

Dhanush Vir Singh vs Dr, Ila Sharma And 3 Others on 18 July, 2024

Author: Ashutosh Srivastava

Bench: Ashutosh Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Neutral Citation No. - 2024:AHC:113931

Judgment Reserved on : 12.03.2024

Judgment Delivered on : 18.07.2024

Court No. - 50

Case :- S.C.C. REVISION No. - 19 of 2024

Revisionist :- Dhanush Vir Singh

Opposite Party :- Dr, Ila Sharma And 3 Others

Counsel for Revisionist :- Pankaj Saxena

Counsel for Opposite Party :- Rama Goel Bansal, Shalini Goel

Hon'ble Ashutosh Srivastava, J.

1. Heard Sri Pankaj Saxena, learned counsel for the Revisionist and Smt. Rama Goel Bansal, learned counsel for the Plaintiff/Decree Holder/ Opposite Party No.1. The Opposite Party Nos. 2 to 4 have been arrayed as Judgment Debtors/Defendants/Proforma Opposite Parties. No one has put in appearance on their behalf.

2. With the consent of the parties the instant SCC Revision is being decided finally.
3. The instant SCC Revision under Section 25 of the Provincial Small Causes Courts Act, 1887 at the instance of the Defendant/Judgment Debtor has been filed questioning the judgment and order dated 16.01.2024 passed by the Additional District Judge, Court No. 6, Bareilly, whereby and whereunder allowing the application 57-Kha of the Plaintiff/Decree Holder/Opposite Party No. 1 in Execution Case No. 02 of 2021 arising out of SCC Suit No. 18 of 2016 and issuing the Warrant of Arrest against the Revisionist.
4. The relief claimed by way of the instant SCC Revision is that the Revision be allowed the judgment and order dated 16.01.2024 in Execution Case No. 2 of 2021 (Dr. Ila Sharma Vs. M/s Benett Coleman & Co. Ltd. and others) be set aside with costs.
5. The facts giving rise to the controversy involved between the parties shorn of unnecessary details are that the Revisionist presently working as Vice President of M/s Benett Coleman & Co. Ltd. while working as General Manager and Branch Head was duly authorized to enter into lease agreement with one Ram Dev Bhaguna for the purposes of rent for the period of 9 years w.e.f. 01.06.2013 to 31.05.2022 @ Rs.15,000/- to be enhanced by 15% after 3 years regarding office space at 129, Civil Lines, Balwant Singh Road, Bareilly, having total area 2000 sq. ft. Though the tenancy was for a fixed period of 9 years but the lessee was entitled to terminate the lease by giving 3 months notice during the tenure of the lease. The tenancy was terminated by the Landlord/Lessor vide Notice dated 22.04.2016 and a request was made to the Company to vacate the premises and handover the vacant possession on expiry of 30 days from the service of notice and claimed mesne profits @ Rs.2500/- per day till delivery of actual physical possession. The Company did not vacate the tenanted premises and the Lessor/Landlord instituted a SCC Suit being SCC Suit No. 18 of 2016 (Dr. Ila Sharma and others Vs. M/s Benett Coleman & Co. Ltd. and others) for ejectment and recovery of mesne profits @ Rs.2500/- per day from the date of filing of the Suit till the date of actual possession.
6. The Company is stated to have filed an Application dated 10.09.2018 (Paper No. 37-C) before the Court stating that it is willing to handover the vacant possession of the premises to the Landlord but the Landlord is not coming forward to accept the same and, accordingly, a request was made that the keys of the premises be accepted by the Court and an Amin Commissioner be appointed to ascertain the vacancy and take custody and hand over possession to the Landlord. It is admitted position that vacant possession of the tenanted premises was handed over to the Opposite Party No.1, Dr. Ila Sharma on 01.10.2019, who issued a Letter of Possession on 01.10.2019.
7. The SCC Suit, thereafter proceeded ex-parte and was decreed vide judgment and decree dated 05.08.2021 under which the Company M/s Benett Coleman & Co. Ltd. was directed to pay the mesne profit @ Rs.2500/- per day from the date of filing of the Suit till the date of delivery of possession i.e. 01.10.2019 totaling to a sum of Rs.30,57,500/- to the Plaintiff/Opposite Party No.1 within one month. The judgment and decree dated 05.08.2021 has been assailed by the Company M/s Benett Coleman & Co. Ltd. in SCC Revision (Defective) No. 36 of 2023, in which this Court has issued notice on the Delay Condonation Application and the Revision is pending consideration. The

effect and operation of the judgment and decree dated 05.08.2021 has not been stayed.

