
(2004) 03 CAL CK 0079
In the Calcutta High Court
Case No : E.C. No. 24 of 2002

Radhamani India Ltd.

APPELLANT

Vs

Imperial Garments Ltd. and Another

RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11(2), Order 21 Rule 22, 13, 44A, 44A(2)

Citation : AIR 2005 Cal 47 : (2005) 3 CALLT 1

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Surojitnath Mitra and Amitesh Banerjee, for the Appellant; B. Sinha Roy and D. Basak for Judgment-debtor No. 2, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—By this application the decree-holder seeks execution of a decree that has been filed in this Court u/s 44A of the Code of Civil Procedure, 1908 (in short "the CPC ").

2. The decree was passed on April 10th, 2001 by the learned Subordinate, Judge, 1st Court at Dhaka in Money Suit No. 30 of 1994. The suit was filed by the decree-holder against the judgment-debtors. The decree was for US\$ 55,669.20 with interest at the rate of 18% per annum till realization. Judgment-debtor 1, preferred an appeal against the decree. Judgment-debtor 2, however, did not prefer any appeal. In the appeal (F.A. No. 365 of 2001) order was passed to stay the operation of the decree. For execution of the decree the decree-holder did not apply to the Court which passed the decree. On the contrary, it filed the certified copy of the decree u/s 44A of the CPC in this Court and applied for its execution under Order 21, Rule 11 (2) of the CPC on April 24th, 2002. By an order dated August 11 th, 2003 the High Court Division at Dhaka of the Supreme Court of Bangladesh modified the stay order passed in the appeal preferred by judgment-debtor 1; the stay was vacated as against judgment-

debtor 2. So now the decree-holder wants to execute the decree as against judgment-debtor 2.

3. Learned counsel for judgment-debtor 2 raises three preliminary objections. He submits that the execution proceeding is not maintainable, because :- (1) the certificate required u/s 44A of the CPC has not been filed with the certified copy of the decree;- (2) in terms of the notifications regarding superior Courts of reciprocating territory, the decree passed by the Court of the Subordinate Judge at Dhaka cannot be executed through this Court; (3) without obtaining prior leave under Order 21, Rule 22 (1) of the CPC a decree cannot be filed u/s 44A of the CPC.

4. His contention is that the decree, if it were executable, should have been put into execution through the Court which passed it, and on its remaining unsatisfied to any extent, only for such unsatisfied part it could have been filed u/s 44A of the CPC, and that too after obtaining prior leave under Order 21, Rule 22(1) of the CPC; and in such case it could have been filed only in a Court having same status and jurisdiction as that of the Court which passed it. So the certificate to be produced u/s 44A of the CPC should be a certificate issued by the Court which passed the decree, recording that the decree remained unsatisfied to the extent mentioned therein for want of property of the judgment-debtor against which it could have been executed. A mere information slip containing the information that the decree was not put into execution in the Court which passed it is no certificate at all. To show what should be the nature and form of the certificate he relies on the decision in *Lakhpatt Rai Sharm Vs. Atama Singh*, . Regarding the requirement of prior leave under Order 21, Rule 22 (1) of the CPC he relies on the decisions in *Indian and General Investment Trust Ltd. Vs. Sri Ramchandra Mardaraja Deo, Raja of Khalikote*, and *Algemene Bank Nederland NV Vs. Satish Dayalal Choksi*, .

5. Regarding the nature and form of the certificate learned counsel for the decreeholder submits that the information slip filed together with the certified copy of the decree is sufficient. For this he relies on the decision in *International Woolen Mills Vs. Standard Wool (U.K.) Ltd.*, . He submits that in terms of the relevant notifications regarding reciprocating territory both this Court and the Court of the Subordinate Judge at Dhaka fall within the category of specified superior Courts, and hence the decree can be filed in this Court for its execution through this Court. He disputes the correctness of the contention that without obtaining prior leave under Order 21, Rule 22 (1) of the CPC the decree, could not have been filed in this Court under Section 44A of the CPC, or that the decree-holder was not entitled to apply for its execution without obtaining such prior leave.

