

20.12.2024

Present : Mr. Georgey V. Mathew, Ld. Counsel for the decree holder.

Mr. R. Ramachandra, Ld. Counsel for the judgment debtor alongwith Mr. Kapil Kumar, Director of the Judgment debtor.

An application for waiver of cost imposed on 02.06.2017 is filed by Ld. Counsel for the judgment debtor. Copy is supplied.

It is stated in the application that the DRT had issued a recovery certificate to the State Bank of India, in pursuance of which, proclamation of sale of assets of the judgment debtor company has been issued.

It is stated that on 25.03.2017, the Predecessor of the Court directed the judgment debtor and its Directors to furnish affidavit disclosing its assets. 7

It is submitted that in compliance of the said direction, an affidavit was filed. However, without appreciating the settled legal position that the company is a distinct legal entity from its Directors and that the Directors are not personally liable for the debts of the company, on 02.06.2017, the Predecessor of this Court imposed a cost of Rs.45,000/- upon the judgment debtor and the Directors were directed to show cause why they be not sent to civil prison.

It is averred that the order dated 02.06.2017 was assailed before the Hon'ble High Court and the Hon'ble High Court has set aside the direction for issuance of show cause notice.

It is further stated that the Hon'ble High Court has granted liberty to the judgment debtor to file application before this Court for waiver of cost. It is pleaded that the entire substratum for imposition of cost upon the judgment debtor for not filing of affidavit by the Directors had been set aside by the Hon'ble High Court and therefore, the Judgment debtor should not be burdened with any cost.

It is further stated that the judgment debtor is currently penny less. It is prayed that the cost of Rs.45,000/- imposed on 02.06.2017 be waived.

Ld. Counsel for the decree holder has opposed the application. He submits that the judgment debtor has again not complied with the direction of filing a fresh affidavit disclosing its assets. He states that on 19.09.2024, the Hon'ble High Court had directed the judgment debtor to file a fresh affidavit disclosing its assets. He submits that on one hand the judgment debtor is seeking waiver of cost and on the other hand, it is again not complying with the direction of filing affidavit for disclosing its assets.

Arguments have been heard and the record has been perused.

On asking by the Court, Ld. Counsel for the judgment debtor submits that the judgment debtor is not filing any fresh affidavit disclosing its assets since such an affidavit has already been filed.

On 19.09.2024, the Hon'ble High Court of Delhi, after considering all the rival submission, directed the judgment debtor to file a fresh affidavit disclosing its assets.

Ld. Counsel for the decree holder submits that this direction was passed since the affidavit which was previously filed by the judgment debtor did not disclose the current status of the properties of the judgment debtor.

It is ironical that the judgment debtor is seeking waiver of cost despite again not complying with the direction of filing of affidavit, that too when this direction was given by the Hon'ble High Court this time.

Not only does the judgment debtor not comply with orders of this Court, it also does not comply with orders of the Hon'ble High Court.

The judgment debtor made a false statement before the Hon'ble High Court that the judgment debtor does not intend to run away and is keen in participating in the proceedings of this case. Participation in proceedings does not merely mean entering appearance before the Court. It includes compliance with the orders passed by the Court.

It is the submission of the judgment debtor that the direction given on 25.03.2017 to the Directors to disclose their assets was illegal since the Directors are separate legal entities from the company.

If that is so, the Directors or the judgment debtor should have assailed the order of 25.03.2017 before a superior Court or should have sought review of the order.

Even if an order is erroneous, it has to be still complied with by the parties, unless it is set aside or recalled.

The parties cannot ignore directions of the Court. If they are aggrieved with the directions, they should have assailed the order by which directions were given.

On the contrary, on the next date of hearing i.e. 21.04.2017, the Counsel for the judgment debtor sought more time to comply with the directions given on 25.03.2017.

On the subsequent date of hearing i.e. 02.06.2017, the judgment debtor did file an affidavit, however, the same was not in consonance with the directions given on 25.03.2017 and for this reason, the Ld. Predecessor of this Court imposed cost upon the judgment debtor.

For the above reasons, the Court is not inclined to waive the cost on 02.06.2017. The application under consideration filed by the judgment debtor is hereby dismissed.

The Hon'ble High Court in its order dated 19.09.2024 took cognizance of the fact that the present execution petition was filed way back in the year 2016 and everything is virtually at a stand still in the present case. Despite making of these observations of the Hon'ble High Court, the judgment debtor has not complied with the orders of the Court due to which the case will have to be adjourned.

The submission of the judgment debtor that since the issuance of show cause notice to the Directors has been set aside, the direction to pay the cost should also be set aside, is devoid of merit. The Hon'ble High Court did not deem it fit to waive the

cost while setting aside the direction of issuance of show cause notice.

Even if the assets of the judgment debtor have been attached in pursuance of the orders of DRT, that does not entitle the judgment debtor to waiver of cost. It shall be seen at a subsequent stage how to recover costs from the judgment debtor in case the same remains unpaid.

For non-compliance of the order of the Hon'ble High Court dated 19.09.2024, due to which the case will have to be adjourned, a further cost of Rs.45,000/- is imposed upon the judgment debtor to be paid to the decree holder.

Also, the Directors of the judgment debtor are directed to show cause why they be not sent to civil prison for a period of three months for non-compliance of the order dated 19.09.2024 passed by the Hon'ble High Court.

An application for lifting the Corporate Veil of the judgment debtor is filed by Ld. Counsel for the decree holder. Copy is supplied.

Ld. Counsel for the judgment debtor submits that he will file reply to the application.

Let advance copy of the reply to the application be supplied to the Ld. Counsel for the decree holder atleast 15 days prior to the next date of hearing.

To come up on 26.04.2025.

(Shirish Aggarwal)
District Judge-03
Patiala House Courts, New Delhi
20.12.2024