

Sandeep Jain vs Akash Gupta & Ors on 4 October, 2021

Author: Amit Bansal

Bench: Amit Bansal

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CM(M) 676/2021
SANDEEP JAIN

Through: Mr. Jayant Mehta Sr.
Mr. Shalabh Singhal,

versus

AKASH GUPTA & ORS.

Through: Mr. Sahil Sethi and M
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL
ORDER

% 04.10.2021 [VIA VIDEO CONFERENCING] CM No. 34849/2021(for exemption)

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

CM(M) 676/2021, CM No. 34848/2021 (for stay) & CM No. 34850/2021 (for permission to file relevant lower court record only)

3. The present petition under Article 227 of the Constitution of India impugns the order dated 16th September, 2021 passed by the National Consumer Disputes Redressal Commission (NCDRC) in Execution Application No. 176/2020, to the extent that it directs recovery proceedings by the issuance of individual recovery certificate against the petitioner, who is one of the directors of the company 'Shree Vardhman Infrahome Private Limited', and which company is the judgment debtor before the NCDRC.

4. The respondents, being members of the Flora Welfare Association, filed a complaint under Section 21 of the Consumer Protection Act, 1986, bearing Consumer Case No. 1893/2017 titled Flora Welfare Association Vs. Shree Vardhman Infrahome Pvt. Ltd., before the NCDRC. The said complaint was disposed of by the NCDRC vide decree dated 15th January, 2019, wherein it was recorded that the matter had been settled between the parties in terms of the written settlement dated 15 th January, 2019, and which written settlement was ordered to form part of the said decree. Since the decree was not satisfied, the respondents filed Execution Application No. 176/2020 under

Section 71 of the Consumer Protection Act, 2019 on 31st August, 2020, seeking enforcement of the decree dated 15th January, 2019 of the NCDRC, and from which execution proceedings, the impugned order arises.

5. The portions of the order, which are impugned in the present petition, are set out below:-

"7. The Registry is requested to issue individual recovery certificates within one week thence, positively, under Section 25(3) of The Consumer Protection Act, 1986 / Section 71 of The Consumer Protection Act, 2019 to the concerned District Collector(s) requiring to recover the respective decretal amounts from the judgment debtor company and its directors (i) Mr. Sandeep Jain, (ii) Mr. Nitin Aggarwal, (iii) Mr. Manish Aggarwal and (iv) Mr. Sachin Jain in the same manner as arrears of land revenue.

8. It is made explicit here that the amount recovered shall be retained with the Registry of this Commission and a decision on releasing it shall be taken after addressing and answering the objections recorded in para 2 above and after hearing objections if any on the quantification of the respective decretal amounts and on any other objection(s) raised by the judgment debtor company and its directors. Meanwhile, the Registry shall retain the recovered amount in the shape of FDR(s), initially for a period of six months, to be renewed regularly."

6. Mr. Jayant Mehta, learned senior counsel appearing on behalf of the petitioner, assails the impugned order on the grounds that, (i) the decree dated 15th January, 2019 of the NCDRC has been passed against the company 'Shree Vardhman Infrahome Private Limited' of which the petitioner is only a director; (ii) neither was the petitioner a party to the consumer complaint nor has the decree dated 15th January, 2019 of the NCDRC been passed against the petitioner; (iii) the petitioner was not even arrayed as a party in the execution application; and (iv) there is no provision either under the Consumer Protection Act, 2019 or under the Consumer Protection Act, 1986 to make a director liable for the decree passed against the company. Therefore, it is submitted that the recovery certificate issued against the petitioner is not permissible in Law and the same should be set aside. It is further submitted that the petitioner has already deposited his passport with the Registrar, NCDRC, in compliance with the impugned order.

7. The counsel for the petitioner has relied upon the judgment of the Supreme Court in *Ambience Infrastructure Private Limited and Ors. Vs. Ambience Island Apartment Owners and Ors.* (2021) 2 SCC 163 to state that an appeal will not lie to the Supreme Court against the impugned order, which has been passed in the course of execution proceedings by the NCDRC and therefore, this Court, under Article 227 of the Constitution of India, can entertain the present petition. He submits that there is no provision for appeal against the impugned order passed by the NCDRC under Section 71 of the Consumer Protection Act, 2019.

