

\$~17 to 19 (2022 Cause List)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 66/2022**
NARESH KUMAR GUPTA Petitioner

versus

SATYA PAL & ORS. Respondents

+ **CM(M) 67/2022**
NARESH KUMAR GUPTA Petitioner

versus

RAJ KUMAR & ORS. Respondents

+ **CM(M) 68/2022**
NARESH KUMAR GUPTA Petitioner

versus

SUNIL KUMAR PUGLA & ORS. Respondents

Present: Mr. Ashutosh Dubey, Mr. Aman Vachher, Mr. Abhishek Chauhan, Advocates for petitioner in item Nos. 17 to 19.
Ms. Stuti Gupta, Advocate for R-1 and 2 in item Nos. 17 to 19.
Mr. Dhruva Vig, and Ms. Adya Singh, Advocates for the Liquidator (Respondent Company) in item Nos. 18 & 19.
[Mob. 9871387425]

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **19.01.2022**

The proceedings in the matter have been conducted through video conferencing.

CM APPL. 3430/2022 (exemption) in CM(M) 66/2022

CM APPL. 3457/2022 (exemption) in CM(M) 67/2022

CM APPL. 3459/2022 (exemption) in CM(M) 68/2022

Exemptions allowed, subject to all just exceptions.

The applications are disposed of.

CM(M) 66/2022 & CM APPL. 3429/2022 (stay)

CM(M) 67/2022 & CM APPL. 3456/2022 (stay)

CM(M) 68/2022 & CM APPL. 3458/2022 (stay)

1. These three petitions under Article 227 of the Constitution are directed against orders dated 15.12.2021 passed by the Additional District Judge, Patiala House Courts, New Delhi, in three execution petitions filed by the respondent-decree holders, being Execution Petition Nos. 394/2018, 472/2018 and 415/2018.

2. The execution proceedings arise out of three suits, which concern three portions of the same property [*E-14/4C, Vasant Vihar, New Delhi-110057*] [“the property”]. The suits were filed by the respondent Nos. 1 and 2 in CM(M) 66/2022, the respondent Nos. 1 to 3 in CM(M) 67/2022 and respondent Nos. 1 and 2 in CM(M) 68/2022, hereinafter collectively referred to as “the plaintiffs”. A company by the name of Shree Shyam Pulp and Board Mills Ltd. [“the Company”], the respondent No. 3 herein, was arrayed as the defendant No. 1 in each of the suits, and the petitioner herein, a Director of the Company, was arrayed as the defendant No. 2 in each of the suits.

3. The suits were settled by virtue of three separate settlement agreements dated 17.01.2018. The plaintiffs were jointly described as “the first party” in each of the settlement agreements, and the defendants, i.e. the petitioner and the Company, were jointly described as “the second party”. It was recorded in the settlement agreement that the suits were for possession and recovery of damages/*mesne* profits in respect of the respective portions of the property. The settlement deed in CM(M) 66/2022 records the following terms:

- “1. That the Second Party shall hand over vacant peaceful possession of the suit premises bearing No. E-14/4C, Second Floor, Vasant Vihar, New Delhi to the First Party on or before 30.06.2018. The Second Party will not seek any extension and shall vacate the premises latest by 30.06.2018.*
- 2. The Second Party shall also clear the entire arrears of rent upto the date of handing over the vacant and peaceful possession of the suit premises to the First Party. In case any TDS is deducted on the said payment, the Second Party will simultaneously handover the TDS certificate.*
- 3. The Second Party will also settle the amount against TDS certificates pending for the financial year 2014-15 and 2015-16.*
- 4. That the Second Party will clear electricity, water and other dues till the date of vacation of the property.*
- 5. That in view of the settlement arrived between the parties, the First Party will not press the claim of damages as prayed in the said suit and shall withdraw the suit upon handing over possession, payment of arrears of rent and other dues by the Second Party.*
- 6. That the First Party will also not execute warrants of possession and warrants for recovery of money against the First Party till 30.06.2018.*
- 7. That the First Party has informed the Second Party that they have filed proceedings U/s 138 of Negotiable Instruments Act in Moradabad Court, against the Second Party. The First Party shall provide the details of the case to the Second Party and take adjournment till 30.06.2018. In case the terms of this settlement are fulfilled by the Second Party, the said cases will be withdrawn by the First Party. In case of any default by the Second Party the first Party will continue with the said cases.”*

The aforesaid clauses were incorporated in all three settlement deeds.

4. The settlement deeds were signed by the plaintiffs, and by the petitioner herein, both in his individual capacity and as authorised signatory/ director of the Company. Pursuant to the aforesaid settlement, applications were made in each of the suits under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 [“CPC”]. The applications were supported by affidavits of one of the plaintiffs in each of the suits, and by the petitioner herein. Their statements were also recorded before the Court. The Trial Court thereafter passed decrees in terms of the settlements.

5. The plaintiffs have put the decrees into execution. By the impugned orders dated 15.12.2021, the petitioner’s contention that he is not liable to satisfy the decrees in his individual capacity has been rejected. He has been directed to file his list of assets, and the execution proceedings are next listed before the Executing Court on 21.01.2022.

6. The Company, in the meanwhile, is undergoing insolvency proceedings under the Insolvency and Bankruptcy Code, 2016, and a Resolution Professional has been appointed in respect of the Company.

