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

\+ W.P.(C) 3370/2016

M/S J.R. INTERNATIONAL & ORS ..... Petitioners

Through: Mr. Fanish K. Jain, Advocates for Petitioner Nos. 1, 2 and 3

versus

PUNJAB & SIND BANK & ANR ..... Respondents

Through: Mr. Rajinder Walli, Advocate for R-1 (Through VC)

% Date of Decision: 10th May, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present petition has been filed under Article 226 of the Constitution for seeking setting aside of the order dated 1st February, 2016, passed by the Debt Recovery Appellate Tribunal, New Delhi ('DRAT') in Appeal No. 56/2015 and quashing of the recovery proceedings in R.C. No. 190/2015, pending before the Recovery Officer, Debt Recovery Tribunal, Delhi.

Brief facts

2. Petitioner No. 1 had availed packing credit limit from Respondent No. 1-Bank, for export of rice to Angola against the letter of credit.

3. The Respondent No.1-Bank on 18th December, 1992 filed a Suit No.

4657/1992 before the original side of this Court for recovery of ₹ 3,64,32,060.04p against the Petitioners and Respondent No. 2.

4. The parties subsequently arrived at a mutual settlement and a joint application [being I.A. No. 7636/1994] dated 14th July, 1994 was filed for recording the settlement and passing of a consent order under Order XXIII Rule 3 Code of Civil Procedure, 1908 ('CPC') in the Civil Suit. The application was allowed and the the learned Single Judge passed a consent judgment and decree dated 3rd August, 1994 including a mortgage decree, in favor of the Respondent No.1-Bank and against the Petitioners and Respondent No. 2.

5. In terms of the consent decree, the Petitioners and Respondent No. 2 became jointly and severally liable for payment of ₹ 3,64,32,060.04p alongwith pendente lite and future interest at 25.75% per annum with quarterly rests on the amounts of the suit. Petitioners and Respondent No. 2 thus, agreed to discharge the liability as per the terms of the compromise arrived at between the parties.

6. However, the Petitioners and Respondent No. 2 failed to deposit the determined agreed debt/decretal amount and therefore, the Respondent No.1- Bank on 31st March, 1995, filed an execution petition bearing Ex. Petition No. 61/1995 before the original side of this Court for execution of the judgment and decree dated 3rd August, 1994.

7. It is a matter of record that in the aforesaid execution proceedings, all the three mortgaged immovable properties were sold; and the amounts realized by the decree holder were adjusted against the decretal debt. Vide

order dated 18th December, 2007, the execution proceedings were adjourned sine die with liberty to the Respondent No.1-Bank i.e., decree holder, to revive the proceedings as and when the decree holder was able to locate the assets of the judgment debtor.

8. The Respondent No.1-Bank filed an application for revival of the execution proceedings, on the averment that it had learnt that one of the judgment debtors was a co-owner of an immovable property and this property was sought to be attached. Simultaneously, the Respondent Bank also filed an application for transfer of the execution proceedings to the Debt Recovery Tribunal ('DRT'). The Executing Court (i.e., the learned Single Judge) vide order dated 17th September, 2012, transferred the execution petition to the DRT.

9. The said execution petition was thereafter listed by DRT before the Recovery Officer ('RO') to continue with the execution proceedings.

10. On 12th September, 2013, the Petitioners filed objections before the RO in the execution proceedings. The main objection of the Petitioners was that since DRT-I stood established vide Notification dated 5th July, 1994, the learned Single Judge on the original side of this Court had no jurisdiction thereafter, to continue to entertain the civil suit and/or pass the consent decree dated 3rd August, 1994. Petitioners contended that the consent decree is a nullity and thus, not executable. In this regard, the Petitioners relied upon Sections 2(c) and 18 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 ('RDB Act').