8. The Plaintiff/Decree Holder/Opposite Party No.1 filed an execution case registered as Execution Case No. 2 of 2021. The Execution Case was filed against one Sri Vijay Sahi, the then General manager M/s Benett Coleman & Co. Ltd., as Opposite Party No. 3. Subsequently, the Decree Holder/ Opposite Party No.1 impleaded one Sri Vineet Kumar Jain, Managing Director of the Company, as party to the Execution Case, who filed his objections. The Executing Court vide its order dated 23.05.2023 partially allowed the objections holding that the Execution Case cannot proceed against the Managing Director of the Company as he was neither party to the proceedings nor party to the lease agreement signed between the parties. The Executing Court, however, observed that the execution is maintainable against the Branch Manager/General Manager of the Company who had signed the agreement. Accordingly, the Revisionist and the proforma Respondent No. 4 were impleaded in the execution proceedings.

9. The Plaintiff/Decree Holder/Opposite Party No.1 filed an Application (Paper No. 57-Kha) on 04.11.2023 praying for the arrest and detention of the Revisionist as required under Section 55 of the C.P.C. The said Application (Paper No. 57-Kha) was objected to by the Revisionist by stating that the Application is misconceived, as no grounds on which arrest of the Revisionist has been sought, has been disclosed, there is neither any allegation against the Revisionist nor any averment that he is absconding the decree has not been passed against him in his individual capacity, the compliance of order 21 Rule 41 CPC has not been made and no notice has been issued under Order 21 Rule 37 CPC.

10. The Additional District Judge, Court No. 6, Bareilly, vide the impugned judgment and order dated 16.01.2024 has proceeded to allow the Application (Paper No. 57 Kha) of the Plaintiff/Decree Holder and rejected the objections of the Revisionist and issued the Warrant of Arrest against the Revisionist.

11. Sri Pankaj Saxena, learned counsel for the Revisionist vehemently submits that the instant execution proceedings against the Revisionist is an abuse of the process of law inasmuch as the Revisionist is merely the employee of the Judgment Debtor Company M/s Benett Coleman & Co. Ltd., and no decree has been passed against him personally but has been passed against the Company. The Revisionist has been impleaded in the proceedings in an official capacity and not in his personal capacity and as such, the decree cannot be executed against him by seeking his arrest and detention in civil prison. It is also argued that the Application (Paper No. 57-Kha) was totally misconceived, not maintainable inasmuch as it violated the provisions of Order 21 Rule 11-A, Order 21 Rule 37 and Order 21 Rule 41 CPC. It is, accordingly, prayed that the Application be set aside and the Revision be allowed.

12. Per contra, Smt. Rama Goel Bansal, learned counsel for the Landlord/ Plaintiff/Decree Holder/Opposite Party has filed supplementary counter affidavit stating that the Judgment Debtor Company is avoiding the decree by adopting the delaying tactics and is harassing the decree holder who is an old lady of 80 years residing in Delhi. Almost 3 years have passed by and the decree dated 05.08.2021 has not been executed. Earlier, an Application on behalf of the judgment debtor was

filed to recall the ex-parte decree without complying with the provisions of Section 17 of the Provincial Small Cause Courts Act, 1887. Later on, the said proceedings were withdrawn. The Revisionist has been impleaded under order of the Executing Court dated 23.05.2023, which order has not been put to challenge. The case was also placed before the Lok Adalat at the request of the judgment debtor, however, the judgment debtor did not appear on the date fixed due to non arrangement of the liability to satisfy the decree. It is also averred that as per the knowledge of the decree holder, no property is owned by the judgment debtor in the District Bareilly and in such circumstances, the decree holder has been compelled to execute the decree in mode provided by Section 51 CPC and cannot be compelled to adopt any other mode. It is also vehemently contended that the Revisionist is an authorized representative of the judgment debtor and he cannot avoid his liability to comply with the money decree. It is, accordingly, prayed that the Revision be dismissed at the threshold.

