
(1994) 03 DEL CK 0016

In the Delhi High Court

Case No : Execution Appeal No's. 58 and 70 of 1994

Deutsche Rano GMBH

APPELLANT

Vs

Mohan Murti

RESPONDENT

Date of Decision : 18-03-1994

Acts Referred:

Citation : (1994) RLR 423

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Madan Bhatia, Lina Goswami, P.N. Lekhi and Aman Lekhi, for the Appellant;

Judgement

Sat Pal, J.

(1) EA. 70/94. This is an application filed by of the D.H. under Order Xx Rule 6A of the CPC ("the Code") for exemption from filing the copy of the decree. Let the application be registered.

(2) Mr Bhatia, the learned Senior Counsel of the D.H. submitted that the decree sheet had not yet been prepared and he, Therefore, referred to the last para of the judgment dated 15.10.93 in terms of which the suit was decreed in favor of the D.H. and against the J. D. He contended that the last para of the judgment be deemed to be a decree for the purposes of the execution in terms of Order Xx Rule 6A (2)(b) of the Code.

(3) Mr. Lekhi the learned counsel of the J.D. however, submitted that the D.H. had failed to satisfy the Court that every endeavor was made to ensure that the decree was drawn up as expeditiously as possible in terms of Order 20 Rule 6A (2) of the Code and as such the D.H. could not be given the benefit of sub-clause (b) of the said Rule.

(4) From the application I find that it has been clearly stated therein that the decree has not been prepared and it is in these circumstances that the D.H. has

filed this application to treat the last para of the judgment, certified copy of which has been placed on record, as decree for the purpose of execution. The decree sheet has to be prepared by the Registry and the D.H. cannot be blamed for the same. In view of this, the application is allowed and the last para of judgment dated 15.10.93 in Suit No. 1383/89, is deemed to be the decree for the purpose of the execution petition. The D.H. is, however, directed to file the decree sheet as soon as the same is obtained from the Registry. With this order the application stands disposed of.

(5) EX. No. 58194. Let the petition be registered. Mr. Bhatia, the learned Senior Counsel for the D.H. submitted that in the present case the application for execution of the order was made within two years from the date of the decree and as such no notice was required to be given to the J.D. In this connection he referred to O. 21 R. 22 of the Code. The learned counsel also drew my attention to O.21 Rules 1, 11 and 30 of the Code and submitted that in the present case the decree being for the payment of money should be executed by the detention of the J.D. in the civil prison or by attachment and sale of his property or by both. He further submitted that the J.D. had filed an appeal before the D.B. but the application for stay filed by J.D. was dismissed as withdrawn.

(6) Mr. Lekhi, the learned Senior Counsel of the J.D. submitted that the D.H. was a foreigner and as such the D.H. was required to file the petition in a proper legal manner of which judicial legal notice could be taken in accordance with law. In this connection he referred to the Diplomatic and Consular Officers Act, 1948 and Section 14 of the Notary Act, 1952. He, Therefore, contended that the Court before passing any order for execution of the decree must examine as to whether the petition had been filed in accordance with the aforesaid provisions of law. The learned counsel further submitted that though the application for stay was dismissed by the D.B. as withdrawn but it was not res judicata and the J.D. would file a fresh application immediately after the decree sheet was drawn.

(7) I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and also perused the record. From the record I find that the execution petition has been duly signed by the constituted attorney of the D.H. as well as by the counsel of the D.H. In this connection I had called for the suit file and from the suit file I also find that there is a copy of the power of attorney duly executed by the decree holder/ plaintiff in favor of Shri S.P. Minocha, advocate and the said power of attorney is duly attested by the Consulate General of India at Frankfurt. I, Therefore, do not find any merit in this contention of the learned counsel for the judgment debtor. Attachment of Bank Accounts of J.D. ordered.