

(2017) 10 DEL CK 0127

In the Delhi High Court

Case No : Execution Petition No. 504 Of 2015, Execution Application (OS) No. 1193-1194 Of 2015, 217, 377, 449 Of 2016

44, Noida Infratech (Two) Private Limited

APPELLANT

Vs

Sanwariya Gas Limited & Ors

RESPONDENT

Date of Decision : 30-10-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Order 21 Rule 3, Order 21 Rule 48, Order 21 Rule 54, Section 38, 39, 39(4), 42, 46, 136

Citation : (2017) 10 DEL CK 0127

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Suhail Dutt, Abhishek Seth, Kushagra Sah, Azhar Alam, Ratan K.Singh, Abhishek Iyer, Prabodh Shukla

Judgement

Manmohan, J

1. On 30th August, 2017, this Court had passed the following order:-

"Learned counsel for both the parties have drawn this Court's attention to the order dated 29th August, 2016, whereby another execution petition being Ex.P.No.117/2016 between the same parties has been transferred to a Court situated at Bullandshehar, U.P. for further proceedings.

This Court is prima facie of the opinion that in accordance with the aforesaid order, even the present execution petition along with the interim order in subsistence, would have to be transferred to Bullandshehar, U.P.

Learned counsel for both the parties pray for some time to address arguments on the said issue.

In the interest of justice, re-notify on 30th October, 2017.

Interim order to continue."

2. Today Mr.Suhail Dutt, learned senior counsel for the decree holder submits that this Court should first decide the objections to the execution petition and only thereafter transfer the decree in question to the Court situated at Bullandshehar, U.P.

3. Section 39 (4) CPC reads as under:-

"39(4). Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction."

4. The Apex Court in Mohit Bhargava Vs.Bharat Bhushan Bhargava & Ors. (2007) 4 SCC 795 has held as under:-

"7. There cannot be any dispute over the proposition that the court which passed the decree is entitled to execute the decree. This is clear from Section 38 of the Code which provides that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Section 42 of the Code indicates that the transferee court to which the decree is transferred for execution will have the same powers in executing that decree as if it had been passed by itself. A decree could be executed by the court which passed the decree so long as it is confined to the assets within its own jurisdiction or as authorised by Order 21 Rule 3 or Order 21 Rule 48 of the Code or the judgment-debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment-debtor. But when the property sought to be proceeded against, is outside the jurisdiction of the court which passed the decree acting as the executing court, there was a conflict of views earlier, some courts taking the view that the court which passed the decree and which is approached for execution cannot proceed with execution but could only transmit the decree to the court having jurisdiction over the property and some other courts taking the view that it is a matter of discretion for the executing court and it could either proceed with the execution or send the decree for execution to another court. But this conflict was set at rest by Amendment Act 22 of 2002 with effect from 1-7-2002, by adopting the position that if the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing court, nothing in Section 39 of the Code shall be deemed to authorise the court to proceed with the execution. In the light of this, it may not be possible to accept the contention that it is a matter of discretion for the court either to proceed with the execution of the decree or to transfer it for execution to the court within the jurisdiction of which the property is situate.

8. Pending a suit, the court approached with the suit, may have jurisdiction to order attachment of a property even outside its jurisdiction. In execution, under Order 21 Rule 54 of the Code, it may also have jurisdiction to order attachment of the property prohibiting the judgment-debtor from transferring or charging the property in any way when it exercises its jurisdiction over the judgment-debtor though not over the property itself. It could in such a case issue a precept in

terms of Section 46 of the Code and thereupon, the court to which the precept is sent, has to actually attach the property in the manner prescribed. Section 136 of the Code provides for an order of attachment in respect of a property outside the jurisdiction of the court and sending the order of attachment to the District Court within whose local limits the property sought to be attached is situate, as provided for therein. But Section 136 clearly excludes execution of decrees from within its purview. An execution against immovable property lying outside the jurisdiction of the executing court is possible in terms of Order 21 Rule 3 of the Code which governs a case where the particular item of immovable property, forms one estate or tenure situate within the local limits of jurisdiction of two or more courts, and one of those courts is approached for execution of the decree against that property. In a case where Order 21 Rule 3 has no application, the position seems to be that if a decree-holder wants to proceed against a property situate outside the jurisdiction of the court which passed the decree, he has to get the decree transferred to the appropriate court for execution on moving the executing court in that behalf. Whatever doubts there might have been earlier on this question, must be taken to have been resolved by the introduction of sub-section (4) of Section 39 of the Code which is a mandate to the executing court to desist from proceeding against a property situate outside its jurisdiction, unless it be a case coming under Order 21 Rule 3 of the Code.

(emphasis supplied)

5. Keeping in view the aforesaid mandate of law as well as the fact that the properties of the judgment debtors are situated in U.P. and by way of order dated 29th August, 2016 passed by a Coordinate Bench of this Court in Ex.P.No.117/2016 between the same parties, another decree has been transferred to the Court situated at Bullandshehar, U.P. for further proceedings, this Court deems it appropriate to issue a transfer certificate in favour of the decree holder, transferring the present petition to the competent court situated at Bullandshehar, U.P. for further proceedings.

6. However, the interim order dated 11th December, 2015 shall remain in subsistence till the same is modified/varied/set aside by the competent court in accordance with law.

7. Let a certificate of transfer of the decree along with the certificate of non-satisfaction of the decree, along with ancillary documents be issued to the plaintiff/decreed holder within a period of three weeks.

8. The plaintiff/decreed holder is granted six weeks to apply for execution to the concerned Court.

9. At this stage, learned counsel for both the parties pray that the Court situated at Bullandshehar, U.P. be directed to decide the matter expeditiously.

10. This Court is of the view that the request made by both the counsel is reasonable, fair and proper. Accordingly, it is hoped that the Court situated at

Bullandshehar, U.P. shall decide the execution petition as well as the pending applications as expeditiously as possible.