11. In addition, the Petitioners contended that for the same reasons, the

execution petition filed before the original side of this Court in 1995 was entertained without jurisdiction and therefore, all prior orders pertaining to sale of the three mortgaged properties are a nullity. It was contended that thus, the parties are required to be restored to the original position, which the parties were occupying prior to the institution of the execution petition. Petitioners thus, sought a declaration that the sale of all the assets and properties of the Petitioners in the execution proceedings before the High Court be declared illegal and claimed restitution.

12. The objections to the execution proceedings filed by the Petitioners were dismissed by DRT-I vide order dated 03rd September, 2015. The Petitioners challenged the said order before DRAT, however, the appeal was dismissed holding that since the judgment and decree dated 03rd August, 1994, was passed by the High Court (i.e., the learned Single Judge) with the consent of the parties, the Petitioners herein are precluded from challenging the validity of the consent decree and objecting to the jurisdiction of the said Court. The present petition has been filed, inter alia, impugning the said order of the DRAT.

13. During the pendency of this petition, the RO proceeded with the execution proceedings and issued an attachment order against the properties of the Respondent No.2 on 03rd March, 2016. Petitioners thereafter amended the present petition and further seek quashing of the execution proceedings i.e., R.C. No. 190/2015.

Submission of counsel for parties

14. Learned counsel for the Petitioners states that DRT failed to

appreciate that the consent decree dated 03rd August, 1994 is a nullity as the High Court had no jurisdiction to pass orders in the civil suit on the date of passing of consent decree and therefore, the decree is not executable.

14.1. He states that this objection as regards the nullity of the decree can be set up by the party wherever and whenever the said decree is sought to be enforced or relied upon. He states that the nineteen (19) years delay does not preclude the Petitioners from raising the objections at this stage of the execution.

14.2. He states that a party cannot acquiesce to the jurisdiction of the Civil Court in view of the bar under Section 18 of the RDB Act and therefore, the consent or the admission of the Petitioners before the High Court in the application filed under Order XXIII Rule 3 CPC is inconsequential. He states that the fact that the debt is undisputed is also inconsequential to the issue. He relies upon the judgments of the Supreme Court in ***Kiran Singh & Ors. v. Chaman Paswan & Ors.***[1] and ***Harshad Chiman Lal Modi v. DLF Universal Ltd.***[2]

14.3. He states that further, the transfer of the execution proceedings by the High Court vide order dated 17th September, 2012 was also impermissible and barred under Section 31 of the RDB Act. He states that since the execution proceedings were filed on 31st March, 1995, the same could not have been entertained by the High Court and ought to have been dismissed. He relies upon a judgment of the Supreme Court in ***Raghunath Rai Bareja***

[1] (1954) 1 SCC 710
[2] (2005) 7 SCC 791

and Anr. v. Punjab National Bank and Ors.[3] in support of this submission.

15. In reply, learned counsel for Respondent No. 1 states that the consent decree was passed on 03rd August, 1994 and the challenge was raised for the first time before the DRT in the year 2013 i.e., after an inordinate delay of nineteen (19) years. He states that the Petitioners are abusing the process of law to resile from their liability towards an admitted debt in order to cause wrongful loss of public money. He states that the objection is barred by the inordinate and unexplained delay and laches.

15.1. He states that Respondent No. 1 is only seeking to recover the admitted decretal amount from Petitioners and Respondent No. 2 in the execution proceedings pending before the RO and therefore no prejudice has been caused to the Petitioners by the orders passed by the High Court.

Findings and analysis

16. We have heard the learned counsel for the parties and perused the record.

17. We may note at the outset that the debt of the Petitioners and Respondent No. 2 is admitted and the consent decree dated 03rd August, 1994 was passed by the learned Single Judge in terms of the settlement arrived at between the parties and in pursuance to the free consent of the Petitioners and Respondent No. 2.

18. The jurisdiction of the Courts to interfere in a consent decree passed by a Civil Court has been barred by law and this intent of the legislature is evident from the provisions of Section 96(3) of CPC and Order XXIII Rule

[3] (2007) 2 SCC 230

3-A of CPC. Section 96 of CPC provides for appeals from original decrees. Sub-section 3 of Section 96 of CPC, however, provides that no appeal shall lie from a decree passed by the Court with the consent of the parties. Similarly, Rule 3-A in Order XXIII of CPC bars the filing of any suit to set aside a decree on the ground that the compromise on which the decree is made was not lawful.

