(2018) 07 CAL CK 0141

In the Calcutta High Court

Case No : General Appeal No.658 of 2008, EC No.25 of 2001, GA No.3337 of 2010, GA No.3840, 1396 of 2007, GA No.1105 of 2011

Bhanu Iron & Steel Co. Ltd APPELLANT

Vs

M/S G.R. Industries RESPONDENT

Date of Decision : 24-07-2018

Acts Referred:
Code of Civil Procedure 1908 — Section 38, 39(4)

Citation : (2018) 07 CAL CK 0141

Hon'ble Judges : SOUMEN SEN, J

Bench : Single Bench

Advocate : A.K. Bhattacharya, S. Ganguly, Malay Kr. Ghosh, A. Sinha, Aniruddha Chatterjee

Final Decision : Disposed Off

Judgement

This is an application by one Satnam Infrastructure Private Limited for leave to be examined pro interresse suo in respect of its right, title and interest

in relation to the property at 10, Jessore Road, Kolkata-700028. This application appears to have been filed in view of an order passed on 1st August,

2002 in an execution application in relation to execution of a decree passed by the District Judge, Dhur appointing Mr. Shyamal Sanyal, Advocate, as

Receiver for ascertaining whether the property mentioned in the affidavit filed in support of the tabular statement belonged to the judgment-debtor

no.1 and, if so, to take symbolic possession there of.

This matter has a chequered history. The judgment-debtor no.1 was a guarantor in a recovery proceeding initiated by the State Bank of India initially

before the Debts Recovery Tribunal, Patna which has since been transferred to the Debts Recovery Tribunal-II at Calcutta. In the said proceeding, a

Receiver was appointed on 20th February, 2002 and thereafter numerous orders were passed which, inter alia, include a direction upon the Receiver

to sell the property in question. Difficulty arose when the decree-holder in this proceeding, presumably without notice of such proceeding and the

series of orders preceding 1st August, 2002, approached this Court for execution of a decree for a sum of Rs.14 lakhs approximately by attachment

and sale of several properties which include the property being subject matter of the present proceeding.

Notwithstanding the embargo created upon the Court by reason of introduction of Section 39(4) of the Code of Civil Procedure, an order was passed

appointing a Receiver only for the limited purpose of ascertaining whether the subject matter belonged to G.R. Industries and, if so, to take symbolic

possession thereof. The proceeding before the DRT continued. The series of orders produced by Mr. Aniruddha Chatterjee, learned counsel

representing the judgment-debtor would show that in spite of notice, G.R. Industries avoided the said proceeding and did not even feel it necessary to

participate in the proceeding and inform the DRT about the High Court proceeding as G.R. Industries was very much a party in the execution

application.

The decree-holder as well as the judgment-debtor have attempted to cast an aspersion on the conduct of the Recovery Officer in proceeding with the

sale and have even gone to the extent of saying that the Recovery Officer has committed an act of contempt by confirming the sale in favour of the

applicant. Mr. Malay Kumar Ghosh, learned senior counsel representing the applicant has produced a list of dates from which it appears that on 16th

January, 2003, G.R. Industries for the first time informed the Recovery Officer about the appointment of the High Court Receiver and although, in my

view, the Recovery Officer was not required to stay its hand as the Recovery Officer has already assumed jurisdiction in relation to the Jessore Road

property, having regard to the majesty and dignity of this Court, the Recovery Officer thought it fit and proper to seek a clarification from the parties

to the said proceeding.

If anyone is benefited by the delay in not seeking appropriate clarification is the judgment-debtor no.1. The judgment-debtor no.1 has suffered the

certificate and did not challenge the said certificate. At a much belated stage as it appears from the record on 6th February, 2007, the judgment-debtor

filed an application before the DRT-II in which an order was passed directing the judgment-debtor to deposit at least 50% of Rs.4,00,83,067.83 within

a period of thirty days failing which the appeal would be dismissed. The said sum was, however, not deposited by the judgment-debtor before the DRT

as a result whereof the said certificate had attained its finality and in enforcement thereof Jessore Road property was put up for sale after valuation

and the Recovery Officer after considering valuation report and the offers received, has confirmed the sale in favour of the applicant who is one of

the three bidders whose offer was above the valuation.

