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Appln.Nos.11 & 12 of 2024

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in
E.P.No.2965 of 2010

Krishnan Ramasamy, J.,

This application has been filed by the applicant to set off a sum of Rs.7.11 lakhs along with interest at the rate of 12 % p.a., from 12.01.2004 as on 31.08.2021 a sum of Rs.15,18,696/-.

2. This issue was raised before the learned Master and the same was considered by the learned Master. The request of the applicant was rejected under the impugned order dated 22.06.2022 made in A.No.3877 of 2021 in E.P.No.2965 of 2010 and the Execution Petition was pending before the learned Master and the same was transferred before this Court.

The relevant portion of the order is as follows:

“7. Now the point for determination is whether the applicant/judgment debtor is entitled to set off Rs.7.11 lakhs as claimed by him or not?

8. The learned counsel for the applicant/judgment debtor reiterated that the respondent/decreed holder admitted the claim of the judgment debtor and based on that they sent a letter to



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Ministry to release the amount. Therefore, they are entitled to that amount. Further, judgment debtor counsel has stated that the president has passed the sanctioned order, but due to enmity arisen because of the complaint given before anticorruption unit, the order sanctioned was cancelled by minutes of meeting. Further, the learned counsel for the judgment debtor stated that the minutes of meeting has no effect at all. Further, the learned counsel for the judgment debtor counsel stated that all these matters were suppressed and not communicated to the judgment debtor.

9. On the other hand, the learned counsel for the decree holder reiterated that though sanction order was in the nature of the president, only the Ministry passes the order. The decree holder sent the letter based on the bills submitted by the judgment debtor to Department of Ministry. It was not approved by the Ministry and the sanction order was cancelled. The judgment debtor is not entitled to any amount.



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10. Based on the service rendered by him, judgment debtor submitted bills and claimed for Rs.28,71,299/-. Decree holder stated that excess amount has been paid to the judgment debtor and asked for recovery. This matter was adjudicated by the Arbitrator. The claim of this amount Rs.7.11 lakhs was already claimed by the way of counterclaim before the Arbitrator when claimed Rs.28,71,299/- which included this Rs.7.11 lakhs. The same was decided by the arbitrator and the award reached its finality. Now for the same Rs.7.11 lakhs, the judgment debtor claims set off by way of filing Section 47 application in the execution proceedings.

11. At this juncture, it is useful to go through section 47 of the CPC

Section 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.



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(2)

(3)

12. The execution Court can decide the questions with regard to execution, discharge or satisfaction of the decree. The learned counsel of judgment debtor argued that the amount for which he is entitled can be set off since it is related to execution and satisfaction of the decree.

13. At this stage it is also relevant to look into the scope of Section 47 CPC. Section 47 refers to all questions which were not raised in the suit and decided by the trial Court. If a question was raised at the stage of trial and decided by the trial court, it is not open to the parties to raise it again at the stage of execution. Similarly, if a question ought to have been raised by a party before the trial court at the stage of trial and omits to raise it, even then he cannot raise it under section 47 of CPC before the execution court.

14. In our case, this amount claimed was already claimed by way of counterclaim including the same for Rs.28,71,299/- before the Arbitrator. The



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arbitrator after considering the same has dismissed the counterclaim. This question was already raised before the trial court. Therefore, the same cannot be reagitated now before this execution court.

15. But the applicant/judgment debtor has taken a stand that the sanction order and the minutes of meeting cancelling the sanction order was not communicated to him and suppressed. At the time of filing counterclaim he was not aware that he was sanctioned by an amount of Rs.7.11 lakhs. Further, he argued that since the facts were suppressed and fraud played, the claim can be raised at any stage even in execution petition, appeal or revision. So that he raised the same claim before the execution Court.

16. This execution petition is for the recovery of money. The judgment debtor is obliged to pay the decretal amount on the date of passing of decree itself. When judgment debtor fails to do the same, the decree can be executed by decree holder by way of filing execution petition, and the judgment debtor has



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to satisfy the decree by paying the decretal amount.

The payment can be made either inside the Court or outside the Court. This judgment debtor wanted to set off the amount otherwise. Now, it is relevant to go through the provisions of CPC which speaks about how to record the payment outside the Court, or adjustment made otherwise.