19. In the facts of this case, the civil suit which was instituted on 18th December, 1992 and was within the jurisdiction of the High Court. The parties filed a joint application under Order XXIII Rule 3 CPC for recording their mutual settlement and a consent decree was passed by the High Court on 03rd August, 1994, in terms of the said settlement.

20. The Supreme Court in ***Pushpa Devi Bhagat (dead) Thr. LRs v. Rajinder Singh and Ors.***[4] held that the only ground on which a consent decree can be set aside is that there was no compromise between the parties. In the said judgment, the Court considered the provisions governing a consent decree and held as under:

> *"17. The position that emerges from the amended provisions of Order 23 can be summed up thus:*
>
> *(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.*
>
> *(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.*
>
> *(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.*
>
> *(iv)* ***A consent decree operates as an estoppel and is valid and binding***

[4] (2006) 5 SCC 566

unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

Therefore, ***the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise****. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because* ***a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made****. ……"*

(Emphasis Supplied)

21. The Supreme Court in the aforesaid judgment has explained that the consent decree is nothing but a contract between the parties superimposed with the seal of approval of the Court and that such a contract can be set aside only on the limited grounds envisaged in the proviso under Order XXIII Rule 3 CPC and no other ground. The said proviso reads as under:

"Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; …"

22. In the facts of this case, the Petitioners are neither disputing their free consent recorded on 03rd August, 1994 nor challenging the consent decree on the limited grounds provided under the proviso to Order XXIII Rule 3 CPC.

23. The ground that the jurisdiction of the High Court was excluded under Section 18 of the RDB Act as on 03rd August, 1994, due to the establishment of DRT-I is not a ground contemplated under the proviso to Order XXIII Rule 3 CPC. As explained by the Supreme Court in ***Pushpa Devi Bhagat*** (supra) a consent decree operates as an estoppel and is valid and binding

unless it is set aside by the Court, which passed the consent decree.

24. The submission of the Petitioners that the Civil Court was denuded of its inherent jurisdiction over the subject matter of the suit by limitation of Section 18 of the RDB Act and therefore, the consent decree is a nullity overlooks the judgment of Supreme Court in ***Mardia Chemicals Ltd. and Ors. v. Union of India and Ors.***[5], wherein the Supreme Court while considering the provisions of RDB Act and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act ('SARFAESI Act') held that in specific circumstances an action can be entertained and maintained in the Civil Courts, with respect to the transaction between banks and borrowers. Thus, the submission of the Petitioners that High Court, when it passed the consent decree dated 03rd August, 1994, did not have the inherent jurisdiction over the subject matter and consequently the submission that the consent decree is a nullity is incorrect.

25. The Petitioners have relied upon the judgment of the Supreme Court in ***Kiran Singh v. Chaman Paswan*** (supra) to contend that the defect in the jurisdiction of the Court cannot be cured even by consent of parties. However, in the same judgment the Supreme Court held that where a party has itself resorted to a forum of his choice, such a party cannot be heard to complain due to the exercise of jurisdiction of the said Court and is precluded from raising the objection of lack of jurisdiction. The relevant paras of the judgment read as under:

[5] (2004) 4 SCC 311 (Para 51)

