
(2021) 12 DEL CK 0053

In the Delhi High Court

Case No : Review Petition No. 102 Of 2021 In EX.P. No. 37 Of 2021

Transasia Private Capital Limited

APPELLANT

Vs

Gaurav Dhawan

RESPONDENT

Date of Decision : 09-12-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 13, 44A, 151, Order 47 Rule 1, Order 21 Rule 22(1), Order 21 Rule 22(2), Order 21 Rule 41(2)

Citation : (2021) 12 DEL CK 0053

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Suresh Kumar Kait, J

1. Vide order dated 24.05.2021, this Court has issued the following directions against the Judgment Debtor:-

"6. This Court is satisfied that the decree holder has made out a case for invoking Order XXI Rule 22(2) of the Code of Civil Procedure. In that view of the matter, the judgment debtor is directed to file the affidavit of his assets on the date of cause of action, date of the judgment as well as today in Form 16A, Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure within 30 days of the receipt of the notice.

XXXX

8. The judgment debtor shall not transfer, alienate or create any third-party interest in respect of its assets to the tune of decretal amount except in the ordinary course of its business such as payment of salary/ statutory dues. However, the judgment shall not discharge any liability except the financial liability in respect of a bank/ financial institution till the next date of hearing.

9. The judgment debtor shall remain present before this Court on the next date

of hearing"

2. Aggrieved against the aforesaid directions issued by this Court, the present review petition has been filed by the judgment debtor under the provisions of Order XLVII Rule 1 r/w Section 151 CPC seeking review of order dated 24.05.2021. Pertinently, the aforesaid directions have been passed against the judgment debtor in the execution petition [EX.P. 37/2021], wherein execution of a foreign judgment and order dated 16.10.2020 passed by the High Court of Justice Business & Property Courts of England & Wales Commercial Court (QBD) in CL-2021-000257, is sought by the decree holder.

3. At the hearing, learned senior counsel for applicant/judgment debtor submitted that under the provisions of Sections 13 and 44A of the CPC, the judgment debtor is entitled to contest a foreign decree and for execution thereof, issuance of a show-cause notice under Order XXI Rule 22(1) CPC is mandatory. Learned senior counsel further submitted that the foreign Award/decreed in question, has neither been passed by a Court of competent jurisdiction, nor is it a judgment on merits. It was pointed out that the order under review suffers from material errors, wherein powers under Order XXI Rule 22(2) of the CPC have been invoked, dispensing with requirement of issuance of Show Cause Notice.

4. Learned senior counsel next submitted that the execution petition was filed on 11.05.2021 and purported advance service email is also dated 11.05.2021 and even if it is assumed that advance service was affected upon judgment debtor, still it could not have been before 11.05.2021, though the judgment debtor had resigned from the directorship of PCL Foods Pvt. Ltd. on 06.05.2021, which fact was placed on record by the decree holder by filing additional documents on 15.05.2021 i.e. the Company Master Data.

5. It has been pleaded on behalf of judgment debtors that the principles carved out in Bhandari Engineers & Builders Pvt. Ltd. Vs. Maharia Raj Joint Venture 2016 227 DLT 302, have been applied to the domestic decrees and not to foreign decrees, execution of which is sought under Section 44A CPC.

6. Lastly, learned senior counsel has submitted that ex parte directions issued by this Court vide order dated 24.05.2021 has caused great prejudice to the judgment debtor and thereby, this review petition deserves to be allowed and directions of this Court in Paras-6 & 8 of the impugned order dated 24.05.2021 deserve to be set aside.

7. To the contrary, learned senior counsel appearing on behalf of decree holder submitted that the grounds on which the preset review petition has been preferred is beyond the scope of Order XLVII Rule 1 CPC. Learned senior counsel submitted that this Court after examination of the facts, recorded its satisfaction to invoke Order XXI Rule 22(2) CPC and only thereafter, issued the directions in dispute.

8. Learned senior counsel submitted that the execution petition was filed on 11.05.2021 and advance copy thereof along with documents was sent to the judgment debtor at the email addresses provided in the agreement(s) with the decree holder and/or last known email address and proof of service was placed on record. It was next submitted that resignation of judgment debtor prior to filing of the execution petition was brought to the notice of the Court and apprehension was expressed that such resignation is likely to cause alienation of shareholding in PCL Foods Pvt. Ltd. and upon being satisfied the impugned directions were passed by this Court.

