

(2017) 04 BOM CK 0178
In the Bombay High Court
Case No : 117 of 2012

M/s. Sparrow Technologies Pvt. Ltd

APPELLANT

Vs

Mr. Ravinder P. Kumar, & Ors.

RESPONDENT

Date of Decision : 21-04-2017

Acts Referred:

Citation : (2017) 04 BOM CK 0178

Hon'ble Judges : F. M. Reis

Bench : SINGLE BENCH

Advocate : Amit Palekar

Final Decision : Dismissed

Judgement

1. Heard Mr. Amit Palekar, learned Counsel appearing for the Appellants and Respondent in person.
2. The challenge in the above Appeal is to an Order dated 04.06.2012 passed by the learned District Judge in Execution No. 73/2010.
3. Briefly, it is the case of the Appellants that the Respondent no. 1 filed a Civil Suit bearing no. 201/2006 in the Court of the learned District Judge at Delhi and joined the Respondent nos. 2 to 4 as Defendants. The Director of the Appellants was named as Director of the Respondent no. 2 and the address of service of summons was shown as that of the Appellants. It is further contended that Mr. Rajiv Sarda was not even the Director of the Respondent no. 2 against whom the said Suit was filed as on the date of the filing of the suit. But, however, the suit proceeded showing the name of Mr. Rajiv Sarda as the Director of the Respondents wrongly. The suit was discreet and the Respondent no. 2-Company was directed to pay the decretal amount to the Respondent no. 1 with interest. But, however, according to the Appellants, there was no decree against the Appellants nor Mr Rajiv Sarda. An Application for Execution of the transfer Decree was filed in the Court of the learned Addl. District Judge, South Goa, at Margao. In such proceedings, an averment was made to state that the Decree

can be executed as against the Appellants which in fact, according to the Appellants, has no relation with the Respondent no. 2 against whom the Decree was obtained. The learned District Judge passed a Garnishee Order whereby M/s. Safe Express Pvt. Ltd. and M/s. Tecknic Controls were directed to deposit the rent payable to the Appellants in terms of the lease executed between them, before the Court for the satisfaction of the Decree. An Appeal challenging such Order dated 06.12.2010 was allowed and consequently such Order was quashed and set aside and the matter was remanded to the Court to decide afresh. It is further contended that the learned District Judge by Order dated 21.01.2012 allowed the application and permitted the Respondent no. 1 to withdraw the amount of money deposited by the Petitioners without examining that the Appellant has nothing to do with the Respondent no. 2. This Court thereafter allowed the Petition challenging the said Order dated 21.01.2012 and the matter was remanded back to the Court to decide afresh. The learned District Judge by the impugned Order dated 14.06.2012, allowed the application and permitted the Respondent no. 1 to withdraw the money deposited by the Petitioner. Being aggrieved by the said Order, the Appellants have preferred the present Appeal.

4. Mr. Amit Palekar, learned Counsel appearing for the Appellants, has pointed out that merely because one of the Directors of the Appellants is alleged to be a Director of the Respondent no. 2, the Respondent no. 1 is not entitled to proceed to recover the amounts from the Appellants. Learned Counsel further submits that in fact such Director Mr. Rajiv Sarda has nothing to do with the Respondent no. 2 nor there is any connection between the Appellants and the Respondent no. 2. Learned Counsel further submits that the Respondent no. 2 is a duly registered Company and, as such, in any event, the question of recovering the amount from the Company for the dues of the Directors of the Company would not arise. Learned Counsel further pointed out that Mr. Rajiv Sarda has nothing to do with the Respondent no. 2 and consequently the question of admitting to recover the amount from the Appellants is totally misconceived and without any justification. Learned Counsel further pointed out that the Appellants have produced sufficient material on record to show that the Appellants are not responsible for the amount claimed by the Respondent no. 1. Learned Counsel further submits that the Decree is against the Respondent nos. 2 to 4 and, as such, the question of recovering such amount from the Appellants would not at all arise. Learned Counsel has thereafter taken me through the impugned Judgment passed by the learned District Judge to point out that the material on record has not at all been examined by the learned Judge whilst passing the impugned Order. The learned Counsel further submits that there is also material on record to show that said Shri Rajiv Sarda was not even a Director of the Respondent no. 1 when the original suit was filed.