17. Order XXI Rule 2

Payment out of court to decree holder.- (1)

Where any money payable under a decree of any kind is paid out of the court, or a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree holder, the decree holder shall certify such payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the same accordingly.

(2) The judgment debtor or any person who has become surety for the judgment debtor also may inform the court of such payment or adjustment, and apply to the court to issue a notice to the decree holder to show cause, on a day to be fixed by the court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.

(2A) No payment or adjustment shall be recorded at the instance of the judgment debtor unless—

(a) the payment is made in the manner, provided in rule 1; or



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(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment, is admitted by, or on behalf of, the decree holder in his reply to the notice given under sub-rule (2) of rule 1, or before the court.

(3) A payment or adjustment which has not been certified or recorded as aforesaid, shall not be recognised by any court executing the decree.

18. By virtue of O 21, r (2), 'a payment or adjustment, which has not been certified or recorded in accordance with the rule, shall not be recognized by any court executing the decree'. Therefore, when a decree holder takes out execution, the judgment debtor will not be entitled to plead that he has otherwise adjusted the decree, outside the court. By placing this construction, no inconsistency arises between O 21, r 2 and s 47. The general and broader provisions of s 47 of the Code of Civil Procedure, clothing the court with the jurisdiction to decide all questions pertaining to execution, discharge and satisfaction of a decree cannot be allowed to defeat the special provisions of O 21, r 2 of the Code of Civil Procedure dealing with adjustments of the decree. When the satisfaction of the decree is based on an adjustment, provisions of s 47



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cannot be pressed into service unless the adjustment is recorded in accordance with r 2 of O 21 of the Code of Civil procedure.

19. The applicant/judgment debtor in his counter affidavit in the main execution petition stated that when fraud is played, the decree is nullity, non-est in the eye of law and inexecutable. Further, the applicant/judgment debtor stated that the excess amount paid as stated by the decree holder was not paid to him. If the execution petition is dismissed on that ground, whether this set off amount can be claimed by the applicant/judgment debtor from the decree holder without a decree is a question to be answered.

20. The recommendation of the ministry sanctioning release of Rs.7.11 lakhs may create a right to the applicant to be eligible for the said amount to recover the same. But the same cannot be straight away executed. It is only a decree that can be executed by way of set off and not the sanction order.



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21. At this stage, this Court wants to reiterate the words spoken in Section 47 of CPC.

(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.**

22. The questions between the parties to the suit which are to be determined, should not be tried by a separate suit, but like a suit under Section 47 CPC application. When the rights of a party is to be determined by the executing court, the applicant shall plead his case and prove the same by adducing evidence. But in our case there is no single piece of evidence putforth before this Court in support of this Section 47 application. Order 21 Rule 2 of CPC also reiterates the same that no adjustment shall be recorded without any documentary evidence.

23. This Court do not find any merit in the application and the application is dismissed.



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Considering the circumstances, there is no order as to costs.

24. Though both sides circulated several judgments in support of their arguments, in the opinion of this Court, they are irrelevant for the above stated consideration, hence they are not discussed. ”

3. Challenging the above said order, the present application has been filed by the applicant before this Court.

4. The learned counsel for the applicant would submit that, the amount mentioned in the Statement of Accounts at page no.12 of the typed set of papers, i.e., a sum of Rs.32,44,821/- is not the amount, which was referred to in the counter claim. Further, he would submit that the amount referred to in the counter claim was not fully appreciated by the learned Master, while rejecting its application for set off by virtue of the sanction letter dated 30.09.2003.

4.1. The learned counsel for the applicant further submitted that the applicant is entitled to a sum of Rs.7.11 lakhs out of Rs.32,44,821/- as per the minutes of the meetings dated 12.01.2004.



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WEB COPY 5. On the other hand, Mr.R.Sankara Narayanan, learned Senior Counsel for the respondent submitted that the claim amount of Rs.32,44,821/- mentioned in the Statement of Accounts is the same amount claimed by way of counter claim and the same has been referred in the award, which was filed before the learned Arbitrator and page no.10 of the said award is as follows:

“The respondent has also made a claim of Rs.32 lakhs along with interest @ 24% per annum from the date of receipt of claims requesting that the claimant is liable to pay the respondent for the services rendered by them not only sum of Rs.98/- per MT in terms of the contract, but also the additional sums @ Rs.44/- per MT towards transportation of goods from the port to the respondent's godown and Rs.15/- per MT for loading and unloading. Thus, the respondent prayed to reject the claim of the claimant and allow the claims of the respondent.”

