
(2005) 05 DEL CK 0236
In the Delhi High Court
Case No : EFA (OS) 22 of 2004

Mr. N.K. Rajgarhia

APPELLANT

Vs

Mahavir Plantation Ltd. and Others

RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:

Citation : (2005) 122 DLT 359 : (2005) 82 DRJ 293 : (2005) 141 PLR 57

Hon'ble Judges : V.K. Jain, J; J.P. Singh, J

Bench : Division Bench

Advocate : G.D. Gandhi, for the Appellant; C.N. Sreekumar, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—This appeal impugns the order passed by learned Single Judge dated May 21st, 2004 declining the prayer of the appellant for execution of a consent decree. Learned counsel for the appellant has vehemently contended that after the compromise was arrived at between the parties on 13.9.2001, a sum of Rs. 32,04,222/- was payable by the Judgment Debtor, out of which, principal amount was fixed at Rs. 26,69,110/- and the last payment was to be made by the Judgment Debtor on or before 20.3.2002. Post dated cheques were given and it was a condition that in case any of the post dated cheques were dishonoured, the judgment debtor would be liable not only for contempt for violating the undertaking but the decree holder would also be entitled to execute the "balance decree" immediately. It is the word "balance decree" which, according to learned counsel for the appellant, meant that in the event of judgment debtor not fulfilling his part of the compromise the balance amount of the decree was to be paid by the judgment debtor. The respondent committed default. The learned Single Judge in the impugned order has opined that in view of the subsequent order passed by the Court by which the time was extended for making the payment and the payment with interest was made and accepted so no further amount (balance decree) was to be paid by the judgment debtor. Learned counsel for the appellant has contended that order passed by the

learned Single Judge extending the time of payment was without the consent of the appellant and, Therefore, no such order in law could have been passed by the learned Single Judge.

2. It is revealed from the record that when the amount was not paid in time, the judgment debtor filed two applications for enlargement of time which were allowed by the Court on 18.2.2002 and 28.8.2002. After the time was extended by the learned Single Judge by order dated 18.2.02, the appellant preferred FAO (OS) No. 101/02 which was disposed of vide order dated 1.4.02. The order of the Division Bench is as under:

"We have perused the record and also the application filed today indicating that two of the cheques given by the judgment debtor have been dishonoured and the fate of the third cheque is not known. The respondent primarily filed an application before the learned Single Judge for grant of extension of time for making payment. The learned Single Judge granted the extension for making payment upto 20.3.2002. Since the extended time has already come to an end the appeal to our mind has become infructuous. The appellant will be however within his rights to approach the learned Single Judge for execution as well as for contempt. The filing of the appeal will not come in the way of the appellant in pursuing his remedy before the learned Single Judge.

With these observations, the appeal and the application stand disposed off."

3. In the meanwhile, the judgment debtor filed another application for extension of time post facto and on 28.8.2002 learned Single Judge in view of the fact that payment was already made passed the following order:

I.A. No. 3872/2002 in Suit No. 2586/1998

"After hearing learned counsel for the applicant and also the objections of the decree-holder, I consider it appropriate that along with the lines of the order passed by the Hon'ble Ms. Justice Sharda Aggarwal, dated 18.2.02 and only in relation to the pecuniary aspect of the recovery under the decree, the time is now extended by this order up to 23.7.2002 taking into account the submissions made by the learned counsel for the applicant that the reduced amount in terms of order of Hon'ble Mr. Justice A.K. Sikri, dated 13.9.2001 with 15% interest up to 25.7.2002 has already been paid. It is, however, made clear that since the judgment-debtor did not make the payment either within the period stipulated in the order dated 13.9.2001 or even by 20.3.2002 the judgment-debtor is not absolved by this order from consequences of breach of undertaking given to this court which will be considered separately in the course of hearing of the C.C.P. which had been preferred by the decree holder. This application stands disposed off.

C.C.P. No. 43/2000 in Suit No. 2586/1998

Prima facie I am satisfied that the respondents have committed breach of their undertaking and accordingly notice is issued to the respondents to show cause

why they be not punished for contempt, returnable on 18.11.2002. On that date the respondent No. 1 shall remain present in court."

4. The order dated 28.8.2002 mentions that as the amount in terms of the order passed on 13.9.2001 with 15% interest up to 25.7.02 has been paid, the judgment debtor cannot be put to any further pecuniary loss. However, as the judgment debtor has not made the payment within the period stipulated in the order dated 13.9.2001 i.e. by 20.3.2002, judgment debtor was not absolved of the consequence of the breach of the undertaking. Therefore, notice was issued to the judgment debtor for initiation of the contempt proceedings. The aforesaid order dated 28.8.02 was not challenged by the appellant, it has been contended before us today by the learned counsel for the appellant that there was no need to challenge the said order as the order was in favor of the appellant. To our mind the order dated 28.8.02 had two crystallised aspects: one in relation to pecuniary liability of the judgment debtor and the other regarding breach of the undertaking to the Court. With regard to finding of learned Single Judge, once it was decided by the order dated 28.8.02 that there was no further liability in terms of money to be paid by the judgment debtor and appellant having accepted the amount with interest, that part of the order attained finality and, Therefore, the reasoning of the learned Single Judge regarding extension of time cannot be faulted, because in our view the courts do have judicial discretion to extend time in the facts and circumstances of a given case. Regarding the breach of undertaking, the learned counsel for the appellant states that the application for contempt of court was dismissed against which he preferred an LPA No. 498/2005 and the same too was dismissed on March 11, 2005. Considering the totality of the facts and circumstances, the appeals dismissed.