5. On the other hand, the Respondent no. 1 appeared in person and pointed out that the Respondent no. 2 was in fact served in the suit through the Appellants. The Party in Person further pointed out that the works carried out by the Respondent no. 1 were in fact for the benefit of the Appellants through the

Respondent no. 2. It is further pointed out that the Appellants are the principal holding Company of the Judgment Debtor-Company due to which the Execution Court passed its execution Order dated 21.01.2012 and 14.06.2012. The Respondent no. 1 also brought to my notice a letter dated 28.10.1988 on the letter head of the Judgment Debtor-Company which was signed by the original Judgment Debtor no. 3 as a head of Sparrow Group of Companies. The Respondent no. 1 has also brought to my notice the payment made by the Appellants as per letter dated 28.10.1988 on the letterhead of the Appellant-Company. It is further pointed out that Shri Rajiv Sarda is Judgment Debtor no. 3 who never made any application to get his name deleted from the proceedings which itself shows that the contention that he has nothing to do with the Respondent no. 2-Company is totally baseless. It is further pointed out that the Appellants and its Directors Mr. Rajiv Sarda and his elder brother and the Managing Director are the principal controlling authority of the Judgment Debtor-Company and other beneficiaries of the profits of the Judgment Debtor-Company. It is also pointed out that by letter dated 03.11.2003 which is at page 153 of the paper book on the letter head of the Company, Shri Sanjay Sarda signed the Board Resolutions of the Sparrow Technologies Pvt. Ltd. authorised Mr. T. R. Biyani and Judgment Debtor nos. 1 and 4 to face trial of the case on their behalf and at page 148, on behalf of the Judgment Debtor nos. 1 and 4, K. Bihani, filed an Appeal as Director of the Judgment Debtor-Company before the Delhi High Court and this itself shows that said Rajiv Sarda and Appellants-Company are liable to pay the amounts to the Respondent no. 1 being the Principal Attorney Company of the Judgment Debtor- Company. The Respondent no. 1 in person also pointed out that letter at pages 44 and 45 of the paper book wherein Mr. Rajiv Sarda cancelled all orders of Sparrow Technologies of Companies on the letter head of the Judgment Debtor-Company. The Respondent no. 1 also brought to my notice letter dated 26.10.98 at page 159 to point out that the cheques signed by the Directors of Appellant-Company were sought to be withheld on erroneous considerations. It is further pointed out that the control and ownership of both the companies being the same, there is no reason to contend that there is any infirmity in the impugned Order.

6. Upon hearing the learned Counsel appearing for the Appellants and the Respondent no. 1 in person, the following point for determination arises in the present Appeal : (i) Whether the Appellants are liable to pay the amount as decreed in favour of the Respondent no. 1 herein ?

7. Whilst passing the impugned Order, the learned Judge noted that the wakalatnama filed on behalf of the Appellants was signed by Rajiv Sarda as a Director whereas the application dated 06.09.2011 filed on behalf of the Judgment Debtor/Respondent no. 3, inter alia, stated that the monthly rents deposited by the tenants was sufficient enough to cover the decretal amount and, as such, a prayer was made for stay of the Order directing the deposit of the amount. It is also noted that the learned Advocates were appearing for Rajiv Sarda as Director of the Appellants and not as Judgment Debtor no. 3. The

learned Judge also noted that on 21.07.2011, an application was filed stating that Decree was satisfied and therefore the Order dated 06.12.2010 be quashed and set aside. The learned Judge also found that in the application for Execution, the Decree holder- Respondent no. 1 stated that the Judgment Debtors had given on rent the premises located in plot no. 99 and 102 at Verna to M/s. Safe Express Pvt. Ltd. And M/s. Tecknic Controls. The learned Judge also found that it is the case of the Respondent no. 1 that Shri Sanjay Sarda and Rajiv Sarda are the common Directors of the Judgment Debtor as well as the Appellants herein. But, however, it is the contention of the Appellants and the Respondent nos. 2 and 4 that Rajiv Sarda is not at all the Director of the Judgment Debtor-Company and that Decree could not be executed as against the Appellants herein because it was not made a party to the suit. The learned Judge also took note that the corporate veil be lifted to recover the amounts from the Appellants by relying upon the Judgment in the case of Delhi Development Authority vs. Skipper Construction Company Pvt. Ltd. The learned Judge also noted that in the present case, the corporate veil can be lifted if it is found that Rajiv Sarda and Sanjay Sarda were dealing with the Decree Holders in two different capacities. To examine such aspect the learned Judge also took note of the letters dated 27.06.1998 and 28.10.1998 relied upon by the Respondent no. 1. The learned Judge also noted that the Respondent no. 1 had business of manufacturing of plastic cabinets for all types of TVs and that Appellant was a vendor of BPL who used to assemble TVs and sell to BPL Company only. The learned Judge also noted that the Appellants had business in Goa and in Delhi and were purchasing TV cabinets from the Respondent no. 1 which were supplied in Goa. The Judgment Debtor also purchased cabinets from the Respondent no. 1 and that Rajiv Sarda was one of the Directors. The learned Judge further noted that the suit was filed for the supplies made during the period from 05.10.1988 to 24.10.98. The learned Judge noted that by letter at exhibit 58 dated 28.10.1998, the said Rajiv Sarda stated that they shall stop purchasing the cabinets from the Respondent no. 1 since the product of the Respondent no. 1 was not up to the mark. The learned Judge also noted that this letter was taken into consideration when the Decree was passed in favour of the Respondent no. 1. The learned Judge also noted the defence of the Appellants and examined exhibit 90 which shows that Rajiv Sarda resigned from the Judgment Debtor-Company on 29.12.1997. The said letter was confronted to Rajiv Sarda in the proceedings who further stated that it was by inadvertence. The learned Judge further found that the explanation that he signed the letter dated 28.10.1998 on the letter head of the Judgment Debtor-Company is not sound. The learned Judge further noted that Mr. Rajiv Sarda is a Director of the Appellant-Company. The learned Judge also took note of the Judgment of the Apex Court in the case of New Horizons Ltd vs. Union of India reported in 1995(1) SCC 478 to lift the corporate veil to execute the Decree against the Appellants herein.

