

(1995) 03 DEL CK 0019

In the Delhi High Court

Case No : Election Appeal No. 282 of 1983, of 1999, of 1994 and Execution Appeal No. 77 of 1992

Cholamandalam Investment and Finance Co. Ltd.

APPELLANT

Vs

CEC Ltd. and Others

RESPONDENT

Date of Decision : 20-03-1995

Acts Referred:

Citation : (1995) 34 DRJ 379

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : Dinesh Agnani and G.N. Aggarwal, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) This order disposes of several applications filed by the decree holder and judgment debtors during execution proceedings.

(2) The High Court of Madras in exercise of its Ordinary Original Civil Jurisdiction passed a money decree dated 28th June, 1991 based on a compromise. The three judgment debtors who are respectively a Company, its Managing Director and Director were directed to pay the decretal amount in Installments. The decree having not been honoured, the decree holder took out execution. By transfer certificate dated 24.2.92, the decree accompanied by a certificate of non-satisfaction at Madras has been transferred for execution to Delhi High Court (Original Side). Yet again the decree accompanied by transfer certificate and certificate of non-satisfaction at Madras has been transferred to Punjab High Court for execution on its Original Side

(3) Ea 282/94 and 283/94 have been filed by the Company (Judgment Debtor No.1) raising objections to the maintainability of the execution at Delhi. The principal objection raised is that simultaneous execution of decree at Chandigarh and Delhi is an abuse of the process of Court and Therefore the execution application at Delhi deserves to be dismissed or adjourned sine die unless and

until the decree holder may withdraw the execution pending at Chandigarh. It is also submitted by reference to Section 41 of the CPC that so long as a certificate of non-satisfaction has not been issued and sent by one transferee court to the original executing court, a fresh application for execution seeking its transfer to another court would not lie. Heavy reliance is placed by the learned counsel for the judgment debtor on *Rulia Ram & Am. VS. Diwan Chand & Ors.* Air 1934 Lah 728 ; *Jatendrakumar Das Vs. Mahendrachandra Banikya*, and *Jaunendra Nath Ghosh VS. Kumar Jogendra Narain Sinha* Air 1923 Pat 384.

(4) I see no merit in the objection raised. No provision of CPC has been brought to my notice which may expressly prohibit simultaneous execution of decree before two Courts. Section 38 provides for execution of a decree either by the Court which passed it or by the Court to which it is sent for execution. The provision is permissive in nature. Section 39 of the CPC and Rules 4 to 9 of Order 21 contemplate transfer of a decree for execution to another court and the execution by transferee court.

(5) The law does not prevent simultaneous execution of decree in more courts than one, although the Court transferring the decree may in its discretion refuse such transfers as would avail the decree holder concurrent executions before more courts than one. The judgment debtor should not be put to hardship nor to oppression. The fact remains that simultaneous transfer of decree for execution to two courts and simultaneous execution proceedings are neither illegal nor without jurisdiction.

(6) I am fortified in taking the above view by the decision of the Supreme Court in *Prem Lata Agarwal Vs. Lakshman Prasad Gupta and Others*, :-

"SIMULTANEOUS execution proceeding in more places than one is possible but the power is used sparingly in exceptional cases by imposing proper terms so that hardship does not occur to judgment- debtors by allowing several attachments to be proceeded with at the same time."

(7) Simultaneous execution is permissible,-is the view taken by Full Bench of Patna High Court in *Radheshyam and Others Vs. Devendra*, , Full Bench of Mysore High Court in *S. Sundara Rao VS. Appiah Naidu & Am.* Air 1954 Mys 154 , Division Bench of Allahabad High Court in *Bhagwan Das Vs. Gomti Bai and Another*, (overruling its earlier view to the Contrary), Madhya Pradesh High Court in *Gyanchand VS. Banwarilal* 1964 MPLJ 180, Madras High Court in *Athivarapu Venkatarami Reddi Vs. Kotamreddi Rami Reddi*, . In the earliest and leading authority of *Saroda Prosaud Mullick VS. Luchmeeput Singh* 14 Mla 529 it was held that there was no irregularity in a Zillah Judge transmitting the record to three Zillah Courts at the same time for execution.

(8) All the decisions relied on by the learned counsel for the Judgment debtors are under 182 (5) of the Limitation Act, 1908 holding in the facts of each-case that any application made by the decree holder to the transferring court after the decree has been transferred to another court for execution does not amount to

step in aid of execution so as to save limitation. Those cases do not in terms apply to the case at hand. In any case, I am bound to follow the law laid down by the Supreme Court. I would also prefer to adopt the view taken by the majority of High Courts referred to in para 7 above.

(9) The Full Bench of Patna High Court in Radheshyam's case (supra) has clearly held that the Court passing the decree has the jurisdiction to execute the decree in certain circumstances inspite of absence of any certificate u/s 41 from the transferee court. It is clear that merely because the Madras Court had not received certificate u/s 41 CPC from Delhi Court it was not deprived of jurisdiction to entertain a fresh prayer for transfer of decree for execution to another court.

(10) I have asked the learned counsel for the Judgment debtors, if the judgment debtors have paid a single penny in satisfaction of decree ever since 28.6.1991, the date of the decree? The answer has been in the negative. Nothing has been pleaded much less suggested to hold if at all and how the judgment debtors are suffering hardship or oppression by such simultaneous execution. The objections preferred by the JDs are wholly devoid of any merit. It is merely an effort at delaying the execution proceedings by unwilling judgment debtors. The objections are rejected, however, with a view to safeguard the interest of the JDs, it is directed that the decree holder shall not secure such attachment the total whereof taken together at Punjab and Delhi may exceed the amount payable under the decree.

(11) Ea 199/94 is an application under Order 21 Rule 41 CPC filed by the decree holder seeking examination of the judgment debtor Nos.2 and 3 as to their properties. The application is opposed by the judgment debtors submitting that this Court cannot direct a roving enquiry to be made unless the decree holder had disclosed facts conferring this Court with jurisdiction to execute the decree. This Court has jurisdiction to execute the decree, the same having been transferred to it and the JDs actually and voluntarily residing or carrying on business or personally working for gain within the jurisdiction of this Court within the meaning of Section 39(1)(a) of the CPC. This is alleged in the execution application. The Company-Judgment debtor No.1 has its principal office in Delhi is not denied.

(12) Manganese Ore (India) Ltd. VS. M/s.Mangilal Rungta Air 1981 Delhi 114, relied on by learned counsel for judgment debtor does not help him. This Court has held that jurisdictional facts have to be averred by decree holder and cannot be left to be determined by indulging into a roving enquiry resorting to Order 21 Rule 41 CPC. The object of Order 21 Rule 41 CPC is to obtain discovery for the purpose of execution in cases where there is any difficulty or delay in obtaining particulars of the judgment debtors property. This is what the decree holder has done in the present case. The jurisdictional facts are all averred in execution application. By application under Order 21 Rule 41 Cpc, the decree Holder is seeking ascertainment of judgment debtor's property. The prayer of decree

holder cannot be rejected by branding it one seeking a roving enquiry. The application is allowed. "The judgment debtors No.2 and 3 shall be bound to appear before the Court for recording their statements.

(13) The upshot of the above discussion is Ea No.282-283/94 filed by the JDs are rejected. Ea No.199/94 filed by the decree holder is allowed.