property was actually the property of the company. The deeds relied upon by the petitioner, were also fabricated.
11. This Court had directed that an opportunity should be given to the petitioner to place his objection and the same should be disposed of on merits. Pursuant to such direction, the learned court heard the parties and came to the conclusion that the extract of the minutes of the meeting dated January 20, 2020 of the Board of Directors of the judgment debtor/company, would indicate that the company was the owner of the property in question.
12. This, in my view, was not the proper procedure which the learned court followed. While adjudicating the dispute raised by the petitioner, the objection of the petitioner should have been

considered in its proper perspective along with the documents which were filed. Parties ought to have been asked to lead oral and documentary evidence in support of their respective claims. The petitioner claims that 1/6<sup>th</sup> share in the property had devolved upon the petitioner after the demise of his father, late Shyam Sundar Agarwal, who was the original owner of the property. The Director of the company, Anand Agarwal also had 1/6<sup>th</sup> share. The legal heirs of late Shyam Sundar Agarwal, had enjoyed the remaining share. All the heirs had gifted their respective shares to the petitioner sometime in 2016, by registered deeds of gift and the petitioner became the absolute owner.

13. According to Mr. Banerjee, even if, the deed of gift was a sham transaction, the fact that the heirs of Shyam Sundar Agarwal had become the owner of the property after demise of Shyam Sundar Agarwal, would itself negate the claim of the decree-holders of the property being the exclusive property of the judgment debtor. Other legal heirs had also inherited the property from Shyam Sundar Agarwal.
14. This order which is impugned, does not record any adjudication although, it is submitted that the documents relied upon by the petitioner had been placed before the court. On the other hand, Mr. Datta submits that in the records before the

registrar of companies, the property has been listed as one of the assets of the company. Most of the legal heirs of Shyam Sundar Agarwal were shareholders of the company and had an interest in the company. As such, decree-holders could proceed for attachment of the property.

15. The order impugned does not indicate that the parties were allowed to adduce any documentary or oral evidence by a proper process. The adjudication would require the court to decide the right, title and interest of Vijay Agarwal in respect of the property in question. Whether the company/judgment debtor was the owner of the property or the transactions were fictitious, were also to be decided on evidence. The rent receipts, balance sheets were also to be looked into. The opposite party was also required to lead evidence and lay foundation with regard to their allegation that transactions were false and frivolous and the creation of tenancy was only to prevent satisfaction of the decree upon sale of this property.

16. The revisional application is disposed of without going into the merits of the claim and counter-claim of the parties. The order impugned is modified to the extent that the decree-holders will not proceed with the sale of the property which is the subject matter herein. The learned court shall re-adjudicate

the objection in accordance with the provisions of law as discussed at length, hereinabove. All parties will be allowed to adduce both oral and documentary evidence. The learned court shall thereafter adjudicate the issues. The entire exercise shall be completed within a period of four months from the date of communication of this order.

17. The sale of the other properties as per the direction of the court, is not interfered with. This order is restricted to the property situated at P-70, CIT Scheme VIM, P.S. Phoolbagan, P.O. Kankurgachi, Kolkata – 700054.
18. As it is informed that the court is now vacant, the matter should be decided by the judge in – charge in view of the urgency involved.
19. However, there shall be no order as to costs.
20. All the parties are directed to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**