13. Reliance is placed upon the decision of the Andhra Pradesh High Court in Case No. C.R.P. No. 5832 of 2006 (V. Dharmavenamma Vs C. Subrahmanyam Mandadi) reported in (2009) 06 AP CK 0018 and a decision of the Apex Court in the case of Shyam Singh versus Collector, District Hamirpur U.P. and others, reported in 1993 Supp (1) SCC 693 to buttress the point that a decree holder cannot be compelled to adopt a particular mode for executing the decree. Reliance is also placed upon a decision of Madras High Court in the case O.S.A. No. 287 of 2019 and C.M.P. Nos. 22998 and 24061 of 2019 (M/s G-Tech Stone Ltd. versus Bfil Finance Ltd.) to submit that the corporate veil can be lifted where the Court from the material on record comes to the conclusion that the judgment debtor is trying to defeat the execution of the decree.

14. In the above backdrop this Court has been called upon to rule on the legality, propriety and correctness of the order dated 16.01.2024 passed by the learned Additional District Judge, Court No. 6, Bareilly in Execution Case No. 2 of 2021 whereby the Application (Paper No. 57-Kha) of the decree holder has been allowed and Warrant of Arrest under Order 21 Rule 38 CPC has been issued against the Revisionist who has been impleaded as Opposite Party No. 3 in the execution case.

15. I have heard the learned counsels for the parties at length and have perused the record as also the case laws cited at the bar.

16. The moot question for consideration in this Revision is whether the Directors/Authorized Representatives of a Limited Company be arrested and detained in Civil Prison for execution of a Money Decree against the Company or so to say whether the Directors/Authorized Representatives of the Company are bound in a representative capacity for the Judgment Debtor Company for the execution of the said Decree.

17. Admittedly, the Tenancy Agreement dated 12.06.2013 was executed with M/s Benett Coleman & Co. Ltd., an existing Company within the meaning of Companies Act, 1956 acting through the Revisionist, who was then working in the capacity of General Manager. In the SCC Suit filed, the Company M/s Benett Coleman & Co. Ltd. was impleaded through its General Manager at Lucknow and Branch Manager at Bareilly. The ex-parte decree dated 05.08.2021 in the SCC Suit No. 18 of 2016 has been passed against M/s Bennett Coleman & Co. Ltd. and as such, the Company is the

judgment debtor. The execution of the ex-parte decree is sought to be executed against the Judgment Debtor Company through the Revisionist by filing an Execution Case registered as Execution Case No. 2 of 2021, under Section 51 read with Order 21 Rule 37 CPC for arrest and detention of the Revisionist in civil prison according to law for non payment of the amount of Rs. 30,57,500/- along with 18% interest and execute the decree for recovery of the amount. The Decree Holder/ Opposite Party reserves her right to opt to the mode for execution of the decree through attachment and sale or by sale without attachment of the property of the judgment debtor as also under Section 51 (b) CPC.

18. The Code of Civil Procedures, 1908 is a self contained Code which provides for the elaborate procedure for executing a decree. It would be apposite to refer to some of the provisions of the CPC which deal with execution of a decree and have been relied upon particularly by the learned counsel for the Decree Holder/Respondent.

Section 51: Powers of Court to enforce execution:-

51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property;
- (c) by arrest and detention in prison;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require.

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree-
 - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
 - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects

or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.-In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

State Amendment:-

Uttar Pradesh- In section 51, after clause (b), insert the following clause, namely:-
"(bb) by transfer other than sale, by attachment or without attachment of any property"

Section 55 Arrest and detention: (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained;

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise;

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found;

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest;

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The State Government may, by notification in the Official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the State Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he may be discharged, if he has not committed any act of bad faith regarding the subject of the application and if he complies with provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor express his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court may release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realised or commit him to the civil prison in execution of the decree.

Order 21 Rule 10. Application for execution.

Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

Order 21 Rule 11. Oral application.