6. For deciding the first contention of learned counsel for judgment-debtor 2 a brief discussion on Section 44A of the CPC will be useful. Section 44A of the CPC empowers a competent District Court in India to execute a decree of any of the superior Courts of any reciprocating territory. The decree executable under this

section has to be a decree under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty or a sum payable under an award made in an arbitral proceeding. In a sense such a decree should be a pure and simple money decree by a Civil Court. It is therefore clear that any and every decree passed by a superior Court of a reciprocating territory cannot be executed through a competent District Court in India.

7. Section 44A of the CPC does not say that before filing a decree in a competent District Court in India, the decree-holder is required to put it into execution in the Court which passed it. From it, read with Section 13 of the CPC, it appears that the legislature intended to give two options to the decree-holder - (1) "to execute the decree through the Court which passed it, or (2) to execute it wholly or partly through a competent District Court in India. In my view the purpose of Section 44A of the CPC will be defeated, if it is held that a decree of the nature mentioned in it cannot be filed in a competent District Court in India without first putting it into execution in the Court which passed it.

8. As to the nature and form of the certificate that is required to accompany the certified copy of the decree, I find that the statute has not prescribed any form. The purpose of the certificate has been specifically mentioned in Section 44A of the CPC. It will be a conclusive proof of the extent of satisfaction or adjustment of the decree. It is therefore clear that the certificate in any form, issued by the Court which passed the decree, will be a certificate for the purpose of Section 44A of the CPC. When the decree-holder obtains an information slip from the Court which passed the decree to show that the decree was not put into execution, there is no reason to say that such information slip will not be a sufficient certificate for the purpose of Section 44A of the CPC; for a decree of the nature mentioned in Section 44A of the CPC can be put into execution either in the superior Court (of the reciprocating territory) which passed the decree, or in a competent District Court in India.

9. The decision in *Lakhpatt Rai Sharm Vs. Atama Singh*, does not advance the argument of learned counsel for judgmentdebtor 2. In this decision nothing was decided regarding the nature and form of the certificate the decree-holder is required to file u/s 44A of the CPC. In *Lakhpatt Rai*'s case the principal question for decision was whether the decree-holder was entitled to execute the decree without getting it transferred by the superior Court of the reciprocating territory which passed it.

10. The decision in *International Woolen Mills Vs. Standard Wool (U.K.) Ltd.*, is also of no help for deciding the issue in hand. In this case also the Court was not deciding anything about the nature and form of the certificate required u/s 44A of the CPC. The question arose regarding the necessity of transfer of a foreign decree; the Court held that the decree-holder was entitled to apply to the Court in India for execution of the foreign decree, without approaching the Court which passed the decree for its transfer or execution.

11. I am therefore of the view that the first contention raised by learned counsel for judgment-debtor 2 has no merit. The information slip dated April 7th, 2002 produced by the decree-holder together with the certified copy of the decree can be accepted as the certificate required u/s 44A of the CPC. In the information slip (issued by the Court which passed the decree), it has been stated that the decree-holder did not apply for execution of the decree to the Court that passed it. The purport of the information slip is therefore very clear. On the basis of this information slip the decree-holder is entitled to say that no part of the decree has been satisfied, and the decree-holder is entitled to execute it for realization of the entire decreed amount.

12. Regarding the forum chosen by the decree-holder to file and execute the decree, I find that by a notification dated February 11th, 1976 the Central Government declared the Peoples' Republic of Bangladesh to be a reciprocating territory for the purpose of Section 44A of the CPC. In this notification the Supreme Court and the Courts of the District and Sub-ordinate Judges in Bangladesh were specified as superior Courts of Bangladesh. Therefore a decree passed by any of these Courts in Bangladesh can be filed and executed u/s 44A of the CPC. The decree has to be filed, and the execution proceeding has to be initiated in a competent District Court in India.