*"16. We have now to see whether the appellants have suffered any **prejudice** by reason of the undervaluation. They were the plaintiffs in the action. They valued the suit at Rs 2959. The defendants raised no objection to the jurisdiction of the court at any time. When the plaintiffs lost the suit after an elaborate trial, it is they who appealed to the District Court as they were bound to, on their valuation. Even there, the defendants took no objection to the jurisdiction of the District Court to hear the appeal. When the decision went on the merits against the plaintiffs, they preferred SA No. 1152 of 1946 to the High Court of Patna, and if the Stamp Reporter had not raised the objection to the valuation and to the court-fee paid, the plaintiffs would not have challenged the jurisdiction of the District Court to hear the appeal. It would be an unfortunate state of the law, if the plaintiffs who initiated proceedings in a court of their own choice could subsequently turn round and question its jurisdiction on the ground of an error in valuation which was their own. If the law were that the decree of a court which would have had no jurisdiction over the suit or appeal but for the overvaluation or undervaluation, should be treated as a nullity, then of course, they would not be stopped from setting up want of jurisdiction in the court by the fact of their having themselves invoked it. That, however, is not the position under Section 11 of the Suits Valuation Act. Why then should the plaintiffs be allowed to resile from the position taken up by them to the prejudice of their opponents, who had acquiesced therein?*

***17.** There is considerable authority in the Indian courts that clauses (a) and (b) of Section 11 of the Suits Valuation Act should be read conjunctively, notwithstanding the use of the word "or". If that is the correct interpretation, the plaintiffs would be precluded from raising the objection about jurisdiction in an appellate court. But even if the two provisions are to be construed disjunctively, and the parties held entitled under Section 11(1)(b) to raise the objection for the first time in the appellate court, even then, the requirement as to **prejudice** has to be satisfied, and the party who has resorted to a forum of his own choice on his own valuation cannot himself be heard to complain of any prejudice. **Prejudice can be a ground for relief only when it is due to the action of another party and not when it results from one's own act. Courts cannot recognise that as prejudice which flows from the action of the very party who complains about it**. Even apart from this, we are satisfied that no prejudice was caused to the appellants by their appeal having been heard by the District Court. There was a fair and full hearing of the appeal by that court; it gave its decision on the merits on a consideration of the entire evidence in the case, and no injustice is shown to have resulted in*

its disposal of the matter. The decision of the learned Judges that there were no grounds for interference under Section 11 of the Suits Valuation Act is correct."

(Emphasis supplied)

26. The Petitioners have relied upon the judgments of the Supreme Court[6] to contend that the defence of nullity of the decree/judgment can be set up by the party at any stage of the proceedings. However, in none of these judgements, the Court has expressed its opinion with respect to a consent decree of Civil Court. In the present case, the free consent is not in dispute and the terms of settlement are not in dispute. The consent decree is in personam and has the effect of only binding the parties thereto, it does not affect the rights of a third party. Therefore, the judgments relied upon by the Petitioners are not attracted to the facts of this case.

27. The execution proceedings were transferred by the High Court to DRT vide order dated 17th September, 2012. The said order of transfer has not been challenged by the Petitioners and has attained finality. Similarly, the consent decree dated 03rd August, 1994, has not been challenged by the Petitioners as per the procedure contemplated under Order XXIII Rule 3 CPC. The Supreme Court in ***Rafique Bibi (dead) by LRs. v. Sayed Waliuddin (dead) by LRs. and Ors.***[7] held that the decree of a superior Court especially the High Court must always be obeyed and cannot be disregarded no matter what flaws it may be thought to contain unless it is set aside in duly constituted legal proceedings. The Supreme Court also emphasized that

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[6] ***Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193; Chiranjilal Shrilal Goenka v. Jasjit Singh, (1993) 2 SCC 507; Union of India v. Swaran Singh, (1996) 5 SCC 501;*** and ***Sarup Singh and Anr. v. Union of India and Anr., (2011) 11 SCC 198***

[7] (2004) 1 SCC 287

to invalidate a decree/order, the party must apply to the correct forum for setting it aside in accordance with the law and not seek to overcome the same by attack in collateral proceedings. The relevant paras read as under:

> *"6. What is "void" has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based o want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.*
>
> *7.* ***Two things must be clearly borne in mind. Firstly, "the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be 'a nullity' and 'void' but these terms have no absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results." (Administrative Law, Wade and Forsyth, 8th Edn., 2000, p. 308.) Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. "The order of a superior court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit." (ibid., p. 312)***
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> *8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings."*
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> (Emphasis supplied)

28. Petitioners have relied upon the judgment of the Supreme Court in

Raghunath Rai Bareja (supra) to contend that the order of the High Court dated 17th September, 2012, transferring the execution proceedings to DRT was illegal. In ***Raghunath Rai Bareja*** (Supra) the order of the concerned High Court transferring the proceedings to DRT was challenged by the petitioner therein before the Supreme Court, however, in the present proceedings, the Petitioners have not challenged the order dated 17th September, 2012, before the superior Court and the same has attained finality.

