

**IN THE HIGH COURT AT CALCUTTA**  
**Ordinary Original Civil Jurisdiction**  
**ORIGINAL SIDE**

BEFORE:

**The Hon'ble Justice Bibhas Ranjan De**

GA 2 of 2022

In  
EC No. 5 of 2017

with  
EC No.55 of 2017

M/S. RANA CHAIRS

VS

DIRECTOR GENERAL (TOWN PLANNING) K.M.C. & ANR.

For the Petitioner :Mr. Chanchal Kumar Dutta, Adv.  
Mr. Krishna Mullick, Adv.

For the judgement-debtors :Mr. Ashoke Kr. Banerjee, Sr.Adv.  
Mr. Arijit Dey, Adv.

Hearing concluded on : 08.09.2022

Judgment on : 29.09.2022

**Bibhas Ranjan De, J.:**

**1.** This Court is dealing with the instant application filed by the Plaintiff/ Decree Holder i.e M/s Rana Chairs with a prayer for adding Kolkata Municipal Corporation and the Commissioner of Kolkata Municipal Corporation in the array of defendants/judgement-debtors.

**2.** According to petition, plaintiff/ Decree holder obtained and ordered for supplying 231 chairs, @ Rs. 4,401/ per unit for work Order No. CMA & TP/22/09-10 and also obtained another work Order No. CMA & TP/23/09-10 for 519 chairs @ Rs. 440/ per unit. Plaintiff/Decree holder supplied /delivered all the chairs in terms of the aforesaid order satisfactorily, on proper delivery receipts.

**3.** In spite of claim, no payment was made by the defendants/ judgement-debtors and plaintiff/decree holder filed a suit against the defendants/judgement-debtors before the Hon'ble Single Bench of Delhi High Court in ordinary Original Civil Jurisdiction being no. CS (OS) No. 1090/2013 wherein the Hon'ble Single Bench passed an ex-parte decree for the amount of Rs.

50,83,155/- (Rupees fifty lakh eighty three thousand one hundred fifty five only) along with Pendente Lite and future interest @ 18% per annum. The Hon'ble Single Bench further ordered the defendants/ judgment-debtors to pay the cost of Rs. 52,876.50/- (fifty two thousand eight hundred seventy six and fifty paise only).

- 4.** The decree being no. EC No. 5 of 2017 was transferred to this Court for execution and execution application was filed being no. EC No. 55 of 2017 where defendant/judgement-debtors have entered their appearance after receiving notice.
- 5.** In the meantime, defendants/judgment-debtors moved the Hon'ble Court for setting aside the ex parte decree under Order 9 Rule 13 of the Civil Procedure Code which was dismissed by the Hon'ble Single Judge by the order dated 05.10.2018. On 28.11.2018 the bank account of KMC was attached by the Hon'ble Single Judge of this Court in execution.
- 6.** On 14.03.2019 an appeal was filed by KMC being No. RFA (OS) 8/2019 before the Hon'ble Division Bench of the High Court at Delhi wherein both the parties to the appeal agreed to such terms and conditions but non-performance of the agreed order by

KMC the said appeal being no. RFA (OS)8/2009 and one application for condonation of delay in CM No. 3306/2009 were dismissed. None of the parties to this application has ever pointed out that any SLP has been filed before the Hon'ble Apex Court against the order of dismissal of appeal.

**7.** Ld. Advocate, Mr. Chanchal Kumar Dutta, appearing on behalf of the decree holder has submitted that Kolkata Municipal Corporation is a necessary party to this execution as Kolkata Municipal Corporation made serious attempt to be a party in the original suit by filing an appeal before the Hon'ble Division Bench of the High Court at Delhi. In support of his contention, Mr. Dutta has referred to the provision of Section 60 of the Civil Procedure Code.

**8.** Per contra, Mr. Ashoke Kr. Banerjee, Ld. Senior Advocate, appearing on behalf of the defendants/judgement-debtors opposes the prayer of the decree holder submitting inter alia that Kolkata Municipal Corporation was not allowed to enter into the suit as a party and from that point of view Kolkata Municipal Corporation can not be made a party to this execution proceeding

with the assistance of provision of Section 60 of the Civil Procedure Code.

**9.** Therefore, only question arose before this Court as to whether the persons who were not on record at the time when the decree was passed may also be liable under the decree and execution can be sought as against them. The process by which this has to be achieved is under order 21 rules 16 or 22 of the Code of Civil Procedure. It is true, that the objectors i.e. Kolkata Municipal Corporation and the Commissioner of Kolkata Municipal Corporation were not parties to the decree. It is also true, that they were neither transferees from the judgment- debtors/ defendants nor are they legal representatives of the judgement- debtors. There is no definite provision in the Court by which such decree would be executed against persons were not parties *eo nomine*.

**10.** In our case, it is admitted fact that Kolkata Municipal Corporation and the Commissioner of Kolkata Municipal Corporation challenged the ex-parte decree by filing an appeal before the Hon'ble Division Bench of High Court, Delhi for setting aside the ex-parte decree. That apart, in the instant execution

case one order of attachment made in respect of bank account of Kolkata Municipal Corporation.

- 11.** In this trying situation, I would like to refer to the provisions of Section 60 and 146 of the Code of Civil Procedure which runs as follows:-

**“ 60. Property liable to attachment and sale in execution of decree.-**

*(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held **in the name of the judgment-debtor or by another person in trust for him or on his behalf:***

*Provided that the following particulars shall not be liable to such attachment or sale, namely:-*

*(a) .....*

**146. Proceedings by or against representatives:-***Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person then the proceeding may be taken or the application may be made by or against any person claiming under him.”*

- 12.** Filing an appeal by the Kolkata Municipal Corporation to set aside the ex-parte decree on the grounds whatsoever shows that

though Kolkata Municipal Corporation was not *eo nomine* party but interested in such right, that means the other persons i.e. Kolkata Municipal Corporation and the Commissioner of Kolkata Municipal Corporation must come under the same title as those represented by names. The reason is that, if we read the provisions of Code of Civil Procedure in a technical or a restricted sense then the difficulty would be that the persons who are really entitled to the benefits of a decree or persons who are really burdened by a decree would escape the benefit or a liability under the decree and, therefore, the decree would be in-fructuous.

**13.** Taking risk of repetition, I find that, here in our case Kolkata Municipal Corporation and the Commissioner of Kolkata Municipal Corporation filed an appeal challenging the ex-parte decree and thereafter bank account of Kolkata Municipal Corporation was attached. Therefore, inclusion of names of Kolkata Municipal Corporation as well as the Commissioner of Kolkata Municipal Corporation will not prejudice to any of the parties to the execution petition.

**14.** In the aforesaid view of the matter, prayer for adding name of the Kolkata Municipal Corporation and the Commissioner of

Kolkata Municipal Corporation as judgment-debtors, stands allowed.

- 15.** Department to incorporate added judgment debtors in the cause title of Execution Case.
- 16.** GA 2 of 2022 stands disposed of.
- 17.** Decree holder is directed to take necessary steps for service of the process upon the added judgment-debtors.
- 18.** Department is directed to amend the tabular statement within two (2) weeks after Puja Vacation and petitioner will re-affirm the affidavit.
- 19.** Department will act on the server copy of the judgement.
- 20.** The matter shall be returned two weeks after re-opening of this Court following the Puja Vacation.

**[BIBHAS RANJAN DE, J.]**