
(1999) 09 DEL CK 0093
In the Delhi High Court
Case No : C.R. NO. 65 OF 1999

Om International and Others	Vs	APPELLANT
Teen Murti Chit Fund (P) Ltd.		RESPONDENT

Date of Decision : 22-09-1999

Acts Referred:

Citation : (1999) 6 AD 300 : (1999) 51 DRJ 734

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. J.K. Seth and Ms. Shalini Kapoor, for the Appellant; Mr. R.S. Sawhney, for the Respondent

Judgement

Dr. M.K. Sharma, J.—This revision petition is directed against the order dated 29.8.1998 passed by the Additional District Judge, Delhi in Execution Case No. 76/95 dismissing the objection petition filed by the petitioners herein.

2. An award was passed on 15.7.1994 in favor of the respondent and against the petitioners. On an application filed for making the award a rule of, the court by order 9.12.94 made the award a rule of the court and a decree was passed for a sum of Rs.1,50,000/- payable within one month from the date of the award, failing which the petitioners were to pay interest @ 18% p.a. from 5.4.1993 till realisation. As the decretal amount was not paid by the petitioners, an execution application for recovery of the decretal amount was filed by the respondent on which warrants of attachment were issued. When the aforesaid warrants of attachments were taken for execution, petitioner No.3 who is the wife of petitioner No. 2 herein, made payment of the decretal amount by giving a cheque of Rs. 4,44,008.50p towards satisfaction of the decree, to the bailiff of the court. However, immediately thereafter the petitioners herein filed objection u/s 47 CPC. It was alleged in the said objection filed on behalf of the petitioners, that the Judgment debtors, namely, petitioner Nos. 1 and 2 herein have made payment of the decretal amount by Bank Draft dated 6.11.1994 for Rs.90,000/- and by cheque dated 2.1.95 for Rs.1,00,000/-.

3. The decree holder/respondent contested the said objection contending, inter alia, that no such payment either by way of cash or, by cheques was received by the decree holder in respect of the decretal amount. It was also contended that the said payment made by the petitioner was in respect of another account and not towards the present decree. In support of the aforesaid contention, the decree holder/respondent also placed on record a duly certified statement of account certified under the Bankers Book Evidence Act.

The aforesaid objection was taken up for consideration by the executing court and on consideration of the entire evidence and circumstances of the case, the Additional District Judge dismissed the application by his order dated 29.8.98 as against which the present revision petition has been preferred.

4. Mr. Seth appearing for the petitioners submitted that the entire decretal amount stood paid by way of aforesaid bank draft and cheque dated 6.11.94 and 2.1.95 respectively. He also submitted that the statement of account filed by the decree holder/respondent should not have been relied upon for such a document cannot be held to be sufficient evidence. He also submitted that the main residential house of the petitioners could not have been attached in view of the provisions of Section 60 CPC.

The aforesaid submission was refuted by the counsel appearing for the respondent contending, inter alia, that no payment has been received by the decree holder/respondent from the petitioners towards satisfaction of the decree in question. It was also submitted that petitioner No. 3 on behalf of her husband, petitioner No. 2 herein, had voluntarily issued a cheque of Rs. 4,44,008.50p in favor of the court in order to avoid attachment. It was also submitted that the aforesaid payment stated to have been made towards satisfaction of the decree in question could not be held to be towards satisfaction and discharge of the decree in question, for such payment was not made towards satisfaction of the decree, which would also be apparent in view of the fact that there was no compliance of the provisions of Order 21 Rules 2 CPC. It was also submitted that the submission of the counsel appearing for the petitioners in respect of Section 60 CPC is without any merit as the decree holder/respondent has not yet asked for attachment of the immovable properties and, Therefore, the said objection at this stage is pre-mature.

5. In the light of the aforesaid submissions of the counsel appearing for the parties, let me weigh the rivals submissions and merits thereof.

6. Order 21 Rules 1 & 2 CPC lays down the procedure for the mode of payment of money towards satisfaction of a decree. The award was made a rule of the court on 9.12.94 on the basis of the application filed by the decree holder/respondent herein. The plea that the objector paid an amount of Rs. 90,000/- by way of bank draft dated 6.11.94 and Rs.1,00,000/- was not accepted by the executing court as the said payments were not in accordance with the provisions of Order 21 CPC. The executing court, as a matter of fact, also found that if the

aforesaid payment were made in partial satisfaction of the decree passed in the present case, it would have been surely reflected in the order dated 9.12.94 passed by the court making the award a rule of the court. I find force in the conclusions arrived at by the executing court for if the aforesaid payment would had been made by the petitioners towards partial satisfaction of the decree, the same would have been definitely pleaded before the court passing the decree and the same would have been reflected in the order itself. None of the alleged payments was also made by the judgment debtors/ petitioners herein towards satisfaction of the present decree in accordance with provisions of Order 21 CPC. If such payments were made by the judgment debtors/ petitioners herein in satisfaction of the decree, there was no occasion for petitioner No. 3, the wife of petitioner No.2 herein, to issue a cheque in the name of the court towards satisfaction of the decretal amount. The decree holder/respondent has admitted receipt of the aforesaid payment of Rs.1,90,000/- by way of bank draft and a cheque but has stated that the said payments were made towards payment of another loan taken by the petitioner No.1. The said statement was also corroborated by filing a statement of account certified under the Bankers Book Evidence Act.

7. Counsel appearing for the petitioners/judgment debtors submitted that the statement of account could not have been read in evidence as such a document has been held to be not sufficient evidence although could be said to be material document.

8. On perusal of the records and the order passed by the executing court, it becomes crystal clear that the executing court had considered several other aspects in coming to the conclusion that payment in respect of the aforesaid amount of Rs.1.90,000/- by way of a Bank Draft and cheque was in respect of other loan taken by petitioner No.3 and not towards the satisfaction of the decree in question and one of the factors considered by the executing court is the statement of account. The contention of the petitioner is, Therefore, without merit.

9. The other submission of the learned counsel for the petitioner that there is violation of the provisions of Section 60 CPC inasmuch as the main residential house of the judgment debtors/petitioners herein is not liable to be attached, is also without any merit in view of the fact that the attachment of the immovable properties has not been ordered as yet and, Therefore, the said objection is prematured at this stage. A perusal of the order passed on 29.8.98 would indicate that the executing court did not direct for attachment or sale of the house in question till date.

10. Thus, none of the pleas taken up by the petitioners in the present revision petition has any merit and as such they are rejected. On going through the entire records I find no infirmity in the order passed by the executing court and, Therefore, the petition has no merit and is dismissed.