7. It is submitted by Mr. Ashutosh Dubey, learned counsel for the petitioner, that the suits filed before the Trial Court arose out of three separate lease deeds dated 01.11.2012, to which the petitioner was not a party in his individual capacity. The plaintiffs were the lessors and the Company was the sole lessee, although clause 23 of each of the lease deeds records that the Company would use the premises for the residential use of the petitioner herein, being the Managing Director of the Company, and his family only. Mr. Dubey therefore submits that the petitioner ought not to be personally saddled with the liability under the

decree.

8. I am unable to accept the aforesaid contention of Mr. Dubey. It is the admitted position that the petitioner was arrayed as the defendant No. 2 in each of the three suits. The settlement deeds, which have been placed on record, were entered into between the respondent-plaintiffs, the Company and also the petitioner in his individual capacity. The petitioner has, in fact, appended his signature to each of the settlement deeds twice, once in his personal capacity and once as the authorised signatory/director of the Company.

9. The parties thereafter filed applications under Order XXIII Rule 3, CPC, and also made statements before the Trial Court on 31.01.2018. The following statement of the petitioner was recorded before the Trial Court in each of the three cases:

“I am defendant no. 2 in the present suit and the authorized representative of the defendant no. 1. I have settled the present suit, in terms of Settlement Deed dated 17.01.2018, which is signed by both the plaintiffs and defendants. The Settlement Deed is exhibited as EX.P1, which bears my signature at point B. I shall remain bound by the terms of the settlement and decree may be passed in terms of the settlement.”

(Emphasis supplied.)

A copy of the statement recorded in CS 58280/2016 has been placed on record in CM(M) 68/2022. It is undisputed that identical statements were recorded in each of the three suits.

10. While allowing the applications under Order XXIII Rule 3, CPC, on 31.01.2018, the Trial Court recorded that the applications were supported *inter alia* by an affidavit of the defendant No. 2 (i.e. the

petitioner herein) in each case. The decrees were accordingly passed.

11. The argument of the petitioner that he is not liable in his personal capacity for satisfaction of the decrees flies in the face of the aforesaid facts. The petitioner was a party to the suits, he entered into a settlement in each case, affirmed affidavits in support of the settlements, made categorical statements to the Court, and suffered the decrees. The Executing Court has rightly negative his contention to the contrary.

12. The submission that the lease deeds were executed only between the respondent-plaintiffs and the Company, to which the petitioner was not personally a party, is a matter which could have been raised in answer to the suits. He cannot now resist execution on the basis of such a defence. After the decree has been passed, that too by virtue of a settlement, the Executing Court is not entitled to go behind the decrees.

13. Mr. Dubey further draws my attention to a subsequent settlement deed dated 28.01.2020, which was entered into between all the plaintiffs in these three suits and the petitioner. The terms of the aforesaid settlements in the suits were noted in the said settlement agreement. It was thereafter noted that the plaintiffs had filed contempt petitions before this Court against the petitioner and the Company, which were sought to be compromised by the petitioner on the terms mentioned therein. Mr. Dubey refers to clause 4 of the said settlement, which requires the petitioner to clear the electricity and water dues of the property until 31.03.2020. According to him, this limits the personal liability of the petitioner, even after the decrees in execution were passed. However, it is pointed out by Ms. Stuti Gupta, learned counsel appearing for the plaintiffs, that the said settlement was only in respect of the contempt

proceedings, and it was specifically recorded that the respondent-plaintiffs would be at liberty to pursue the execution petitions filed by them for execution of the judgments and decrees passed in their favour. She refers me to clause 5 of the agreement which reads as follows:

“5. That upon complying the above terms, the First Party agrees that they will not press the contempt petitions before the Hon’ble Delhi High Court. The First Party however shall be at liberty to pursue the execution petitions filed by them for execution of judgment & decrees passed in favour of the First Party.”

The terms of the subsequent agreement dated 28.01.2020 do not, in any manner, absolve the petitioner from the terms of the decrees; the terms of clause 5 of the agreement pointed out by Ms. Gupta puts this matter beyond doubt. Mr. Dubey’s contention in this regard is, therefore, rejected.

14. Mr. Dubey further urges that the execution proceedings as against the Company, which is undergoing insolvency proceedings, cannot proceed without the leave of the National Company Law Tribunal. However, the Company is not the petitioner in these proceedings and has not sought to challenge any orders passed in the execution proceedings. The impugned orders dated 15.12.2021 are directed only against the petitioner herein. In any event, it is not for the petitioner to take up the case of the Company, which is now under the management of a Resolution Professional.

15. Mr. Dubey lastly states that the plaintiffs have already raised their claims against the Company before the Resolution Professional, which are pending resolution. I am of the view that the filing of the plaintiffs’

claims before the Resolution Professional does not absolve the petitioner from his liability under the decrees.

16. In view of the above, I find no jurisdictional error or perversity in the impugned orders of the Executing Court dated 15.12.2021. The plea now being taken by the petitioner appears to be an attempt to renege from the terms of the settlement deed entered into by him with the plaintiffs, which is the subject matter of the execution proceedings.

17. For the aforesaid reasons, the petitions are dismissed with costs of ₹20,000/- in each petition.

PRATEEK JALAN, J

JANUARY 19, 2022

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