(1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

(2) Written application- Save as otherwise provided by sub-rule(1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely-

(a) the number of the suit;

(b) the names of the parties;

- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;
- (h) the amount of the costs (if any) awarded;
- (I) the name of the person against whom execution of the decree is sought; and
- (j) the mode in which the assistance of the Court is required whether-
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;
 - (iii) by the arrest and detention in prison of any person;
 - (iv) by the appointment of a receiver;
 - (v) otherwise, as the nature of the relief granted may require.
- (3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

Order 21 Rule 11A. Application for arrest to state grounds.

Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.

Order 21 Rule 30. Decree for payment of money.

Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

Order 21 Rule 37. Discretionary power to permit judgment-debtor to show cause against detention in prison.--

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court 1 [shall], instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.] (2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor."

Order 21 Rule 38. Warrant for arrest to direct judgment-debtor to be brought up.

Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

Order 21 Rule 40. Proceedings on appearance of judgement-debtor in obedience to notice or after arrest.

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of the Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

Order 21 Rule 41. Examination of judgment-debtor as to his property.

(1) Where a decree is for the payment of money the decree-holder may apply to the Court for an order that-

(a) The judgment-debtor, or

(b) where the judgment-debtor is a corporation, any officer thereof, or

(c) any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.

Order 21 Rule 50. Execution of decree against firm.

(1) Where a decree has been passed against a firm, execution may be granted-

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 30 of the Indian Partnership Act, 1932 (9 of 1932).

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2) the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not lease, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

(5) Nothing in this rule shall apply to a decree passed against a Hindu Undivided Family by virtue of the provision of rule 10 of Order XXX.

19. A perusal of the above provisions shows that the same apply to a judgment debtor alone who has suffered the decree. In the case at hand the Revisionist is not the judgment debtor rather it is M/s Bennett Coleman & Co. Ltd. which is the judgment debtor. There is no provision in the CPC which provides for execution of a money decree against the Judgment Debtor Company by effecting arrest and detention of its Employee, Director or General Manager. Order 21 Rule 50 does provide for execution of a money decree against a firm from the assets of the partners of the said firm mentioned in the Rule but there is no provision with respect to the Employee/Representative/Director of a Company. The Executing Court cannot go behind the decree and can execute the same as per the form only. The decree admittedly is against the Company. The Executing Court cannot execute the decree against anyone including the Revisionist herein other than the judgment debtor or against from the assets/properties of anyone other than the judgment debtor.

20. Sub Rule (1)(b) of Order 21 Rule 41 provides that where a money decree is against the judgment-debtor which is a Corporation, the decree holder may apply to the Court for an Officer of

the said Corporation to be orally examined to determine the quantum of debts that are owned by the judgment-debtor and whether the judgment-debtor has the means of satisfying the decree. Order 21 Rule 41(2) provides that on an Application of a decree-holder the Court has the power to require the judgment-debtor or where the judgment-debtor is a Corporation, any Officer to file an affidavit stating the particulars of the assets of the judgment-debtor. Order 21 Rule 41(3) provides that in case of disobedience of any order made under Order 21 Rule 41(2), the Court may direct civil imprisonment of the person disobeying the said order.

21. The Delhi High Court in the Case of V. K. Uppal Vs. Akshay International Pvt. Ltd. reported in Manu/DE/0320/2010 wherein an execution of an Award under the Arbitration Act, 1996 against the Judgment debtor Company was sought to be enforced against the Director the Court rejecting the Application observed as under:

"6. The admitted position is that the arbitration award having force of the decree is against the judgment debtor company only and not against its Directors. The question which arises is whether a money decree against a Private Limited Co. can be executed against its Directors. There is no provision therefor in the CPC. Order 21 Rule 50 does provide for execution of a money decree against a firm from the assets of the partners of the said firm mentioned in the said rule but there is no provision with respect to the Directors of a company. The executing court, as this Court is cannot go behind the decree and can execute the same as per its form only. The decree is against the company. This Court as the executing court cannot execute the decree against anyone other than the judgment debtor or against from the assets/properties of anyone other than the judgment debtor. The identity of a Director or a shareholder of a company is distinct from that of the company. That is the very genesis of a company or a corporate identity or a juristic person. The classic exposition of law in this regard is contained in Solomon Vs. Solomon & Co. Ltd. 1897 AC 22 where the House of Lords had held that in law a company is a person all together different from its shareholders and Directors and the shareholders and Directors of the company are not liable for the debts of the company except to the extent permissible by law."

