
(2011) 06 BOM CK 0107
In the Bombay High Court
Case No : Writ Petition No. 2648 of 2011

Paack-in-India

APPELLANT

Vs

VSR Foods and Beverages Pvt. Ltd.

RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, 47

Citation : (2011) 7 ALLMR 432 : (2012) 1 BC 588 : (2011) 5 BomCR 91 :
(2011) 5 MhLj 575

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : Ajay A. Basutkar, for the Appellant; Jyotishwar Bhosale, for the Respondent

Judgement

D.G. Karnik, J.—Rule, returnable forthwith. Mr. Bhosale waives service for the Respondent. By consent, taken up for final hearing.

2. By this petition, the Petitioner challenges the order passed by the executing court below Exh. 14 in Special Darkhast No. 212 of 2009. The Petitioner is a decree holder. He had filed a summary suit bearing Special Summary Suit No. 58 of 2008 against the Respondent for recovery of money. That suit was decreed and the Respondent was directed to pay to the Plaintiff a sum of Rs. 2,10,270/ together with future interest at the rate of 4% per annum until its realization. Since the Respondent did not make the payment, the Petitioner filed an execution petition No. 212 of 2009. In the execution petition, the Respondent made an application at Exh. 14, purporting to be an application u/s 47 read with Order 21, Rule 2 of the Civil Procedure Code. By that application the Respondent contended that he had made payments of certain amounts to the Petitioner between 26th July, 2004 and 21st January, 2007. The money paid by the Respondent to the Petitioner fully covered the decretal amount and the decree was satisfied. No amount was due to the Petitioner. He prayed that he may be given a liberty to produce evidence before the executing court about the

payment made and till then the warrant for execution be stayed.

3. The application was allowed by the court by passing the following order.

Perused application and Say.

Satisfaction of decretal amount is claimed by JD. If it been so opportunity needs to be given to prove and establish such fact. As such JD is directed to make available on record oral and documentary evidence in support of contentions raised herein to make clear that whatever amount that was claimed in the main suit had been already paid to DH. Matter be fixed for such evidence on 17.12.09.

4. It may be noted that the suit was filed by the Petitioner on 22nd April, 2008 and the decree was passed on 29th April, 2009. The payments that the Respondent alleges to have made to the Petitioner are made between the years 2004 to 2007 i.e. prior to the passing of the decree. The Respondent could have and ought to have taken the defence of the alleged payments in the written statement and /or in the application for leave to defend made in the suit. Once the suit is decreed, the executing court is bound to execute the decree as it is and cannot go behind the decree. It cannot allow to raise contention that the decree is satisfied on account of payment alleged to have been made prior to the date of the institution of the suit or the decree. That would amount to ignoring the decree and sitting in adjudication of the dispute afresh.

5. The impugned order goes beyond the decree and permits the Respondent to adduce evidence of the payment alleged to have been made by the Respondent prior to the decree. Obviously, this cannot be done. In the circumstances, the impugned order is set aside and the executing court is directed to proceed with the execution in accordance with the law.