(1990) 03 DEL CK 0024

In the Delhi High Court

Case No : IAS 9496/89 and 82/90

M/s. Chelsea Mills and others APPELLANT

Vs

M/s. Chorus Girl Inc. RESPONDENT

Date of Decision : 13-03-1990

Acts Referred:

Citation : (1990) 41 DLT 142 : (1990) 2 RCR(Criminal) 82

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : Mr. M.L. Verma and Mr. Sanjiv Puri, for the Appellant; Mr. P.K. Jaitley, for the Respondent

Judgement

1. These two applications have arisen out of a suit filed by the plaintiffs numbering three for recovery of about Rs. 6 lacs from the defendant. is 9496/ 89 is by the plaintiff and is under 0. 38, R. 1, 0. 39, Rr. 1 and 2 and S. 151 of the Civil P.C. (for short ''the Code). The other application is 82/ 90 is by the defendant and is under O.38, R. I and S. 151 of the Code.

2. plaintiff No. 3 is stated to be the proprietor of plaintiffs Nos. 1 and 2. Defendant is styled as Chorus Girl Inc., New York, U.S.A. and has been sued through Mrs. Nina Batra without describing as to what she is in the defendant company. The whole body of the plaint does not say as to what position Mrs. Nina Batra is holding in the defendant, though it is stated that orders had been placed on behalf of the defendant by Mrs. Nina Batra for supply of certain readymade garments by the plaintiffs to the defendant. The suit is for recovery of price of the goods and interest accrued thereon.

3. Along with the suit, the plaintiffs filed an application (IA 9496/89) in which apart from referring to the averments made in the plaint it was stated that the defendant had no intention to pay the balance outstanding amount which was evident from the conduct of Mrs. Nina Batra inasmuch as though she was presently in Delhi, was avoiding to talk to the plaintiffs and her attitude was even

abusive. It was stated that plaintiffs seriously apprehended that defendant will be leaving India on any day and would never return thereafter. It was also mentioned in this application that intention of the defendant was to delay the claim of the plaintiff and in order to delay the process of the Court and obstruct its proceedings the defendant was planning to leave the country within a day or t paying the outstanding amount due to the plaintiffs from the defendant. Reference was also made to the Foreign Exchange Regulation Act to two without contend that plaintiffs might have to face prosecution or some penal action under that Act. The application, however, did not specify for what fault of the plaintiffs, if any, action could have been taken under that Act. It was, Therefore, prayed that defendant be restrained from leaving the country for which her arrest before judgment was necessary. The plaintiffs prayed that warrants of arrest directing the arrest of Mrs. Nina Batra be issued directing her to be present in Court to show cause as to why she should not furnish security for her appearance and/or in the alternative she be directed to deposit the suit amount in Court. There was yet another alternative prayer that her passport be seized and she be restrained from leaving India. The suit and the aforesaid application were filed on 28th Dec 1989. On this day itself the Court while issuing summons in the suit passed the following orders on the application:

"On the basis of the averments raised in the application supported by the affidavits, I am satisfied that the defendant is about to leave India which is likely to result in the obstruction of the execution of the decree that may be passed against her. Under these circumstances, let a warrant of arrest be issued against the defendant and to bring before the Court to show cause why she should not furnish security for her appearance. The warrant shall not, however, be executed if the defendant pays to the officer entrusted with the execution of the warrant a sum of Rs. 5,99,564/-. The S.H.O. concerned to be entrusted with the execution of the warrant. The warrant to be returnable on 9th Jan 1990. The order to be released today."

In pursuance of this order Mrs. Nina Batra was arrested and was produced before the learned Judge by the S.H.O., Karol Bagh, New Delhi, on the following day when the following order was made:

"The defendant be released if she fetches security in the sum of Rs. 6,00,000/- to the satisfaction of D.B. in charge today, failing which she be committed to civil prison. Expenses to be borne by the plaintiff. To be produced on next hearing."

4. In pursuance of this order Mrs. Nina Batra furnished security of one Mr. Radha Krishna Batra in the sum of Rs. 6 lakhs and sought her release. The defendant then filed an application on 6th Jan., 1990 -(IA82/90) stating that the defendant was an incorporate company under the laws of America having its registered office at New York, USA and Mrs. Nina Batra was Secretary of that company. In the application the defendant also mentioned as to how the letter of credit was opened and how it could not be honoured. It was, however, stated that Mrs. Nina Batra was not the defendant in the case and no order for her arrest could have

been passed and she could not have been asked to furnish security in terms of 0. 38, Rr. 1 and 5 of the Code. The defendant, Therefore, prayed that the order made on 28th Dec., 1989 in is 9496/89 be recalled and cancelled and such further orders be made as in the circumstances of the case might appear to be appropriate.