9. Learned senior counsel for decree holder further submitted that the contention of judgment debtor that scheme for enforcing foreign decrees through Indian Courts is different from enforcing domestic decrees, is misconceived and provisions of Section 44A provides that "where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District court, the decree may be executed in India as if it had been passed by the District Court". Learned senior counsel further submitted that provisions of Order XXI CPC also do not differentiate between execution of a foreign decree and a domestic decree.

10. During the course of hearing, learned senior counsel for decree holder drew attention of this Court to a copy of Third Statement of Kirsty Nan Macharday (EX. KNM3) dated 16.10.2020 before the court at UK to show that judgment debtor (defendant No.2 therein) was duly served. However, despite service, judgment debtor did not appear before the UK Court nor responded and even after passing of final judgment, no objection qua jurisdiction of the UK court nor any appeal was preferred by him and now, at the stage of execution of decree, he cannot be permitted to raise such objections before the executing court.

11. The rival contentions urged by learned senior counsel representing both the sides were heard at length and this Court has gone through the material documents relied upon by both the sides in support of their submissions.

12. The first and foremost contention raised on behalf of judgment debtor in the present review petition is that he was purportedly served with advance notice e-mail only on 11.05.2021. However, during the course of hearing, learned senior counsel appearing on his behalf submitted that the decree holder despite having knowledge of resignation of judgment debtor from the Directorship of the company on 06.05.2021, sent the advance notice e-mail on the official email address of judgment debtor, which was not accessible to him. Further submitted that the Memo of Parties filed in the execution petition mentions the residential address particulars of judgment debtor, which belongs to his father, however, advance service was not affected on the said address. Learned senior counsel also submitted that decree holder has deliberately avoided to serve judgment debtor with advance notice with the intention to first obtain interim orders and immediately after passing of order dated 24.05.2021, decree holder served judgment debtor on his personal gmail address.

13. The aforesaid contention made on behalf of judgment debtor was vehemently opposed by learned senior counsel for decree holder, who submitted that judgment debtor was served on his last known email address and could not be served at the Shalimar Bagh address as at the relevant time, process/notice/dak/summons were permitted to be served through electronic mode only under the orders of this Court.

14. This Court has gone through the affidavit of service dated 11.05.2021 filed on behalf of decree holder, which mentions the service email address of judgment debtor as "ceo@pclworld.net and gaurav@pclworld.net", which according to judgment debtor was not accessible to him having resigned from the Directorship of the company, however, according to decree holder the above mentioned were last known emails of judgment debtor.

15. Further, by virtue of Notice of this Court bearing No. 515/R & D/ PSA/DHC dated 09.06.2020, it was directed as under:-

".... till further orders, all documents/notices/ summons/daks through physical mode be dispensed with, except where there is a specific order to that effect by the Hon'ble Court, and that such service be instead permitted to be effected through e-mail/fax/whatsapp. The necessary e-mail address and other details will be required to be furnished by the concerned party seeking to effect the service. The process of sending the documents/summons/Oaks in electronic mode will continue to be done by the Dispatch Branch/Process Serving Agency, in co-ordination with respective judicial branches and IT Branch, from their seats only. The conventional mode of physical delivery may be permitted to be restored once the normalcy returns...."

16. The afore-noted directions stood extended from time to time, lastly by Notice dated 03.05.2021 and the conventional mode of physical delivery of notices, summons and daks has been restored only on 11.10.2021 vide Notice bearing No. 515/R & D/PSA/DHC, in addition to electronic mode. Thereby, service of summons could not be affected on the Shalimar Bagh, address of judgment debtor.

