

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C. P. No. D-996 of 2019

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

M/s. Fortech Construction (Pvt.) Ltd.....Petitioner

Versus

4th Additional District & Sessions Judge
Karachi, West at Karachi & others.....Respondents

Imdad Khan, Advocate, for the Petitioner.
Hamza Maqsood, Advocate, for Respondent No. 2.

Date of Hearing : 28.11.2022

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order dated 09.01.2018 made by the learned Additional District Judge-IV, Karachi, West, dismissing Civil Revision Application No.63/2017 filed by the Petitioner against the Order passed by the learned 1st Senior Civil Judge, Karachi, West on 25.11.2017 in Execution Application No.16/2003 emanating from Civil Suit No.41/2003, whereby three different Applications filed by the Petitioner, under Order XXI Rule 41, Order XXI Rule 23-A and Order XXI Rule 38 read with Section 151 CPC respectively, were dismissed.

2. The backdrop to the matter is that the Petitioner had apparently filed the aforementioned Suit against the Respondent No.2, which culminated in a judgment in its favour on 13.05.2003, whereby said Respondent was held liable for payment of Rs.9,88,874.70/-, with a decree being drawn up accordingly and the Execution proceedings then being initiated for enforcement.

3. Through the underlying Applications filed before the Executing Court, the Petitioner had sought that the books and records of the Respondent/JD be called under Order 21 Rule 41 of CPC, that it be required to deposit the decretal amount or furnish security in terms of Order 21, Rule 23-A, and that, in case of failure, warrants be issued for the arrest of its functionaries under order 21 rule 38 CPC.

4. As stated, those Applications came to be dismissed by the Executing Court vide the Order dated 25.11.2017, with the relevant excerpt thereof reading as follows:-

“From the facts of applications and contentions raised by learned counsel for decree holder it is very much clear that he has prayed for in three dimensions, with request to direct responsible officers of judgment debtor company to appear with record and books of the judgment debtor company so as to examine and verify means of satisfying the decree and for issuance of warrants and for directing judgment debtor to deposit decretal amount before considering objections. Instant execution application is pending since, 2003, decree holder couldn't furnish such record showing ownership of any property in the name of judgment debtor company sought to be attached validly for satisfaction of decree. Judgment debtor has furnished accounts of audit attached with counter affidavit and has clarified no property in the name of judgment debtor company as the company has been defunct since, 1996. Under the aforementioned circumstances, it is very

much envisaged that at present judgment debtor company holds no property in his name and no funds denoted. In this respect, decree holder has failed to point out accurate and appropriate record of rights of properties in the name of judgment debtor company. No doubt, this is a money decree but under the doctrine of limited liability, execution is to be dealt with respect to sole assets of judgment debtor company which have not been brought on record during the proceedings of execution application. Under such circumstances, there becomes no fit position to call responsible officers of company to produce record and books and to issue warrants against them for depositing decretal amount. Therefore, above applications merit no consideration and are dismissed accordingly.”

5. For its part, the Revisional Court found no illegality afflicting the Order of the Executing Court, hence upheld the same, while observing *inter alia* that:

12. In view of the above, it cannot be laid down as a general proposition that whenever the decree is against a company, its directors/officers or 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., but a case has to be made out. The decree holder in the present case has not made out any case whatsoever. There are no averments made in the revision petition or even in the applications under consideration before executing Court of fraud or improper conduct or of incorporation of the company to evade obligations imposed by law therefore, the corporate veil can be disregarded. All that the decree holder has pleaded is that the Directors/Officers be sent to civil prison after their arrest is therefore, devoid of force. However, there are no specific pleadings of fraud and as required to be made under Order 6 Rule 4 of the CPC; and the said circumstances, alone as agitated on behalf of decree holder is not sufficient to make out a case for lifting of the corporate veil.

6. As to the scope of instant proceedings, we can do no better than to cite the judgment of a learned Division Bench of this Court in the case reported as Allauddin Malik v. Late Dr. Abdul Jalil through legal heirs & 5 others PLD 2022 Sindh 147, where it was held that:

“3. The revisional jurisdiction only applies to the cases involving illegal assumption, non-exercise or the irregular exercise of jurisdiction which can be invoked in the cases in which no appeal lies and the case was decided by subordinate court and such court appeared to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity. The scope of entertaining the revision application is required by exercise only when the applicant’s case falls within the four corners of provisions of section 115, C.P.C. in which the court has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of revision and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order. The court in its revisional jurisdiction cannot travel beyond the scope of section 115, C.P.C. and cannot go into the matters not relevant for the purposes of testing the jurisdictional error committed by the court below. Whereas Constitutional jurisdiction cannot be exercised to interfere with revisional order unless the impugned order is based on gross misreading or non-reading of evidence and the reasons given are absolutely perverse, not supported by law or evidence or the material available on record.”

7. Proceedings with his submissions, learned counsel for the Petitioner stated that during the course of proceedings on the underlying Applications, it had come to the fore that the Respondent/JD had filed JM No.27/1997 before this Court during pendency of the Suit and obtained the sanction for reduction of its share capital from Rs.75,000,000/- to Rs.1000/- vide an Order dated 13.03.1998.

8. It was argued that such sanction had obtained from this Court while suppressing the pendency of the Suit, and the fora below had failed to appreciate that the corporate veil ought to therefore be lifted so as to extend the proceedings of Execution to the sponsors/directors of the Respondent/JD and order foreclosure of their personal accounts and assets for satisfaction of the decree.

9. On the hand, learned counsel for the Respondent argued that the impugned Orders were unexceptionable and also pointed out that the Petitioner had earlier filed an Application seeking attachment of certain immoveable properties, in pursuance of which orders for attachment of those properties had been made, but thereafter the attachment was recalled vide an Order dated 27.08.2016 as those properties had been found to belong to the Directors of the Respondent/JD, with the Application thus being dismissed. However, that order had never been assailed by the Petitioner.

10. Having considered the matter, we are of the view that the concurrent Orders of the Executing and Revisional Courts are properly reasoned and do not reflect any error or perversity warranting correction through the extraordinary Constitutional jurisdiction of this Court. Indeed, the Petitioner never came forward as an objector in the aforementioned JM or took any step to assail the Order dated 13.03.1998 made therein, nor for that matter did it take any step to assail the dismissal of its earlier Application for attachment on the ground that the properties identified were owned by the sponsors/directors personally and did not belong to the Respondent/JD.

11. That being so, the Petition is found to be misconceived and stands dismissed accordingly.

JUDGE

CHIEF JUSTICE