6. Therefore, he would further submit that no other claim was made except this claim as contented by the learned counsel for the applicant.

7. I have given due consideration to the submission made by the learned counsel for the applicant as well as the learned Senior counsel for the respondent and perused the materials available on record.



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WEB COPY 8. The learned Master has elaborately discussed and passed a detailed order. In the present case, the only issue is whether the applicant is entitled to set off amount of Rs.7.11 lakhs along with interest at the rate of 12% p.a., from 12.01.2004 as on 31.08.2021 a sum of Rs.15,18,696/-. The applicant has sought a sum of Rs.32,44,821/- as counter claim, and the said counter claim was also discussed at page no.10 as referred supra and finally at page no.49 of the award passed, it was rejected with the following observation:

“After careful consideration of the documents filed by the respondent and argument of learned counsel of the claimant. I feel that respondent has failed to prove his counter claim and the same therefore is rejected to the extent mentioned above.”

9. In order to prove the submission of the applicant's claim for set off of a sum of Rs.7.11 lakhs, which was not included in the counter claim, the applicant was not able to produce any documents. Only by referring to, the judgment, he would submit that, a sum of Rs.32,44,821/- does not include a sum of Rs.7.11 lakhs as sanctioned. Further, the claim of the applicant is pertaining to the year 1992 to 1996 of Clearing & Forwarding (in short “C & F”) charges. The issue pertaining to the excess payment of C & F charges was referred for resolution by Arbitration and a sum of Rs.35 lakhs was claimed by the respondent, and a sum of Rs.18.49 lakhs was allowed. If at all, any additional claim is to be made, it is for the respondent to raise a claim before the learned



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Arbitrator. In the present case, the respondent has made a claim for Rs.32 lakhs by letting in evidence. However, the same was rejected in entirety and the award was passed in the year 2008. The claim statement was filed only pertaining to the excess payment based on the Auditor's report, and it would come around to a sum of Rs.32 lakhs.

10. In the present case, according to the applicant, it was approved a sum of 7.11 lakhs and it is for the applicant to prove by letting in evidence before the learned Arbitrator or before any other Court. When the respondent is taking steps for recovery, the applicant is not entitled to make a claim in respect of the said amount as the same was not covered and rejected by the learned Arbitrator. Further, the applicant was not able to produce any materials to prove the same before the learned Arbitrator or any other Court to prove that the claims are entirely different. Only to cause confusion, without any materials, the applicant is trying to make a double claim before this Court for setting off a sum of Rs.7.11 lakhs. The award was passed on 23.10.2008. According to the respondent, a sum of Rs.7.11 lakhs was sanctioned by the Government on 14.01.2004. Merely sanctioning of the amount is not sufficient, it is for the applicant to produce and prove the same before the appropriate forum and substantiate their claim. In the present case, the applicant had raised the aforesaid claim before the learned Arbitrator, however, the applicant was unable



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to prove the same and by taking advantage of the sanction letter, the applicant is trying to mislead the Court by making the claim, as if it is a decree. Unless and otherwise it is a decree, they are not at all entitled to any set off, as stated by the learned Master.

11. For all these reasons, this Court is unable to accept the contention of the applicant, as the applicant is trying to mislead the Court, by making a double claim. Therefore, it is a fit case to impose a cost of Rs.7.11 lakhs equivalent to the amount claimed by the applicant. Accordingly, this application is dismissed with cost of Rs.7.11 lakhs. The applicant is directed to deposit a sum of Rs.7.11 lakhs to the credit of **Cancer Institute (Regional Cancer Centre), Adyar, Chennai – 600 020**, within a period of four weeks from today. Consequently, connected Appln.No.12 of 2024 is closed.

This Court is constrained to impose such costs to restrict the frivolous claims made by the parties concerned.

Post this matter on 20.08.2024 under the caption for “reporting compliance”.



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01.07.2024

Note: Issue order copy on 18.07.2024.



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