

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2888 OF 2006

MALEGAON MUNICIPAL CORPN.

Appellant (s)

VERSUS

SANJAY MAHENDRA PAWAR & ANR.

Respondent(s)

Date: 16/03/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s)

Mr. A.S. Bhasme,Adv.

For Respondent(s)

Mr. Aniruddha P. Mayee,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(NIDHI CHUGH)
Sr. P.A.

(RENUKA SADANA)
Court Master

(Signed order is placed on the file.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2888 OF 2006

MALEGAON MUNICIPAL CORPN.

...Appellant

VERSUS

SANJAY MAHENDRA PAWAR & ANR.

...Respondents

O R D E R

The appellant Corporation herein is the decree holder. It had filed the Execution Application to recover a total amount of Rs.4,70,38,726.45p. The decree holder had prayed for detaining the respondent-judgment debtor in civil imprisonment claiming that he intentionally avoided the payment of decretal amount. The trial Court allowed the Execution Application and accordingly directed the respondent-judgment debtor to pay at least ¼th of the amount sought under execution within one month from the date of the order and in case of failure, the judgment debtor was directed to be committed to civil imprisonment for a period

of three months on payment of subsistence allowance by the decree holder. The same was challenged by the judgment debtor in the High Court. The High Court vide the impugned order, set aside the order of the trial Court. Hence this appeal by special leave.

The impugned order of the High Court, in our considered opinion, does not suffer from any error or infirmity requiring our interference under Article 136 of the Constitution of India. Needless to restate that committing a judgment debtor to civil imprisonment to realize decretal amount is not a matter of course. It is fraught with serious consequences. The High Court note that even the findings and reasons found in the order of the trial Court do not make out any case for committing the judgment debtor to civil imprisonment. There is no

...2

CIVIL APPEAL NO. 2888 OF 2006

.2.

conclusion as such arrived at by the trial Court that during the period from the date of the decree to the passing of the impugned order, the judgment debtor had means to pay the decretal amount or any substantial part thereof and yet refused or neglected to pay the decretal amount. It is for that reason, the High Court found that there was no willful attempt on the part of the judgment debtor in refusing to discharge his obligation under the decree. It is not a case where the judgment debtor had sufficient means at all points of time but intentionally evaded the payment due under the decree. The findings of the High Court, in our considered opinion, do not suffer from any infirmity as they are based upon appreciation of the relevant material available on record. We are in agreement with the view taken by the High Court. Be it noted that even the trial Court did not find that there was any willful and deliberate attempt as such on the part of the judgment debtor to avoid the payment of decretal amount.

In the circumstances, it is not possible to direct the detention of the judgment-debtor as prayed for by the appellant-corporation. However, it shall always be open to the appellant-corporation to proceed against the properties of the judgment-debtor, if any, available for realization of the decretal amount in accordance with law.

For the aforesaid reasons, we find no merit in the appeal. The appeal is, accordingly, dismissed.

....., J.
[B. SUDERSHAN REDDY]

....., J.
[SURINDER SINGH NIJJAR]

NEW DELHI;
MARCH 16, 2011.