17. So far as submission that judgment debtor is entitled to contest a foreign decree under the provisions of Sections 13 and 44A of the CPC and that for execution thereof, issuance of a show-cause notice under Order XXI Rule 22(1) CPC is mandatory, which has been dispensed with by this Court while passing order dated 24.05.2021, is concerned, this Court finds that when this matter first came up for hearing on 17.05.2021, learned counsel for decree holder prayed for orders against the judgment debtor in terms of principles laid down in M/s Bhandari Engineers & Builders Pvt. Ltd. Vs. M/s Maharia Raj Joint Venture in Ex.P.275/2012, MANU/DE/1497/2020, however, no such order was passed and matter was adjourned at the request of counsel for decree holder to file written submissions to satisfy this Court in this regard. On the next date i.e. 24.05.2021, when the matter came up for hearing, notice to the judgment debtor was

directed to be issued. However, this Court in Para-6 of order recorded its satisfaction for invoking Order XXI Rule 22(2) CPC before passing interim directions, which are under challenge before this Court.

18. The provisions of Order XXI Rule 22 CPC read as under:-

"22. Notice to show cause against execution in certain cases.- (1) Where an application for execution is made-

(a) more than two years after the date of the decree, or

(b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44A, or

(C) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent).

the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last Order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment debtor, if upon a previous application for execution against the same person the court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the end of justice."

19. A perusal of Order XXI Rule 22(2) CPC makes it clear as to what would have weighed in the mind of the Court to invoke the afore-noted provision of law. During the course of hearing, attention of this Court was drawn by learned counsel for decree holder to the fact that the judgment debtor had resigned as Director of PCL Foods Pvt. Ltd. three days prior to the filing of the present petition and an apprehension was expressed that judgment debtor may dispose of his assets, including shareholding with the intent to frustrate judgment. In such a scenario the judgment debtor was directed to file affidavit of his assets in Form 16A, Appendix E under Order XXI Rule 41 (2) CPC and further directed not to transfer and alienate or create any third-party interest in respect to its assets to the tune of decretal amount. In the considered opinion of this Court the intention and purport while passing the aforesaid interim direction was to safe guard the interest of decree holder and since judgment debtor has been

permitted to only furnish details of his assets and he has been restrained to transfer and alienate his assets limited to the decretal amount only and also, has been permitted to maintain his ordinary course of business such as payment of salary/dues etc. as well as to discharge his liability in respect of bank and financial institution, no prejudice is caused to him.

20. As far as submission of review petitioner/judgment debtor that he is entitled to contest a foreign decree or that the execution petition is misconceived, are not required to be gone into at this stage, as this Court has considered the submissions of parties limited to the extent of review of order dated 24.05.2021. Therefore, the averment made on behalf of judgment debtor that the foreign Award/decreet in question has not been passed by a Court of competent jurisdiction and it is without merits, are also not required to be gone into for the purpose of disposal of this review petition and shall be subject matter of consideration at the time of hearing of the main petition.

21. Further, it was emphasized by learned senior counsel appearing on behalf of decree holder that the present review petition has been filed beyond the scope of Order XLVII Rule 1 CPC. The provisions thereof read as under:-

"1. Application for review of judgment.- (1) Any person considering himself aggrieved,-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(C) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

22. The Hon'ble Supreme Court in Parsion Devi Vs. Sumitri Devi, (1997) 8 SCC 715 has dealt with the scope and ambit of the review jurisdiction under XLVII Rule 1 CPC and has observed as under:-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered

has a limited purpose and cannot be allowed to be "an appeal in disguise".

23. Further, the Hon'ble Supreme Court in Lily Thomas Vs. Union of India, (2000) 6 SCC 224 has observed "that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power".

24. In another decision Shri Ram Sahu (Dead) Through Lrs Vs. Vinod Kumar Rawat & Ors. 2020 SCC OnLine SC 896, while dealing an appeal arising out of review petition allowed by High Court of Madhya Pradesh, the Hon'ble Supreme Court has observed as under:-

"30. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. In the case of Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844, this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise."

25. Applying the ratio of afore-noted decisions to the instant case this Court finds that the afore-noted provisions of Order XLVII Rule 1 CPC makes it manifestly clear that while considering a review application, this Court is only required to correct a mistake and not to substitute a view. In the considered opinion of this Court, the order dated 24.05.2021 does not call for any review.

26. In the light of above, finding no substance in the present petition, it is accordingly dismissed while directing the judgment debtor to comply the order dated 24.05.2021 at least a week prior to the next date of hearing.