

(2014) 10 KAR CK 0204

In the Karnataka High Court

Case No : Writ Petition No. 3800/2014 (GM-CPC)

Green City Constructions

APPELLANT

Vs

G.K.B. Optolab Pvt. Ltd.

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Citation : (2015) 1 AKR 493 : (2015) 3 KCCR 2292

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : K. Chandranath Ariga, Advocate for the Appellant; Samudra Sarangi, Advocate for M/s. Kaitan and Co, Advocate for the Respondent

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 23.01.2014 passed in E.P. No. 3106/2013. The petitioner is also seeking dismissal of the application filed by the judgment debtor seeking to set aside the attachment order in Execution Petition No. 3106/2013.

2. The petitioner and the respondent herein had certain disputes with regard to the terms of tenancy and an arbitration proceedings had been initiated. The learned arbitrator by the award dated 05.12.2012 had adjudicated upon the dispute in the said proceedings. The issue relating to the payment of service tax was considered and it was awarded that the respondent herein who was the respondent to the arbitral dispute is liable to pay a sum of Rs. 17,58,497/- to the petitioner herein along with interest at 9% p.a. from the date of claim petition i.e., 29.11.2011 till the date of payment. There is no dispute to the fact that the award has attained finality. The petitioner in order to recover the amount which had been awarded and had not been paid by the petitioner, levied Execution Petition in No. 3106/2013.

3. In the petition, the award amount of Rs. 17,58,497/- was claimed and on the said amount the interest which was calculated as on the date of filing the execution petition up to 18.11.2013 from 29.11.2011 was claimed at Rs.

3,12,252/-. In addition, the stamp duty paid on the arbitration award was also claimed. The total claim made therein was in a sum of Rs. 21,61,449/-. The Executing Court had passed the order of attachment of the movables and also garnishee order was passed. The respondent herein had filed an application seeking that the order be set aside. The Court below by the order impugned dated 23.01.2014 on taking note of the fact that the judgment debtor had furnished a Bank Guarantee to the tune of Rs. 18,00,000/- from the SBI, Commercial Branch, Panaji had raised the order of attachment and also the Bank account which had been frozen earlier was raised. It is the said order that has been assailed in the instant petition and as such the dismissal of the application raising the attachment has been sought.

4. Learned counsel for the petitioner while assailing the said order at the outset sought to contend that the manner in which the Executing Court has proceeded itself would indicate that the Court below has lost sight of the fact that the application filed by the sister concern of the judgment debtor as an objector is yet to be considered, and disposed of. Therefore, the consideration made to raise the attachment is not justified.

5. Learned counsel for the respondent would not only seek to sustain the order passed by the Court below, but would also contend that though the award passed by the learned arbitrator is not disputed, the only issue is with regard to the appropriate amount to be determined as due and liable to be paid to the department concerned. In that view, it is contended that the order passed by this Court earlier itself would disclose that if that aspect is satisfied, the matter could be put at rest.

6. In the light of the above, though the order raising the attachment has been assailed in the instant petition, the subsequent developments which have taken place during the pendency of this petition, more particularly the order dated 25.08.2014 would indicate that the only issue is relating to the appropriate quantum of amount which is payable towards the service tax. Though the order raising the attachment is assailed here, this Court by the order dated 25.08.2014 has permitted the respondent to file an application for release of the movables before the Executing Court as this Court has also taken into consideration the fact that the interest of the petitioner to the extent of Rs. 18 lakhs is protected, in view of the Bank Guarantee having been furnished by the judgment debtor respondent herein. In that view, the order impugned need not be interfered with at this stage with except to clarify the other aspects of the matter arising herein.

7. In that regard, though a document as issued by the department has not been produced by the petitioner that in itself cannot prejudice the contention of the petitioner inasmuch as the award which has become final and binding between the parties refers to a quantum of amount and the interest that is required to be calculated on the said amount... The amount as awarded is in a sum of Rs. 17,58,497/- and the interest thereon is to be calculated from 29.11.2011 at 9% p.a. The amount as calculated and claimed in the Execution petition itself is more

than Rs. 18 lakhs for which Bank Guarantee has been furnished at present. Though the learned counsel for the respondent has sought to raise certain contentions that there are discrepancies in the calculations as made in the Execution petition and the petition filed before this Court, what cannot be lost sight is the further period that has lapsed from the date on which the execution petition was filed and the affidavit that has been filed subsequently wherein the calculation of interest has been made till 10.09.2014. In any event, this is an exercise which is to be undertaken before the Executing Court to come to a conclusion as to whether the award regarding which the execution has been levied stands satisfied and as to whether the execution is to be closed. Therefore, even if this aspect is kept in view, considering the fact that the very principal amount towards service tax as awarded by the learned arbitrator itself is in a sum of Rs. 17,58,497/-, no prejudice would be caused to the respondent judgment debtor if the petitioner is permitted to invoke the Bank Guarantee which has, been furnished in the execution proceedings. This is more so when indulgence has been shown to the judgment debtor for release of the movables by filing an application as permitted by this Court.

8. Therefore, though interference with the order passed by the Execution Court is of no consequence at this stage, the petitioner is however permitted to invoke the Bank guarantee and receive the sum of Rs. 18 lakhs for which the Bank guarantee has been furnished. Thereafter the parties shall file appropriate memo of calculation before the Executing Court. The Court shall take note of the memo of calculation to be filed by the decree holder as also the judgment debtor and determine as to whether any further amount is payable by the judgment debtor. Based on such decision, the additional amount shall be paid by the judgment debtor. In order to allay the apprehension as put forth by the learned counsel for the judgment debtor, it is also made clear that on a decision being rendered by the Executing Court on the rival memo of calculations to be filed before it and in that event, if it is found that the Bank Guarantee invoked and the amount received by the petitioner to the tune of Rs. 18 lakhs is more than what is actually due, the Executing Court shall direct the decree holder to redeposit the excess portion, if any and the same shall be complied by the decree holder. On the other hand, if further amount is payable by the judgment debtor, they shall deposit the same.

In terms of the above, the petition stands disposed of.