13. The phrase "District Court" has not been defined in the CPC. The word "district" has, however, been defined in Section 2(4) of the CPC, It means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (in the provisions of the CPC called a "District Court"), and it includes the local limits of the ordinary original civil jurisdiction of a High Court. This means that if the decree-holder is otherwise entitled to invoke the ordinary original civil Jurisdiction of a High Court, then he can file the decree in such High Court u/s 44A of the CPC.

14. Therefore, it cannot be said that a decree passed by the Court of a Sub-ordinate Judge in Bangladesh can be filed u/s 44A of the CPC only in a Court of co-ordinate jurisdiction. Decree passed by any superior Court of Bangladesh (as specified in the notification) can be filed u/s 44A of the CPC in a District Court in India, which includes a High Court that possesses ordinary original civil jurisdiction. Hence, I am of the view that the second contention of learned counsel for judgment-debtor 2 has also no merit. The decree-holder is entitled to execute the decree passed by the 1st Court of the Sub-ordinate Judge at Dhaka through this Court.

15. As to the third contention, I find that the decision in Indian and General Investment Trust Ltd. Vs. Sri Ramchandra Mardaraja Deo, Raja of Khalikote, does not help Judgment-debtor 2 in any manner whatsoever. The question for decision in this case was whether according to practice of this Court an application u/s 44A of the CPC read with Section 39 thereof could be made ex parte before an officer, of this Court. It was held that an application made u/s 44A of the CPC should be dealt with by the Court, and not by one of its officers; and it should be

dealt with upon notice to the judgment-debtor. Nothing was decided in this case regarding requirement of obtaining prior leave by the decree-holder under Order 21, Rule 22(1) of the CPC.

16. In *Algemene Bank Nederland NV Vs. Satish Dayalal Choksi*, the facts were like this. The Supreme Court of Hong Kong passed a decree in favour of the bank. It filed the decree (apparently) in the Bombay High Court u/s 44A of the CPC. Thereafter it made an application under Order 21, Rule 22 of the CPC for leave to execute the decree; notice was issued. The judgment-debtor entered appearance and contended that leave to execute the decree should not be granted, because the decree fell within the exceptions of clauses (b), (c) and (f) of Section 13 of the CPC. In this context it was held that an application for execution of a foreign decree filed u/s 44A of the CPC could be made only after obtaining leave by filing an application under Order 21, Rule 22 of the CPC,

17. With great respect, I am unable to agree with the view taken by the learned Judge in *Algemene Bank Nederland NV Vs. Satish Dayalal Choksi*, . Once a decree is filed u/s 44A of the CPC, it goes without saying that the decree-holder has to apply in writing for its execution; the application in writing is to be made under Order 21, Rule 11 (2) of the CPC. The Rule 22 stage of Order 21 of the CPC would arise only when such an application is made. When the decree-holder prays for issue of process in execution of the decree, it is only then that ordinarily the Court shall not issue any process, without first issuing a notice under Order 21, Rule 22(1) of the CPC to the judgment-debtor requiring him to show-cause why the decree should not be executed against him. At this stage also while, of course, the Court is required to issue the notice to the judgment-debtor, the decree-holder has a right to persuade the Court executing the decree into issuing a necessary process in execution, before issuing notice to the judgment-debtor. A process in execution of the decree can be issued in such a case to prevent the ends of justice being defeated. There is absolutely no scope to file an application under Order 21, Rule 22 of the CPC. There is also no scope to pass an order under Order 21, Rule 22 of the CPC in the absence of an application under Order 21, Rule 11 (2) of the CPC, preceded by the filing of the decree u/s 44A of the CPC. This, however, does not mean that the Judgment-debtor should not or rather would not get any opportunity to contest the execution proceeding by raising all the grounds available, including the grounds mentioned in Section 13 of the CPC. I therefore find no merit also in the third contention of learned counsel for Judgment-debtor 2.

18. For the above reasons the preliminary objections raised on behalf of judgment-debtor 2 are hereby rejected. The execution application filed by the decree-holder under Order 21, Rule 11 (2) of the CPC shall now be heard on merit.

19. Let the execution application come up as "Chamber Application for Final Disposal" after three weeks.

20. Urgent certified xerox copy of this judgment and order, if applied for, may be supplied to the parties.