IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14052 OF 2024

Gharda Chemicals Limited ...Petitioner

Versus

Rangarasayan Partners Firm and anr. ...Respondents

WITH

WRIT PETITION NO. 14053 OF 2024

Gharda Chemicals Limited ...Petitioner

Versus

SVS Chemicals Corporation and anr. ...Respondents

Mr. Sandesh Patil, a/w Chaitanya Nikte and Krishnakant Deshmukh, i/b Manekshaw & Sethna, for the Petitioner.
Mr. Amrut Vernekar, a/w Suraj Ghagare, for Respondent No.1.
Mr. Atul Shah, Representative of Respondent No.1, present.

CORAM: N. J. JAMADAR, J.
DATED: 15th JANUARY, 2025

ORDER:-

1. Heard the learned Counsel for the parties.

2. These petitions under Articles 226 and 227 of the Constitution of India arise out of an identical fact-situation. The Judgment Debtor is common and identical controversies arose in the proceedings before the Executing Court. The only difference that appears in these two petitions is that the decree-holders in the two petitions are different. The facts in Civil/WP/14052/2024 are noted as a lead petition.

3. Respondent No.1 instituted Special Civil Suit No.47 of 2005 in the Civil Court at Pune. On 27th February, 2009 the said suit came to be decreed and respondent No.2 – defendant No.1 was ordered to pay an amount of Rs.19,71,899/- to the plaintiffs alongwith interest at the rate of 21% p.a. Execution Application No.39 of 2012 was filed. On 30th April, 2022 the decree-holders filed an application for attachment and sell of the property of the Judgment Debtor – respondent No.2 being Plot No.F1, MIDC Area, Lote Parshuram, Taluka Khed, District Ratnagiri (the subject property) in execution of the said decree.

4. In the meanwhile, respondent No.2 under a Memorandum of Understanding had assigned the subject property to the petitioners for a valuable consideration of Rs.14,40,00,000/-. On 17th August, 2023 a warrant of attachment under Order XXI Rule 30 of the Code of Civil Procedure, 1908 ("the Code") came to be issued. The Bailiff reported that respondent No.2 had sold the subject property to the petitioners in the year 2018. Thereupon respondent No.1 filed an application to issue warrant of attachment and sale in the name of the petitioners. By an order dated 1st December, 2023, on the said application (Exhibit-71), the Executing Court directed issue of warrant of attachment and sale as per the order dated 17th August, 2023 in the name of the petitioner. The petitioner filed applications purportedly under Order XXI Rule 97 and Order XXI Rule 58. The Petitioner also filed an application (Exhibit-79) to stay the warrant of attachment and sale. The Executing Court rejected the stay application (Exhibit-79) by an order dated 28th March, 2024. The petitioner carried the matter in appeal. As the Appellate Court dismissed the appeals, second appeals were filed by the petitioner. The Second Appeal was partly allowed holding that the appeals preferred against the order passed by the Executing Court rejecting application for stay to the warrant of attachment and sale of the subject property were not maintainable. Liberty was granted to the petitioner to challenge the orders dated 28th March, 2024 passed by the Executing Court rejecting the applications for stay.

5. In the meanwhile, on 16th October, 2024, the petitioner deposited the decreetal amount, for which sale proclamation was issued, with the Executing Court.

6. The situation which thus obtains is that the application preferred by the petitioner purportedly under Order XXI Rule 58 and Order XXI Rule 97 await adjudication before the Executing Court. In the meanwhile, the petitioner has deposited the entire decretal amount in both the suits, before the Executing Court.

7. In the second appeals, while granting liberty to the petitioner to assail the order passed on application (Exhibit-79), this Court directed that the amount already deposited by the petitioner in the Executing Court shall not be released for the period of four weeks thereof. By an order dated 16th October, 2024, the said restraint against withdrawal of the amount deposited by the petitioner has been continued.

8. Indubitably, the petitioner was not a party to the suits in which the decree came to be passed. The petitioner has allegedly purchased the property of the Judgment Debtor during the pendency of the execution proceedings. Thereupon, the subject property was ordered to be attached and sold in execution of the decree. To obviate the sale, the petitioner has deposited the entire decreetal amount.

9. The core controversy between the parties is, whether the subject property is liable to be attached and sold in execution of the said decree. The said question has yet not been conclusively determined by the Executing Court. Undoubtedly, the subject property has been attached. However, the objections to the said attachment filed on behalf of the petitioner have not been finally determined.

10. It is imperative to note that the purpose of attachment of the subject property was the recovery of the decreetal amount. As noted above, the petitioner has deposited the entire decretal amount in Court. In this context, the provisions contained in Order XXI Rule 55 of the Code deserve to be noted. It reads as under;

> "**Order XXI Rule 55:** Removal of attachment after satisfaction of decree:
>
> Where-
>
> **(a)** <u>the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or</u>
>
> **(b)** satisfaction of the decree is otherwise made through the Court or certified to the Court, or
>
> **(c)** the decree is set aside or reversed, the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule."

11. From a bare perusal of Rule 55, it becomes evident that the attachment of property shall be deemed to be withdrawn in three situations. One, decreetal amount alongwith all costs and charges are paid into the Court. Two, the decree is otherwise satisfied either through the Court or certified to the Court. Three, the decree is set aside or reversed.

12. In the case at hand, the contingency covered by clause (a) of Rule 55, seems to have occurred. Incontrovertibly the decreetal amount has been paid into the Court. Thus, the necessary corollary is that the attachment over the subject property is deemed to be withdrawn under Rule 55.

13. Thus, at this stage and these petitions, this Court need not delve into the challenge to the impugned orders. The petitions can be disposed of by directing the Executing Court to decide the core question in controversy.

14. Hence, the following order:

: O R D E R :

(A) The petitions stand disposed in the following terms:

(i) The attachment of the subject property pursuant to the order of the Executing Court stands removed.

(ii) The decreetal amount deposited by the petitioner shall remain with the Executing Court till the Executing Court decides the question as to whether the decree is liable to be executed against the subject property in the hands of the petitioner?

(iii) If the aforesaid question is answered in the affirmative, the decree holder respondent No.1 shall be permitted to withdraw the decreetal amount alongwith the interest accrued thereon.

(iv) In the event the aforesaid question is answered in the negative, the Executing Court shall refund the amount to the petitioner alongwith the interest accrued thereon.

(v) The pending applications filed by the petitioner before the Executing Court, shall also be decided by the Executing Court in the light of the aforesaid core question in controversy, in accordance with law.

(vi) Petitions stand disposed.

No costs.

[N. J. JAMADAR, J.]