

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

EC/10/2024
GA/1/2024
MRS. SUMITRA BHATTACHARJEE
VS
SUVANKAR BANERJEE

BEFORE:

The Hon'ble JUSTICE PARTHA SARATHI SEN

Date : 13th February, 2025.

Appearance:

Ms. Tiana Bhattacharyya, Adv.
Mr. Dilip Kumar Ghosh, Adv.
For the decree-holder.

Ms. Noelle Banerjee, Adv.
Mr. Dipak Dey, Adv.
For the judgment-debtor.

Re : GA/1/2024

The Court:

1. Affidavit in reply as filed today is taken on record.
2. By filing GA/1/2024 the judgment-debtor has basically prayed for dismissal of execution case no.10 of 2024 as not maintainable along with the other ancillary reliefs.
3. Ms. Banerjee, learned counsel appearing on behalf of the judgment-debtor/petitioner in GA/1/2024 at the very outset draws attention of this Court to the tabular statement as has been filed in connection with the

instant execution case. Attention of this Court is also drawn to the certified copy of the decree which is sought to be executed in the instant execution case. It is submitted by Ms. Banerjee that this High Court sitting in Appellate Jurisdiction while entertaining an appeal under Section 10F of the Companies Act, 1956 (hereinafter referred to as the 'said Act of 1956' in short) from an order passed by the Company Law Board, Principal Bench, New Delhi had modified the order passed by the said Company Law Board in terms of the settlement as filed in the said appeal.

4. In her next fold of submission Ms. Banerjee, submits further that with the enactment of the Companies Act, 2013 (hereinafter referred to as the 'said Act of 2013' in short) the said Act of 1956 has been repealed. It is further submitted by her that with the enactment of the said Act of 2013 the National Company Law Tribunal (in short, NCLT) has been created which assumed all the jurisdiction of the Company Law Board. It is further submitted by her that Section 434 of the said Act of 2013 clearly postulates transfer of all matters, proceedings or cases pending before the Company Law Board to NCLT for disposal.

5. Drawing attention to the provisions of Section 37 of Code of Civil Procedure, 1908 it is submitted by Ms. Banerjee that as per provision of Section 37(b) of CPC by no stretch of imagination this Court assumes the power to execute the decree as sought to be executed by the decree-holder. It is further submitted by her that the decree-holder has chosen a wrong forum for executing the said decree and, thus, for want of an appropriate jurisdiction the instant execution application is liable to be dismissed.

6. It is further submitted by Ms. Banerjee that Section 430 of the said Act of 2013 also postulates that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or appellate Tribunal under the said Act of 2013 is empowered to determine. Drawing attention to Section 408 of the Act of 2013 it is further contended on behalf of the judgment-debtor/petitioner that with the constitution of NCLT, NCLT assumed the jurisdiction to execute a decree which has been passed by Company Law Board as has been modified by this High Court sitting in appellate jurisdiction.

7. In course of her submission Ms. Banerjee places reliance upon the following two reported decisions namely; (i) **Chief General Manager, Calcutta Telephone and Anr. Vs. State Consumer Disputes Redressal Commission, West Bengal & Ors.** reported in **AIR 2004 Cal 141** ; (ii) **Coastal Roadways Limited vs. Kanoi Plantation (P) Ltd.** reported in **(2005) SCC Online Cal 120**.

8. It is, thus submitted by Ms. Banerjee that for the reasons as highlighted in course of her argument GA/1/2024 may be allowed by recording an order of dismissal of the instant execution case.

9. Per contra, Ms. Bhattacharjee, learned Advocate for the Decree Holder opposes the contentions of Ms. Banerjee. It is argued by her that provisions of Section 37 of CPC makes it clear that this Court has jurisdiction to execute the order as passed by the Company Law Board and as has been modified by this High Court sitting in appellate jurisdiction.

10. It is submitted further that in view of the enactment of the said Act of 2013, the Company Law Board has ceased to exist. It is also submitted by her that Section 434 of the said Act of 2013 deals with pending matters, proceedings or cases before the Company Law Board and not with regard to a decree that has been passed by the Company Law Board.

11. Ms. Bhattacharjee, thus, submits that the instant application may be dismissed in limine.

12. For effective adjudication of the instant application, this Court at the very outset proposes to look into the provisions of Section 37 of CPC. Section 37 of the CPC is quoted hereinbelow in verbatim and the same is as hereunder:

Section 37 Definition of Court which passed a decree.

The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of the first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for execution of the decree, would have jurisdiction to try such suit.

Explanation - " "

13. Section 37(b) of the CPC makes it clear that when the Court of first instance has ceased to exist (as in this case since Company Law Board has ceased to exist with the enactment of the said Act of 2013) or would have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for

execution of the decree, shall have the jurisdiction to try such suit. It thus appears to this Court that with the cessation of Company Law Board, this Court being the ordinary original Court of civil jurisdiction thus assumed the power for execution of the decree and/or order as passed by the Company Law Board Tribunal, as has been modified by this Court in an appeal.