The judgment-debtor in this proceeding has failed to demonstrate that the valuation made was absurd and on lower side. The only challenge thrown to

the said order appears to be that the High Court having appointed a Receiver over the said property, the Recovery Officer could not have proceeded

with the sale of the said property and concluded the sale in favour of the applicant. The decree-holder, in the instant case, has also failed to

demonstrate that by reason of Section 39(4) of the Code of Civil Procedure how this application would be maintainable in this Court and more so in

the teeth of the decision of the Honâ??ble Supreme Court in â??Mohit Bhargava vs. Bharat Bhushan Bhargava And Othersâ?? reported in (2007)

4 Supreme Court Cases 795 and followed by our Division Bench in â??Mechano Paper Machines Ltd. Vs. NEPC Papers & Boards Ltd. & Ors.â??

reported in AIR 2012 Calcutta 26 which has clearly stated that Section 39(4) is mandatory and it debars court which had passed the decree against

any person residing or carrying on business or property situated beyond its territorial limit.

In fact in â??Smt. Uma Kanoria vs. Pradip Kumar Dagaâ?? reported in AIR 2003 Calcutta 162, Sections 38 and 39(4) of the Code of Civil

Procedure were considered and it was held that that by reason of the amendment to the said provision, even a person residing outside the territorial

jurisdiction of the Court would be attracted and the word â??personâ?? mentioned in Section 39(4) implies not only the judgment-debtor but includes

third party as well. By reason of the amendment to Section 39(4) of the Code of Civil Procedure, this Court does not retain any jurisdiction over the

property in question. The said property is admittedly outside the jurisdiction of this Court. Any order passed contrary to a statute is a void order and

can be set up as a defence in a collateral proceeding without necessity of formally challenging it. Apart from the well-settled principle one could find in

Wadeâ??s Administrative Law where the learned author with erudition has explained the related concepts of void and voidable orders, the same was

also considered by our Supreme Court in (2007) 5 SCC 211.

Be that as it may, one may not have to go to the extent of referring to such authority and decision having regard to the plain language of Section 39(4)

of the Code of Civil Procedure. The High Court was exercising the jurisdiction of a transferee court and the property admittedly was not within the

jurisdiction of the Court. The decree could not be transferred to this Court. Once the Court has found out that the property is not within the jurisdiction,

any order passed by the Court would be a void order. As opposed to this, the Recovery Officer has a jurisdiction to proceed with the sale of the

Jessore Road property. The sale as it appears now is practically not opposed. Infructuous appeals and applications have unnecessarily burdened the

record of the DRT with the object of frustrating the orders passed by the Recovery Officer in relation to the sale of the property in question. The

decree-holder also did not take any step for transfer of the decree to the appropriate court within whose jurisdiction the properties are situated.

Learned counsel representing the decree-holder is unable to satisfy this Court as to diligence shown by the decree-holder in executing the decree. One

of the properties at Diamond Harbour Road was not proceeded against inasmuch as the judgment-debtor was never examined for all these 11 years.

The decree-holder has not taken any steps nor has shown any interest to proceed with the execution of the decree. Nothing has prevented the

decreeholder to proceed with the other properties of the judgment-debtor no.1. The reason for such stoic silence and reluctance to proceed with the

execution has remained a mystery and inexplicable. It has only benefited the judgment-debtor no.1 and deprived the applicant from enjoying the

benefit of the sale. The applicant has already deposited the entire sale proceeds in the recovery proceeding and a certificate of sale of immovable

property in Form No.ITCP-20 has been issued by the Tribunal on 27th December, 2005. However, by reason of the appointment of Receiver in the

execution proceeding the applicant could not enjoy the said property.

Under such circumstances, the Receiver stands discharged. The Receiver immediately upon communication of this order shall remove the padlock

and make over possession of the property in question to the applicant. The Receiver shall be paid a remuneration of 1000 GMs by the decree-holder.

GA No.658 of 2008 is, accordingly, disposed of. Â All interim orders operating on the said Jessore Road property stand vacated.

In view thereof, GA No.3337 of 2010, GA No.3840 of 2007, GA No.1396 of 2010 stand dismissed with costs assessed at 3000 GMs each to be paid

by the decree-holder and the judgment-debtor no.1 to the applicant. The decree-holder, however, shall be entitled to recover its share of cost in the

execution proceeding from the judgment-debtor no.1.