30-07-2024
Item no.6 CD
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Commercial Division)

FMA No.914 of 2024
Essential Logistics Private Limited
-vs-
Shree Raj Metalloys Private Limited
with
CAN No.1 of 2024

Mr. Rajarshi Dutta
Mr. Pratip Mukherjee
Mr. Aditya Chakraborty ...for the appellant

Mr. Rupak Ghosh
Mr. Varun Kothari
Ms. Pooja Agarwal ...for the respondent

We formally admit the appeal.

As the point involved is not very complex and as we do not intend to keep the suit before the learned court below pending for long, we propose to dispose of the appeal, dispensing with all formalities.

The impugned judgement and order of the learned court below is dated 6th July 2024. It attaches the bank account of the appellant. The appellant is aggrieved by this attachment.

Before submissions were made on merits, learned counsel for the appellant questioned the territorial jurisdiction of this court and its power to attach the account or accounts in a bank situated outside the jurisdiction of this court.

At the present moment, we are not going into those questions as it would be possible to dispose of the appeal on other issues, assuming that the learned court below had correctly prima facie satisfied itself that it had territorial jurisdiction and that by an order in personem the court would direct the bank not to allow the appellant to operate their bank account. The questions are kept open to be decided in the suit, if and when raised.

Mr Ghosh, learned advocate appearing for the respondent, tried to support this order of attachment on mainly two grounds: first, there was an order of the learned court below directing the appellant to furnish security which they have challenged in a higher forum, but till date without any success. The order directing furnishing of security also provided that in case it was not furnished, an order of attachment would follow. The impugned order was thus a consequential order. Secondly, he showed us an e-mail of the appellant dated 4th April 2023 to the respondent at page 83 of the stay petition where they said due to "changing business circumstances we are unable to continue with the lease". Further to this, they vacated the subject premises within the "lock-in period", that is to say, before expiry of the minimum period during which they had to continue the lease or tenancy. Therefore, the appellant was involved in financial circumstances.

He also showed us the statement of the appellant in paragraph 11 of the affidavit-in-opposition to the interim application in the court below admitting their lack of financial resources.

On the basis of all these facts and evidence, the court was justified in passing the attachment order, Mr Ghosh submitted.

On the other hand, Mr Rajarshi Dutta, learned counsel appearing for the appellant, very ably assisting by his learned junior, Mr Pratip Mukherjee, contended that the appellant was a running business. No case had been made out by the respondent for attachment before judgement. The impugned order was badly affecting the business of his client to the extent that they were unable to pay the wages of their employees.

This was in addition to the maintainability points discussed above.

If the contention of Mr Ghosh was to be accepted, then a defendant lacking financial resources would have to secure the decree claimed and also face attachment of his property on failure to do so, even before a decree was made against him, whereas a defendant with greater financial resources could sit back and resist the decree, till it was executed.

The law is, it is not the impecuniosity of the defendant but any act of insolvency on his part by disposal or dealing with his assets with the specific objective of defeating the decree that was expected to be passed against him or of the claims of his creditors or an unequivocal admission of his liability or such admitted facts that render him defenceless that would entitle the plaintiff to obtain an order for security or attachment. No such case has been established against the appellant.

In this case, it is true that the appellant did not furnish the security and the default clause in the order remained operative. As a consequence of that order, the order of attachment followed. The ultimate result of the application made by the respondent before the learned court below has resulted in freezing of the bank account of the appellant to a very substantial extent.

Taking into account the fact that the order furnishing security remains without alteration and absence of any act on the part of the appellant to dispose of or deal with their assets to defeat a decree that might be passed against them, we modify the impugned judgement and order to the effect that the appellant could be permitted to operate their bank account without any restraint but their average monthly withdrawal should not exceed the monthly average in the earlier financial year 1st April 2023 to 31st March 2024.

If any withdrawal above that amount is contemplated, leave of the court below has to be taken. The appellant shall furnish a monthly statement of account, certified by their company secretary to the respondent, together with the corresponding statement of the previous financial year.

With the above, the appeal and the connected stay application are disposed of.

The learned court is requested to proceed with the trial of the suit as expeditiously as possible.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]