

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 38 of 2023

[Multan Electric Power Companyv.....M/s. Metropolitan Steel Corporation Limited & another]

Present

Mr. Justice Irfan Saadat Khan.

Mr. Justice Zulfiqar Ahmad Khan.

Date of Hearing : 21.08.2023
Appellants through : Mr. Ali Raza, Advocate.
Respondent through : Mehboob Mehkari, Chairman of respondent No.1 present in person.

ORDER

Zulfiqar Ahmad Khan, J:- Through this High Court Appeal (“HCA”), the appellant has impugned the order dated 16.02.2023 passed by learned Single Judge in Execution No.20/2020 (Suit No.1576/2015) whereby the learned Single Judge allowed the execution application and directed the Nazir of this Court to release decretal amount to the Decree Holder resultantly dismissed CMA No.506/2022 filed under Section 47 CPC for transfer of execution proceedings to Multan.

2. Learned counsel for the appellant premised his case on the argument that public money is involved and if the amount is released to the decree holder/respondent, it would cause a colossal loss to the national exchequer. During the course of arguments, learned counsel repeatedly argued that if the amount is released, that would cause loss to the national exchequer, however, while concluding his submissions, he submitted that the inquiry proceedings was conducted against the decree holder/respondent as he could not supply the nuts and bolts upto the required standard but the learned executing Court failed to consider the objections and allowed the

execution application without appreciating the fact that the Head Office of the appellant was situated in Multan, therefore, the impugned order be set aside and a precept under the provisions of Section 47 CPC be issued directing the learned executing to transfer the execution proceedings to Multan.

3. In contra, respondent/decree holder submitted that the goods were supplied to the appellant/J.D. which were installed at various needed locations, which fact is an admitted but appellant/J.D. is bent upon to prolong the dispute as well as it is adamant to not to release the agreed amount. He stated that all supplies made by the company, whilst some of which were allegedly termed “faulty” but even those supplied worked perfectly fine even after the lapse of nine years, and the appellant/J.D. is delaying payments for one reason or the other; and the impugned order was passed on the basis of documentary evidence produced by him before the executing Court.

4. Heard the arguments and perused the record. At the very onset, we may observe here that the executing Court cannot extend its jurisdiction to go behind the decree and question of its correctness except in a case in which decree is silent which is not the case at hand. The executing Court can look into the judgment in order to find out that property brought for the satisfaction of decree actually belonged to the judgment-debtors but cannot entertain an objection which may change and alter the terms of decree¹. The crux of the arguments before this court with regards inquiry proceedings against the respondent/ decree holder as he allegedly failed to

¹ Per Muhammad Nawaz Abbasi.J in Allah Ditta v. Ahmed Ali Shah (2003 SCMR 1202).

supply nuts and bolts, this aspect has already been considered by the Enquiry Committee. The honourable Supreme Court in case reported in Muhammad Tariq Khan v. Khuwaja Muhammad Javad Asami (2007 SCMR 818), has ruled that a decree is executable in the light of the terms and conditions mentioned in the decree and the executing Court has to confine its deliberation within the purview of the decree and not to go beyond that.

5. Apart from above, the provision of section 47 CPC did not bar remedy, but has only regulated the forum for the enforcement of rights relating to execution, discharge or satisfaction of decree. The executing Court was only empowered to exercise its jurisdiction on the matters concerned with execution, discharge or satisfaction of an existing decree between the same parties², therefore, the objection raised by the learned counsel for the Appellant/J.D. with regard to the Enquiry Proceedings against the respondent/D.H. is not sustainable under the statutory hierarchy of executing court.

6. It is considered expedient to reiterate here that the suit of the respondent/D.H. was decreed vide Judgment dated 06.12.2019, whereupon that the appellant/J.D. failed to prefer any appeal and that the learned executing Court also discussed this aspect in para-4 of the impugned order. It further unfurls from the record as well as impugned order that the appellant/J.D. during pendency of the main suit moved an application under Order VII Rule 11 C.P.C seeking indulgence of the learned trial Court to reject the plaint of the respondent/D.H. on the ground of jurisdiction, which application was

² Sunder Dass v. Ram Prakash (AIR 1977 SC 1201) Hira Lal Patni v. Sri Kadi Nadh (AIR 1962 SC 199) and Vasydev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Others (AIR 1970 SC 1475).

dismissed and the issue of jurisdiction was decided by the learned trial court vide its order dated 16.02.2016.

7. Once the rights of the parties are settled by the Court of first instance and the aggrieved party fails to impugn findings of the Court of first instance (learned trial court) or avail the remedy of an appeal, then in our view filing of such kind of application by the appellant/J.D. before the learned executing court is meritless and upon being considered misconceived are usually summarily dismissed, enabling the decree holder/respondent to reap the fruits of his decree³. Most disturbing feature of the current situation is that while the suit was decided on the findings of the lengthy Enquiry Committee, which clearly laid down the sums payable to the contractor, it was also stated that parties would honour such findings and will avoid further litigation, which aspect was essence of the recommendations, but seemingly such considerations have fallen on the deaf ears of the appellant.

8. Since we did not find any illegality or impropriety in the impugned order of the learned executing court, therefore the instant High Court Appeal was dismissed vide our short order dated 21.08.2023. Above are the reasons of our short order.

JUDGE

JUDGE

Karachi
Dated: _____ 08.2023

Aadil Arab

³ Topanmal Chhotamal v. M/s. Kundomal Gangaram and others (AIR 1960 SC 388) and Fazal Ilahi and another v. (Firm) R.B Sabel & Co. and another (AIR 1935 Lahore 549).