
(2009) 12 OHC CK 0029
In the Orissa High Court

Vik Associates and Chits Private Limited APPELLANT
Vs
Ashok Automobiles Mechanical and Electrical Engineer RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Companies Act, 1956 — Section 446(2)(b)

Citation : (2010) 109 CLT 894 : (2010) 1 OLR 243

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Judgement

Sanju Panda, J.—In this civil revision, challenge has been made to the order dated 24.11.1988 passed by the learned Subordinate Judge, Berhampur in E.P. No. 61 of 1988.

2. The facts as narrated in the civil revision are as follows:

The petitioner-decree holder filed Application No. 101/1982 u/s 446(2)(b) of the Companies Act, 1956 in Company Petition No. 27 of 1977 before the High Court of Karnatak at Bangalore. On 2.6.1982, the Hon''ble Company Judge held that the case for Official Liquidator was accepted and ordered ex parte that the respondent would pay the sum of Rs. 14,331.00 together with interest at the rate of 6% per annum on the principal sum of Rs. 9,990.00 from the date of application till the date of realization. Accordingly, the said application was decreed. Further, on 3.3.1978 the Hon''ble Company Judge in Company Petition No. 27 of 1977 ordered the petitioner-company to be wound up. After the aforesaid decrees were passed, those were forwarded to one Sri B. Debadan, Advocate, Berhampur for filing of execution petition in the Court of the Sub-Judge, Berhampur. He filed the execution petition which was registered as E.P. No. 61 of 1988. The said application was rejected on 24.11.1988 by the learned Subordinate Judge on the ground that the decree holder had simply filed a certified copy of the decree to execute the same. In absence of any order for transfer of the decree in question to the Court, as required u/s 39(2) of the Civil Procedure Code, the execution proceeding was not maintainable.

3. Learned Counsel for the petitioner submitted that the executing Court erred in law in holding that the procedure laid down in Section 39 of the CPC is to be complied with by the Court which has passed the order to enforce the decree. The impugned order is otherwise illegal and if allowed to stand, it will cause irreparable loss and injury to the petitioner-decree holder. Hence, the same is liable to be set aside.

4. Earlier, notice was issued to the opposite party-judgment debtor by registered post. Thereafter, on 11.10.2007 it was published in the local Oriya daily "The Samaj". In spite of that, the opposite party did not appear in this case.

5. It is the admitted fact that the petitioner-decree holder filed an application u/s 446(2) (b) of the Companies Act and obtained a decree from the company Court which is not a usual civil Court decree. Therefore, the procedure prescribed u/s 39 of the CPC is that the decree is to be transferred by the Court, which passed the same, to be executed out of this jurisdiction to another Court in whose jurisdiction the judgment-debtor is residing.

6. Here, admittedly the judgment debtor, as per the address furnished in the company case, was staying at Berhampur. So, the learned Subordinate Judge, Berhampur had the jurisdiction to execute the decree. In view of the provisions contained in Section 635 of the Companies Act, it is not necessary to transfer the decree passed by the Court to another Court for its execution as the decree can be filed before the Court within whose jurisdiction the judgment-debtor is residing.

7. For better appreciation, Section 635 of the Companies Act is quoted hereunder.

Section 635. Enforcement of orders of one Court by other Courts.- (1) Where any order made by one Court is required to be enforced by another Court, a certified copy of the order shall be produced to the proper Officer of the Court required to enforce the order.

(2) the production of such certified copy shall be sufficient evidence of the order.

(3) Upon the production of such certified copy, the Court shall take the requisite steps for enforcing the order, in the same manner as if it has been made by itself.

(4) Where any order made by the Company Law Board u/s 17, Section 18, Section 19, Section 79 or Section 186 is required to be enforced by a Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order and the provisions of Sub-sections (2) and (3) shall, as far as may be, apply to every such order in the same manner and to the same extent as they apply to an order made by a Court."

8. Since, the learned Subordinate Judge failed to exercise his jurisdiction in executing the decree in question, this Court sets aside the impugned order and remands the matter to the executing Court with a direction to proceed with the execution proceeding in accordance with law and conclude the same as early as

possible, preferably within a period of six months from the date of receipt of a copy of this order.

The Civil Revision is accordingly disposed of. No costs.