22. Then again, the Delhi High Court in the case of Anirban Roy and Others Vs. Ram Kishan Gupta and others reported in Manu/DE/ 3524/ 2017 while considering a Petition under Article 227 of the Constitution of India impugning orders passed in execution proceedings exercising powers under Order 21 Rule 41 CPC directing the Directors of the Judgment Debtor Company to disclose their personal assets movable and immovable and issuing bailable warrants, while allowing the petition observed as under:-

"I have in V.K. Uppal Vs. Akshay International Pvt. Ltd. 2010 SCC online Delhi 538 held; (i) that there is no provision in the CPC for execution of a money decree against a Pvt. Ltd company, against its directors; (ii) that though Order XXI Rule 50 of the CPC does provide for execution of a money decree against a firm, from the assets of the partners of the said firm mentioned in the said Rule but there is no provision with

respect to directors of a company; (iii) that the Executing Court cannot go behind the decree and can execute the same as per its form only; (iv) that if the decree is against the company, the executing Court cannot execute the decree against anyone other than the judgment-debtor company or against the assets and properties of anyone other than the judgment-debtor company; (v) that the identity of a director or a shareholder of a company is distinct from that of the company--that is the very genesis of a company or a corporate identity or a juristic person;(vi) the classic exposition of law in this regard is contained in Solomon Vs. Solomon & Co. Ltd. 1897 AC 22 where the House of Lords held that in law, a company is a person all together different from its shareholders and directors and the shareholders and Directors of the company are not liable for the debts of the company except to the extent permissible; (vii) that though a Single Judge of this Court in Jawahar Lal Nehru Hockey Tournament Vs. Radiant Sports Management 149(2008) DLT 749 observed that there could be a case where the Court even in a execution proceeding lifts the veil of a closely held company, particularly a Pvt. Ltd company and in order to satisfy a decree, proceed against the personal assets of its directors and shareholders but the said judgment was over ruled by the Division Bench EFA(OS) No.17/2008 decided on 7th November, 2008 and reported as MANU/DE/1756/2008, finding that the director of the company had agreed to be personally liable to satisfy the decree and for this reason holding him liable; however the Division Bench refrained from commenting authoritatively on the aspect of lifting of the corporate veil in execution; (viii) that though Section 53 of the Transfer of the Property Act, 1882 allows the creditors to have a transfer of property made with an intent to defeat the creditors set aside but a case therefor has to be pleaded; (ix) that it cannot be laid as a general proposition that whenever the decree is against a company, its Directors/ shareholders would also be liable-to hold so would be contrary to the very concept of limited liability and obliterate the distinction between a partnership and a company; (x) that though the Courts have watered down the principle in Solomon supra to cover the cases of a fraud, improper conduct, etc. as laid down in Singer India Ltd. Vs. Chander Mohan Chadha (2004) SCC 1 but a case therefor has to be made out; (xi) that the decree holders in that case had not made out any case therefor; the directors were not parties to the proceedings in which decree was passed and were not impleaded in the execution petition also and there were no averments in the execution petition of fraud or improper conduct or of incorporation of the company to evade obligations imposed by law and in which situations Supreme Court in Singer India Ltd. supra has held that the corporate veil must be disregarded."

23. Yet again the Delhi High Court in the case of (Liugong India Pvt. Ltd. Vs. Yograj Infrastructure Ltd. And others) reported in Manu/DE/ 1909/2018 observed as under.

12. A company, being a juristic entity, has to necessarily act through natural persons and we are still far from the day when such juristic entities, with the assistance of Artificial Intelligence will enter into contracts without acting through natural persons. Thus, merely because a natural CS(OS) 3318/2012 person has acted on behalf of a juristic entity like a company will not make such natural

person personally liable for the debts of such juristic entity. Reference if any required in this context can be made to V.K. Uppal Vs. Akshay International Pvt. Ltd. 2010 SCC OnLine Del 538 and Anirban Roy Vs. Ram Kishan Gupta MANU/DE/3524/2017.

