

(2022) 05 DEL CK 0278

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 500 Of 2022, Civil Miscellaneous Application No. 25426, 25427 Of 2022

Babita Sharma & Anr.

APPELLANT

Vs

Shankar Coop. Urban T/C Society

RESPONDENT

Date of Decision : 26-05-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section Order 21 Rule 26, 151
Constitution Of India, 1950 — Article 227

Citation : (2022) 05 DEL CK 0278

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : O.N. Sharma

Final Decision : Dismissed

Judgement

C. Hari Shankar, J

1. The impugned order dated 24th March, 2022, passed by the learned District Judge (Commercial Court) ("the learned Commercial Court") in Ex. 56/2021 (The Shankar Coop. Urban T/C Society v. Smt. Babita Sharma), reads as under:

"EX No. 56/2021

The Shankar Co-op Urban T&C Society Ltd.

Vs.

Babita Sharma & Ors.

24.03.2022

Present: Ms. Deeksha Mishra, Advocate, Ld. Counsel for the DH.

JD No.1 & 3 are in person. (JD No.3 is an advocate by profession and JD No.1 is wife of JD No.3)

JD No.2 is yet to be served.

Notices qua JD Nos..1 & 3 returned duly served. As per report, notices have been accepted by Sh. Chaman Kumar Sharma, JD No.3/ husband of the JD No.1 on 15.01.2022.

Notice qua JD No.2 returned unserved with the report of 'left the premises after selling the same to one Sh. Satish Kumar, Advocate. Regd. Post and Speed post qua JD No.2 also returned unse1ved with the report 'left without instructions'.

Notice qua JD No.2 is awaited.

On being asked, JD No.1 & 3 submits that JD No.2 was their guarantor and they do not know about his present whereabouts.

Ld. Counsel for the DH needs time to trace out the fresh address of JD No.2. Let it be filed within a period of three weeks, if any.

IA U/o 21 Rule 26 r/w Section 151 for stay of execution filed by JDs :-

Copy of the application is supplied to Ld. Counsel for the DH. Reply, if any, be filed within three weeks."

In the meantime, both the JDs are directed to furnish the detail of their properties including bank accounts on affidavit.

Renotify the matter for disposal of above IA on 20.05.2022."

2. Ex. 56/2021, in which the present petitioners were Judgment Debtors 1 and 3 (hereinafter, "JD 1 & 3") sought execution of an award, dated 31st July, 2020, passed by the learned arbitrator in Arbitration Case No. 2878/AR/ARB/2017-18 (The Shankar Coop. Urban T/C Society v. Smt. Babita Sharma & Ors.), whereby the petitioners were directed to pay, to the respondent, ? 15,24,168/- along with interest and penal interest @ 18.6 % p.a. with effect from 18th July, 2020 till realisation of the principal amount.

3. The respondent, as the successful claimant in the arbitral proceedings, sought execution of the aforesaid award by way of Ex. 56/2021. The present petitioners moved an application, in the said execution proceedings, under Order XXI Rule 26 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) seeking stay of the execution proceedings.

4. A reading of the impugned order dated 24th March, 2022 reveals that the learned Commercial Court has called upon the respondent/DH to file a reply to the said application within three weeks and has, in the interregnum, required the petitioners to file details of their assets.

5. I am, frankly, completely befuddled as to how the petitioners have at all chosen to challenge this order under Article 227 of the Constitution of India.

6. The order is, ex-facie, innocuous and does not result in any prejudice to the

petitioners at all.

7. Notice has effectively been issued on the petitioners' application seeking stay of the execution proceedings, and the respondent has been called upon to file its reply thereto. The only other direction, in the impugned order dated 24th March, 2022, is for the petitioners to place on record the details of their assets.

8. It is not the contention of the learned Counsel for the petitioners that the learned Commercial Court did not possess the jurisdiction or authority to call upon the petitioners to file details of their assets.

9. Indeed, Order XXI Rule 26 of the CPC specifically empowers the court to issue such a direction.

10. This position also stands recognised by the Supreme Court in its decision in *Rahul S. Shah v. Jinendra Kumar Gandhi* (2021) 6 SCC 418.

11. The sole contention of Mr. Sharma, learned Counsel for the petitioners, is that the learned Commercial Court ought to have allowed the said application filed by the petitioners, seeking stay of the execution proceedings.

12. There is no mandate, in law, or otherwise, requiring the executing court to decide the application under Order XXI Rule 26 on the very first day. It is entitled to call upon the Decree Holder to file a reply to the application before taking a decision thereon.

13. That is all that the learned Commercial Court has done in the present case. There is, clearly, no erroneous exercise of jurisdiction, by the learned Commercial Court, as would call for supervisory correction by this Court, in exercise of its powers under Article 227 of the Constitution of India.

14. This petition is accordingly completely misconceived and is dismissed in limine, with no order as to costs.