S.B. Poddar vs M/S Rehabilitations Plantation Ltd & ... on 7 April, 2025

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*    IN THE HIGH COURT OF DELHI AT NEW DELHI

%                                 Date of Decision: 07.04.

+    FAO 92/2025, CM APPL. 20563/2025 & CM APPL. 20564/2025

     S.B. PODDAR                              .....Appellan
                    Through:   Mr. Harish Katyal, Ms. M
                               Katyal, Ms. Aditi Todari
                               Prachi Bhandari, Advocat


                    versus

     M/S REHABILITATIONS PLANTATION LTD
     & ORS.                         .....Respondents
                    Through:

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

TEJAS KARIA, J.(ORAL)
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1. The present appeal is filed against the order dated 19.03.2025 („impugned order) passed in Ex. Pet. No.1329/2017 titled M/s Rehabilitation Plantation Limited vs. S.B. Poddar before the Court of District Judge-07, Central District, Tis Hazari Courts, New Delhi („Executing Court).

2. By way of the impugned order, an application under Section 47 read with Section 151 of Code of Civil Procedure, 1908, („CPC) filed by the Appellant praying for dismissal of the execution petition filed against the Appellant on the ground that the decree under execution was null and void and inexecutable as the learned Court, which passed the decree lacked inherent jurisdiction and also the same was obtained by misleading and making false submissions and concealment of material facts from the learned Court.

3. The decree under the execution was passed by the Court of Subordinate Judge, Kottarakkara, Kerala („Trial Court) on 08.07.1997 in Original Suit No. 13/1991 filed by Respondent No.1, the decree holder, for recovery of 3,38,223.74/- with future interest and costs against the Appellant and Respondent Nos.2 to 5 for the loss suffered by Respondent No.1 as a result of mis-delivery of goods ("Suit").

4. The Respondent No.1 had appointed the Appellant as its selling agent for sale of latex in various States and authorized the Appellant to arrange for sale of latex belonging to Respondent No.1 at prices to be fixed by Respondent No.1 from time to time. The Respondent No.1 suffered a loss of 2,83,519.80/- due to mis-delivery of latex by Respondent No.4 and claimed the said loss from the

Appellant and Respondent Nos. 2 to 5 jointly and severely by filing the Suit.

5. The Appellant has submitted that there was no allegation against the Appellant in the plaint showing that the Appellant was responsible/liable for the mis-delivery of latex as a result of which the Respondent No.1 alleged to have suffered the loss. Further, there was no averment/pleading in the entire plaint nor there was any document annexed with the plaint to demonstrate the responsibility/liability of the Appellant for the amount claimed in the suit by the Respondent No.1. Accordingly, there was no cause of action against the Appellant in the Suit and the decree passed against the Appellant was nullity, void ab initio and was inexecutable.

6. The Appellant also submitted that the Respondent No.1 has misled the learned Executing Court by making false statements and concealing material facts from the learned Trial Court by cleverly drafting the plaint.

7. The Appellant has submitted that the Respondent No.1 has received an excess amount by invoking the bank guarantees provided by the Appellant for appointing the Appellant as the selling agent. Accordingly, the Respondent No.1 has already received an amount more than the amount due under the decree. These facts were deliberately and wilfully concealed from the learned Trial Court with malafide intentions to get undue advantage. The Respondent No.1 has also concealed the same from the learned Executing Court that it has received more than the amount due under the decree.

8. When the Appellant raised the objection, the Respondent No.1 made false submissions that the amount received by the Respondent No.1 was in another execution. The Appellant, therefore, preferred an application under Section 47 read with Section 151 of the CPC praying for dismissal of the execution petition as the decree under execution was null and void, inexecutable as the learned Trial Court passing a decree lacked inherent jurisdiction and the decree was obtained by misleading, making false submissions and concealment of material facts from the learned Trial Court.

9. By way of the impugned order, the learned Executing Court has dismissed the said application with cost of 20,000/-. The learned Executing Court has held that the execution petition was maintainable before the learned Executing Court as the same has been transferred and the learned Trial Court has already considered the aspect of the proceedings seeking recovery of bank guarantees being different from the Suit filed by the Respondent No.1 before the learned Trial Court. The impugned order also observes that the bills for which the bank guarantees were encashed were excluded from the subject matter of the suit in which the decree under execution was passed.

10. Heard the learned counsel for the Appellant at length. He submitted that the learned Executing Court failed to appreciate that there was an overlap between Suit and another Suit being OS No.141/1990 whereby the Respondent No.1 had already recovered the amount by way of encashment of bank guarantees and again sought the same from the Appellant in the Suit. It was submitted that in OS No.141/1990, the Respondent No.1 had encashed the bank guarantees for invoices no.3282 and 3283, which were reflected in paragraph 9 of the said plaint. However, the Respondent No.1 by suppressing the said facts sought the recovery of loss for the same invoices in paragraph 8 of the Suit.

11. It was further submitted that the Respondent No.1 has suppressed material facts from the learned Trial Court and hence, the decree under execution was null and void. It was submitted by the learned counsel for the Appellant that the learned Executing Court erred in not appreciating these facts and dismissing the application under Section 47 read with Section 151 of the CPC.

12. Section 47 of the CPC provides that all questions arising between the parties to a suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of a decree, shall be determined by the Court executing the decree, and not by a separate suit.

13. Admittedly, the Appellant was party to the Suit as well as OS No.141/1990. Despite that, the Appellant did not file any written statement to point out the facts stated for the first time before the learned Executing Court.

14. It is trite law that the learned Executing Court cannot go behind the decree and a new plea cannot be allowed to be raised for the first time in the execution proceedings. The judgment and decree being executed have attained finality as neither any application for rejection of plaint was filed by the Appellant at the relevant point of time for lack of cause of action nor any appeal was preferred by the Appellant against the judgement and decree in the Suit.

15. The Appellant s contention that there was no cause of action against the Appellant in the plaint cannot be raised for the first time before the learned Executing Court as the Appellant was party to the suit and had sufficient opportunity to raise the same before the learned Trial Court. In any event, being the selling agent of Respondent No.1, decree holder, the Appellant was responsible for the mis-delivery and the consequential loss suffered by the Respondent No.1.

16. As regards to the extent of the liability of the Appellant in execution of the decree, it is open for the Appellant to make submissions before the learned Executing Court, which will be considered by the learned Executing Court in accordance with the law.

17. In view of the above, the application under Section 47 read with Section 151 of the CPC, for dismissal of the execution petition, was rightly dismissed by the learned Executing Court. No interference is required by this Court as the impugned order after considering the submissions of the appellant has arrived at the conclusion that the application filed by the Appellant was simply to delay the execution of the decree.

18. Hence, the present appeal is dismissed.

19. Pending application(s) also stand disposed of.

TEJAS KARIA, J APRIL 7, 2025/'A' Click here to check corrigendum, if any