24. The Punjab and Haryana High Court in the case of H.S. Sidona vs. Rajesh Enterprises reported in 1993 (77) P&H 251 has held that where there was a decree for recovery of sums due to a Bank from a Company in a suit against the Company and its Managing Director, the liability to discharge the decretal amount was that of the Company and not of its Managing Director. The Executing Court could proceed against the Managing Director of the Judgment Debtor Company only if it came to be conclusion that the managing Director was personally liable to discharge the decretal amount.

25. The Bombay High Court at Goa while considering a Civil Revision Petition at the instance of the Proprietor of the Judgment Debtor Company incorporated under the Companies Act assailing an order refusing to discharge him in execution proceedings where the assistance of the Court for executing the decree inter-alia was sought by detention in civil prison the Sole Proprietor/Authorized Signatory/Partner/Director of the Judgment Debtor in civil prison allowed the Revision, set aside the impugned order observing as under:-

"10. It is apparent that as per the case made out in the plaint Harshada Trading Company is a Company, incorporated under the Companies Act and the decree is also passed against the original defendant-Harshada Trading Company alone. It is now well settled that where the decree is against the Company, which is an independent entity, the decree cannot be executed against any individual, being a Director or a person responsible for the conduct of the business of the Company. It was for the respondent to point out as to what are the assets of the Company, against which the decree can be executed. Such details can be obtained by the decree holder from the office of the Registrar of Companies (RoC). Without doing any such exercise, the respondent is trying to execute the decree against an individual and that too, without showing that the petitioner is in anyway related to the Company-Harshada Trading Company."

26. Much emphasis has been laid by Smt. Rama Goel Bansal, learned counsel for the Decree Holder/Respondent No.1 that the Judgment-Debtor Company has no intention to honour the Decree passed in the SCC Suit dated 05.08.2021 which is for a sum of Rs.30,57,500/- and about 3 years have passed by and the Decree Holder/Respondent No.1 has not been able to enjoy the fruits of the Decree. She submits that this case is a fit case in which this Court should lift the Corporate Veil to see that the Revisionist being the Vice President of the Judgment Debtor Company is in the helm of the affairs of the Judgment Debtor Company and no indulgence is required to be granted to the Revisionist and rather he must be directed to ensure the satisfaction of the Decree.

27. I have given my anxious consideration to the above submission of the learned counsel for the Decree Holder/Respondent No.1 and am not impressed. No ground for invoking the above principle is made out in the present case. The question of lifting the Corporate Veil was examined by the

Constitutional Bench in the case of Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar, reported in AIR 1965 SC 40. In the said case the Apex Court observed that the doctrine of lifting of the veil postulate the existence of dualism between the Company on one hand and its members or shareholders on the other. The question was again considered in the case of Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. reported in 1996(4) SCC 622. In Para Nos. 24 to 28 the Apex Court observed as under:-

24. In Aron Salomon v. Salomon & Company Limited (1897 Appeal Cases 22), the House of Lords had observed, "the company is at law a different person altogether from the subscriber...; and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands received the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, on any shape or form, except to the extent and in the manner provided by that Act".

Since then, however, the Courts have come to recognize several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is "when the corporate personality is being blatantly used as a cloak for fraud or improper conduct". [Gower: Modern Company Law - 4th Edn. (1979) at P. 137]. Pennington [Company Law - 5th Edn. 1985 at P.53] also states that "here the protection of public interests is of paramount importance or where the company has been formed to evade obligations imposed by the law", the court will disregard the corporate veil. A Professor of Law, S. Ottolenghi in his article "From Peeping Behind the Corporate Veil, to Ignoring it Completely" says "the concept of 'piercing the veil' in the United States is much More developed than in the UK. The motto, which was laid down by Sanborn,J. and cited since then as the law, is that 'when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. The same can be seen in various European jurisdictions'".

[(1990) 53 Modern Law Review 338].