5. On notice being issued of this application (IA 82 / 90), the plaintiffs have filed their reply. Now, it is stated that Mrs. Nina Batra was the President of the defendant company which was incorporated in 1981 and 100 per cent capital stock of the defendant was held by Mrs. Nina Batra. It was, Therefore, stated that she had substantial interest in the defendant and further that she had always been acting on behalf of the defendant. It was also stated that the defendant could not file such an application and the application not being on behalf of Mrs. Nina Batra deserved dismissal. The application, of course, is signed by Mrs. Nina Batra and is supported by her affidavit. Mrs. Nina Batra also authorised the counsel to appear on behalf of the defendant signing the power of attorney in his favor as Secretary of the defendant.

6. Under O. 38, R. l of the Code, so far as it is relevant to the present controversy, the court, if satisfied, by affidavit or otherwise, that the defendant was about to leave India under circumstances affording reasonable probability that the plaintiff would or might thereby be obstructed or delayed in the execution of any decree that might be passed against the defendant in the suit, could issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance. There is a proviso which says that defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff''s claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until further order of the Court. Under R.2 of O. 38 of the Code if the defendant fails to show such cause, the Court can order him either to deposit money in Court or other property sufficient to answer the claims against him or to furnish security for his appearance at any time when called upon during the pendency of the suit and until satisfaction of any decree that might be passed against him. Under sub-rule (2) of this Rule, every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant might be ordered to pay in the suit. R. 3 prescribed the procedure when a surety could be discharged on his making an application during the pendency of the suit. R. 4 prescribes the procedure where the defendant fails to furnish security and in that eventuality the Court may commit him to civil prison until the decision of the suit or, where decree is passed against the defendant, until the decree has been satisfied.

7. The law regarding arrest and imprisonment is contained in Ss. 51, 55 to 59, 135, 135A and 136, 0. XXI, Rr. 21, 37 to 40, 0. 38, Rr, I to 4 of the Code. In the present controversy I am, however, concerned with S. 56 and 0. 38, Rr. I to 4 of the Code. Under S. 56 of the Code there is a prohibition of arrest or detention of

a woman in execution of decree for the payment of money.

8. It does appear to me that on two grounds is 82/90 filed by the defendant, must succeed and these are (i) Mrs. Nina Batra is not a defendant and no order under R. 1 of O. 38 of the Code could have been passed; and (ii) she being a woman could not have been arrested or detained.

9. I think, I have to see the circumstances existing at the time when the main orders were made. it was clear that the defendant was incorporate company under the laws in U.S.A. It, Therefore, had a separate entity. The defendant was being sued only through Mrs. Nina Batra and, as noted above, there was nothing on record to show as to what status Mrs. Nina Batra enjoyed in the defendant company. It was only when application is 82/90 was filed that it was brought to the notice of the Court that she was only a Secretary in the defendant company. Provisions of R.1 of O. 38 of the Code being stringent have to be strictly construed. Even a bare reading would show that an order under this provision could be made only against the defendant and against no one else. Admittedly, Mrs. Nina Batra is not a defendant. Now, if under S. 56 of the Code the Court shall not order the arrest or detention decree for the payment of money, it cannot certainly order her arrest in a suit filed for recovery of money where a decree is yet to be passed. If literal meaning is given to Rr. I and 4 of O.38 of the Code, it would mean that a woman can be arrested in a money suit and if she fails to furnish any security or pays the amount in Court, she can be committed to civil prison until the decree is passed against her and not thereafter because under S. 56 of the Code she cannot be a arrested and detained in execution of a decree for the payment of money. Under R.4 of O.38 of the Code a person committed to civil prison has nevertheless to be detained until the decree passed against him is satisfied. This provision, Therefore, cannot be applicable in the case of a woman.

10. I would, Therefore, hold that a woman cannot be arrested or detained in civil prison under R.1 of O. 38, of the Code. To me it appears that the arrest of Mrs. Nina Batra was applied for on non-existent grounds and the application is 82/90 has, Therefore, to succeed. Consequently, order dated 28th Dec., 1989 passed in is 9496/89 is recalled and security bond furnished in pursuance of order dated 29th Dec., 1989 discharged.

11. Since, is 9496/89 is directed against Mrs. Nina Batra only, this has also necessarily to fail and is to costs. Counsel s fee Rs. 1,000/-.

12. Order accordingly.

