

JO Code No.WB00885
Money EX 26 of 2016

Order No. 59 dated : 22-11-2023

Both parties files hazira.

The Ld. Counsel for the DHR invites the attention on the court that he had on 16-09-2023 filed an affidavit of assets in respect of the properties of the judgment debtors that are known to him. He has further stated that a copy of the concerned affidavit was served upon the Ld. Counsel of the DHR No.1. The counsel of the DHR has further drawn the attention of the court towards an application filed by the DHR No.1, that was submitted before the on 29-08-2023, but was 'not pressed' by the Ld. Counsel for the DHR No.1 on 20-11-2023. It is said that no counter affidavit has been filed on behalf of the DHR No.1 challenging the authority of the affidavit filed by the DHR on 16-09-2023. Ld. Counsel for the DHR further submits before the court that decree was passed in EC No.597 of 2015 and GA No.596 of 2015 by the Hon'ble Calcutta High Court and the present Execution Case was filed on 19-12-2016 against the three judgment debtors, for realization of an amount of Rs.7,06,799.50 plus interest at the rate of 18% since 11-11-2016.

The Ld. Counsel for the JDR No.1 submits before the court while he does not dispute the fact that the affidavit of assets furnished by the DHR on 16-09-2023 is correct, he has been hard done by the facts that all the assets disclosed herein are of his and that the properties of the other Judgement Debtors have not been incorporated therein.

Perused the affidavit of assets furnished by the DHR as well as other materials on record.

Admittedly, an award was passed in favour of DHR on 21-01-2015. He filed the instant execution case on 19-12-2016 and the JDR has not paid in single penny for realization of the said award. The only bone of contention of the JDR No.1 is the fact that the DHR has sought to cause attachment of the properties that belong solely to the DHR No.1 and not the other Judgement Debtors. Having said that, the same has been the contention of the DHR No.1 all along and in the process, the JDRs have managed to frustrate the award thus far. The court has also been extremely patient in giving time to the DHR No.1 to assist the DHR in finding out properties of all judgement debtors. Having said that, the fundamental idea behind an agency relationship is that two parties; being the principal and the agent agree to form a mutually beneficial relationship. A partnership is a relationship between partners where each partner is an agent of the other. The same has been specifically stated in Section 18 of the Partnership Act. Even after dissolution of a firm, the partners have certain liabilities. In fact, section 45 of the Partnership Act endeavors to protect 3rd party who have no clue of such dissolution, post dissolution. The law on 'joint and several liability', as it applicable in partnerships is well settled. Here, a 3rd party have the choice to recovery all damages/outstanding amount from any of the partners, regardless of individual share of liability. Thus, the argument of the Ld. Counsel for the DHR No.1 is not

tenable in the eye of law, since in the winding up proceedings, one partner has the scope to recover any amount from the other partners, which he thinks, pertain to their liability.

Therefore, this court is constrained to hold that it is about time that the award in GA 596 of 2016 and EC No. 597 of 2015, together with interest thereon is realized and the court has no hesitation in coming to finding that properties furnished by the DHR as would be sufficient to realize the award along with interest, should be attached.

Having said that, the DHR has failed to mention the valuations of each of the plots, disclosed in his affidavit of assets dated 16-09-2023.

Fix 06-12-2023 for taking proper steps by the DHR mentioning the valuation of the individual plots cited in the affidavit of assets.

Dict. & Corrected by me

ADJ

**Addl. District Judge,
3rd Court, Howrah.**