Indeed, as far back 1912, another American Professor L. Maurice Wormser examined the American decisions on the subject in a brilliantly written article "Piercing the veil of corporate entity" [published in (1912) XII Columbia Law Review 496] and summarized their central holding in the following words:

"The various classes of cases where the concept of corporate entity should be ignored and the veil drawn aside have now been briefly reviewed. What general rule, if any, can be laid down? The nearest approximation to generalization which the present state of the authorities would warrant is this: When the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the courts will draw aside the web of entity, will regard the corporate company as an association of live, up-and-doing, men and women shareholders, and will do justice between real persons."

25. In Palmer's Company law, this topic discussed in Part- II of Vol-I. Several situations where the court will disregard the corporate veil are set out. It would be sufficient for our purposes to quote the eighth exception. It runs:

"The courts have further shown themselves willing to 'lifting the veil' where the device of incorporation is used for some illegal or improper purpose....Where a vendor of land sought to avoid the action for specific performance by transferring the land in breach of contract to a company he had formed for the purpose, the court treated the company as a mere 'sham' and made an order for specific performance against both the vendor and the company".

Similar views have been expressed by all the commentators on the Company Law which we do not think it necessary to refer to.

26. The law as stated by Palmer and Gower has been approved by this Court in Tata Engineering and Locomotive Company Limited v. State of Bihar [1964 (6) S.C.R. 885]. The following passage form the decision is apposite:

"Gower has classified seven categories of cases where the veil of a corporate body has been lifted. But, it would not be possible to evolve a rational consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not. Broadly, where fraud is intended to be prevented, or trading with enemy is sought to be defeated, the veil of corporation is lifted by judicial decisions and the shareholders are held to be 'persons who actually work for the corporation.'"

27. In DHN Food Distributors Ltd. & Ors. v. London Borough of Tower Hamlets [1976 (3) All.E.R. 462], the Court of Appeal dealt with a group of companies. Lord Denning quoted with approval the statement in Gower's Company Law that "there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group".

The learned Master of Rolls observed that "this group is virtually the same as a partnership in which all the three companies are partners". He called it a case of "three-in-one" - and, alternatively, as "one-in-three".

28. The concept of corporate entity was evolved to encourage and promote trade and commerce : but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejawant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejawant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejawant Singh and/or

members of his family and that the device of incorporation was really a Ploy adopted for committing illegalities and/or to defraud people."

28. This Court is of the firm view that the Money Decree dated 05.08.2021 for the sum of Rs.30,57,500/- cannot be executed against the Revisionist being the Vice President of the Judgment Debtor Company M/s Benett Coleman Co. Ltd. responsible for the conduct of the business of the Company. It was for the Respondent/Decree Holder to point out as to what are the assets of the Judgment Debtor Company against which the Decree can be executed. Such details can very well be obtained from the Registrar of the Companies without undertaking any such exercise, the Decree Holder/ Respondent is trying to execute the Decree against an individual/ Revisionist by seeking his arrest and detention in civil prison.

29. In view of the above, this Court comes to the irresistible conclusion that the application 57-Kha moved by the Decree Holder/Opposite Party seeking the arrest and detention of the Revisionist who admittedly is not the judgment debtor and only the Vice President of the Judgment Debtor Company is misconceived and was not liable to be entertained. The learned Additional District Judge, Court No. 6, Bareilly, committed manifest error of law in allowing the Application and issuing Warrant of Arrest under Order 21 Rule 38 against the Revisionist under the impugned order dated 16.01.2024. The order dated 16.01.2024 impugned in the instant SCC Revision is set aside. The SCC Revision is allowed. However, this Court is conscious of the fact that a Money Decree has been passed against the Judgment Debtor Company, which is liable to be enforced against the Judgment Debtor Company. The Decree Holder/Respondent may take recourse to the specific provisions of Order 21 Rule 41 CPC to enforce the Decree passed in the SCC Suit No. 18 of 2016 and suitably amend the Execution Application No. 2 of 2021.

30. Learned counsel for the decree-holder may file an appropriate application at the earliest and in the eventuality of such an application being filed, it is expected that the Executing Court shall taken cognizance of the said application and pass appropriate orders expeditiously preferably within two months from the date of service of a certified copy of the order of this Court.

31. No order as to costs.

Order Date :- 18.07.2024 pks