14. This Court considers that in the course of argument, Ms. Banerjee learned counsel appearing on behalf of the judgment-debtor/petitioner has failed to satisfy this Court by showing the relevant provisions of the said Act of 2013 that the instant execution case ought to have been filed before NCLT. This Court has meticulously gone through the provisions of Section 434 of the said Act of 2013. It appears to this Court that the said section more specifically Section 434(1)(a) of the said Act of 2013 deals with the pending matters, proceedings or cases and the said section is absolutely silent with regard to the execution. This Court is thus of the considered view that the provisions of Section 434 of the said Act of 2013 is of no help to the present petitioner.

15. So far as the provision of Section 430 of the said Act of 2013 is concerned, it appears that jurisdiction of civil court is barred in respect of entertaining a suit or proceeding over which the tribunal or appellate tribunal is empowered to determine. Nothing can be shown on behalf of the judgment debtor/petitioner that the jurisdiction of a civil Court is barred in respect of an order or decree as sought to be executed in this case.

16. In further considered view of this Court the reported decision of **Chief General Manager, Calcutta Telephones & Anr.** (supra), is no way helpful to the judgment debtor/petitioner inasmuch as it has been held in the said reported decision that in the event a decree or order is modified by an appellate Court or authority, such modified decree or order ought to have been executed not by the appellate authority but by the authority which passes the original order.

17. In the reported decision of the **Coastal Roadways Ltd.** (supra) a coordinate Bench of this Court while deciding the said case came to a finding that Section 635 of the said Act of 1956 clearly indicates the intention of the legislature that an order passed by Company Court is executable by a company Court only and not by any other Court.

18. As discussed hereinabove, it is an admitted position that the Company Law Board is not in existence now. It is equally undisputed that the decree which is sought to be executed has been modified in terms of the settlement by this High Court sitting in appellate jurisdiction. Such being the position, this Court is of the considered view that provisions of Section 37(b) of the CPC comes into play. This Court thus holds that this Court has jurisdiction to execute the order/decreed as passed by the Company Law Board and as has been modified by the High Court sitting in appellate jurisdiction.

19. Consequently, GA/1/2024 is dismissed with costs of Rs.25,000/- out of which Rs.15,000/- is to be deposited with the office of the State Legal Services Authority and the remaining amount is to be paid to the decree-holder within a fortnight from today.

20. It is further directed that Member Secretary, State Legal Services Authority, on receipt of the cost of Rs.15,000/- shall credit the same to the funds allocated for 'Victim Compensation Scheme.'

21. Department is directed to forward a copy of this order to the Member Secretary, State Legal Services Authority for his information and due compliance.

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22. In course of her submission learned Advocate for the decree-holder, at the very outset draws attention of this Court, to page 19 of the execution application. It is submitted that in terms of the settlement as filed before the appeal Court, the present judgment-debtor, Suvankar Banerjee is duty-bound to pay Rs.25,00,000/- by sale of properties as mentioned in serial no.1, 2 and 4 of the Second Schedule being page 23 of the instant application.

23. Ms. Bhattacharjee, learned Advocate for the decree-holder further draws attention of this Court to prayer (f) of Column 10 of the Tabular Statement. It is submitted that an appropriate order of injunction may be passed in terms of the said prayer.

24. Per contra, Ms. Banerjee, learned Advocate appearing on behalf of the judgment-debtor submits before this Court that such prayer cannot be entertained in view of the fact that in terms of the said settlement, the judgment-debtor has to sell out the properties as mentioned in the Second Schedule of the terms of settlement which forms part of the appellate decree and thereafter the judgment-debtor has to pay Rs.25,00,000/- to the decree-holder. It is further submitted by Ms. Banerjee that as on this day

her client has paid Rs.4,50,000/- to the decree-holder which is not disputed by Ms. Bhattacharjee. It is further submitted by Ms. Banerjee that this Court has no territorial jurisdiction to pass an order of injunction in respect of the properties which lies outside the territorial jurisdiction of the original side of this Court. Ms. Banerjee places reliance upon a reported decision in the case of **Mechano Paper Machines Ltd. Vs NEPC Papers & Boards Ltd. & Ors.** reported in AIR 2012 Cal 26.

25. On careful consideration of the entire materials as placed before this Court, this Court finds no force in the submission of Ms. Banerjee, inasmuch as at this stage this Court is not going to execute the decree beyond its territorial jurisdiction as has been prescribed under Section 39 of the CPC. This Court is conscious that this Court being an executing Court cannot go beyond the decree. However, this Court being an executing Court has every power to pass an appropriate order to secure the decretal property intact so that the decree-holder must not be deprived of the fruits of the decree.

26. In considered view of this Court, the prayer as made in clause (f) of column 10 of the Tabular Statement is very innocuous inasmuch as the decree-holder has sought for an injunction restraining the judgment-debtor from dealing with and/or disposing and/or alienating and/or transferring and/or parting with the possession of the property as mentioned in the Second Schedule of the terms of settlement which formed the part of the decree till *a prospective buyer is identified*.

27. Considering the entire circumstances, there shall be an order of injunction upon the judgment-debtor from disposing of and/or alienating

and/or transferring and/or parting with the possession of the property as mentioned in serial no.1 and 4 of the Second Schedule of the said terms of settlement till the end of April, 2015.

28. Let the matter be listed on 6th March, 2025 under the same heading for further consideration.

(PARTHA SARATHI SEN, J.)

dg/