8. On going through the material on record and the Board Resolution as brought to my notice, it clearly shows that Rajiv Sarda was a Director of the Judgment

Debtor-Company. Though it is contended by the Appellants that he had resigned much before the amount claimed in the Suit was payable to the Respondent no. 1, the learned District Judge whilst passing the impugned Order found that this aspect has not been proved by the Appellants. The learned Judge noted that though said Shri Rajiv Sarda was aware about the pendency of the suit filed by the Respondent no. 1, no steps were taken by him to raise any such contentions in the proceedings initiated by the Respondent no. 1. In fact on perusal of the cause title in the suit, the Judgment Debtor no. 3 Company was sued through its Director Shri Rajiv Sarda and the party was served through the Appellant no. 1 herein. The Respondent no. 1 has also brought evidence on record to show that the cabinet supplied by him was to all the Companies including the Appellants herein who were the beneficiaries of the services rendered by the Respondent no. 1. The Appellants are also represented by the same Director Shri Rajiv Sarda who has represented the Appellants in the proceedings. The purchase orders placed on record which are at exhibit 57, exhibit P7 and exhibit P8 would clearly disclose that the Judgment Debtor-Company is closely associated with the said Rajiv Sarda who is also the Director of the Appellants herein. The fact that the Judgment Debtor-Company was served in the suit through the Appellants has not been disputed. The learned Judge has found that the Appellant was also the beneficiary of the services rendered by the Respondent no. 1 to the Judgment Debtor-Company and the contention that the common Director had resigned much before the liability accrued has been rightly rejected by the learned Judge in the impugned Order as this aspect has not been established. Looking into the subsequent correspondence referred to by the learned Judge Shri Sarda had represented and held out to the Respondent no. 1 that he continued to be a Director of the Judgment Debtor-Company. In such circumstances, as there are common Directors in the subject Company, the learned Judge was justified to lift the corporate veil and direct the recovery of the amounts from the Appellants. This is essentially in view of the fact that the material on record suggest as pointed out by the learned Judge that the Appellants also took benefit of the cabinets supplied by the Respondent no. 1 which were the subject matter of the recovery suit filed by the Respondent no. 1 which came to be decreed.

9. In such circumstances, considering the overall facts and circumstances of the case, I find that the contention of Mr. Palekar, learned Counsel appearing for the Appellants, that the amounts cannot be recovered from the Appellants cannot be accepted. The learned Judge also noted that based on the amounts which were deposited pursuant to the Garnishee Order even the Judgment Debtor- Company had moved the Court to seek relief of staying further recoveries as the amounts deposited would satisfy the decretal amount. This clearly shows the nexus between the Judgment Debtor-Company and the Appellants herein. Apart from that, the learned Judge also noted that steps taken in the proceedings would clearly show that the Appellants are closely associated with the Judgment Debtor- Company and in such circumstances, the learned Judge was justified to lift the corporate veil and direct the recovery of the amount from the rents

payable to the Appellants. The point for determination is answered accordingly.

10. In view of the above, I find no merit in the above Appeal which stands accordingly dismissed.