8. The counsel appearing on behalf of the respondent on advance notice, fairly states that Section 71 of the Consumer Protection Act, 2019 does not empower the NCDRC to issue an individual recovery

certificate against the director of a company. However, he submits that proceedings under Section 72 of the Consumer Protection Act, 2019 can be initiated against the petitioner in his capacity as a director of the judgment debtor company.

9. Section 71 of the Consumer Protection Act, 2019 provides that every order made by the NCDRC shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (CPC) shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under the said Act. In light of the same, the counsel for the petitioner has drawn my attention to the decisions of this Court relating to execution proceedings of a decree, wherein liability has been sought to be fastened onto directors of a company. The counsel for the petitioner has relied upon the decision of this Court in V.K. Uppal Vs. Akshay International Pvt. Ltd. 2010 SCC OnLine Del 538, wherein it has been held as set out below:-

"10. It cannot be laid down 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. Though the courts have watered down the principle in Solomon (supra), to cover the cases of fraud, improper conduct etc, as laid down in Singer India Ltd. v. Chander Mohan Chadha (2004) 7 SCC 1 but a case therefor has to be made out. The decree holder in the present case has not made out any case whatsoever. As aforesaid not only were the Directors not parties to the arbitration proceedings but were not impleaded in the execution petition also. There are no averments whatsoever in the execution petition or even in the application under consideration of fraud or improper conduct or of incorporation of the company to evade obligations imposed by law and in which situations the Supreme Court in Singer India Ltd. (Supra) has held that the corporate veil can be disregarded..."

10. The aforesaid has also been upheld by this Court in Anirban Roy and Ors. Vs. Ram Kishan Gupta and Ors. MANU/DE/3524/2017, wherein the position in V.K. Uppal (supra) has been reiterated to state that there is no provision in the CPC for execution of a money decree against a Pvt. Ltd. company, against its directors and 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. Furthermore, it has been held that the Executing Court cannot go behind the decree and 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.

11. This Court is unable to find any provision under the Consumer Protection Act, 2019 to make a director liable for the decree passed against the company and such a provision does not exist in the Consumer Protection Act, 1986 either. Since, neither was the petitioner a party to the consumer complaint nor had the decree dated 15th January, 2019 of the NCDRC been passed against the petitioner, and furthermore, the petitioner was not even arrayed as a party in the execution application, the Executing Court could not go behind the decree in such a manner to execute the decree against the petitioner. Therefore, the impugned order to the extent that the individual recovery certificate has been directed to be issued against the petitioner, is without jurisdiction.

12. Accordingly, the direction of the NCDRC to issue individual recovery certificate against the petitioner is set aside. The recovery certificate, if having been already issued in terms of the impugned order, stands cancelled.

13. It may be noted that in the impugned order, the NCDRC has not adjudicated on whether the provisions of the Consumer Protection Act, 2019 or the Consumer Protection Act, 1986 are applicable to the execution proceedings before it, and has kept the question open. However, taking into account the fact that the application of the complainants for execution of the decree dated 15th January, 2019 passed by the NCDRC was made under Section 71 of the Consumer Protection Act, 2019, this Court has proceeded to principally analyse the merits of the present petition in light of the provisions of the said Act. Such an exercise does not make any difference to the case at hand as neither of the aforesaid Acts contains provisions, whereby a director can be held liable for the decree passed against the company.

14. It is clarified that this Court has not given any finding on the question of whether in respect of the execution proceedings, the provisions of the Consumer Protection Act, 1986 or the Consumer Protection Act, 2019 would be applicable. It is further clarified that this Court has not gone into the aspect of proceedings that are sought to be initiated against the petitioner under Section 72 of the Consumer Protection Act, 2019.

AMIT BANSAL, J OCTOBER 4, 2021 Sakshi R.