29. In the present proceedings, the Petitioners have not pleaded or proved that any prejudice has been caused to them due to the mutual settlement being recorded by the High Court in the civil suit. The Petitioners do not dispute their free consent to the settlement recorded on 03rd August, 1994. There is also no dispute that the civil suit on the date of institution before the High Court was within its jurisdiction. Thus, the challenge raised belatedly after more than two decades to the consent decree, in the present writ proceedings seeking to invoke the equitable jurisdiction of this Court is not maintainable as this Court cannot come to the aid of the Petitioners who though admit to the free consent given before the High Court for passing the decree dated 03rd August 1994, yet are now seeking to resile from the same to avoid their admitted liability. Since the writ jurisdiction is equitable in nature, its issuance is governed by equitable principles. The grant of relief to the Petitioners as sought for in the present petition, if accepted would lead to injustice.

30. At this stage it would be apposite to refer to the judgment of ***ITC***

Limited vs. Blue Coast Hotels[8] wherein it has been categorically observed that a debtor, who has failed to discharge its admitted liability is not entitled for the discretionary equitable relief under Article 226 of the Constitution, even if there is an allegation of infringement of the debtor's legal rights. In the facts of that case, the High Court had set aside the order of DRAT, in favour of the defaulting debtor, after holding that the proceedings for recovery and sale of the mortgaged property were in violation of the SARFAESI Act. The relevant paras of the aforesaid judgment read as under:

> *"**52**. We have anxiously considered the entire matter and find that the undisputed facts of the case are that a loan was taken by the debtor which was not paid, the debtor did not respond to a notice of demand and made a representation which was not replied to in writing by the creditor. The creditor, however, considered the proposals for repayment of the loan as contained in the representation in the course of negotiations which continued for a considerable amount of time. Several opportunities were in fact availed of by the debtor for the repayment of the loan after the proceedings were initiated by the secured creditor. The debtor failed to discharge its liabilities and eventually undertook that if the debtor fails to discharge the debt, the creditor would be entitled to take/realise the secured assets.*
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> ***53**. As held, we are of the view that non-compliance with sub-section (3-A) of Section 13 cannot be of any avail to the debtor whose conduct has been merely to seek time and not repay the loan as promised on several occasions.*
>
> ***54.** This Court in State of Maharashtra v. Digambar [State of Maharashtra v. Digambar, (1995) 4 SCC 683] observed as follows: (SCC p. 692, para 19)*
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> > *"19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon*

[8] (2018) 15 SCC 99

> *unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct."*
>
> *It relied on the judgment of the Privy Council in Lindsay Petroleum Co. v. Hurd [Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221], where the Privy Council observed: (PC p. 240)*
>
> > *"... Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."*
>
> ***55.** Therefore**, the debtor is not entitled for the discretionary equitable relief under Articles 226 and 136 of the Constitution of India in the present case.***
>
> ***56.** We accordingly, set aside the impugned judgment [Blue Coast Hotels Ltd. v. IFCI Ltd., 2016 SCC OnLine Bom 2663] of the High Court and direct the debtor and its agents to hand over possession of the mortgaged properties to the auction-purchaser within a period of six months from the date of this judgment along with the relevant accounts."*
>
> (Emphasis supplied)

31. It would also be relevant to refer to the judgment of the Supreme Court in ***T.N. Rugmani and Another v. Achutha Menon and Ors***.[9]

> *"**3. Taking up the issue of non-maintainability it may be stated that denial of constitutional remedy, for this reason, cannot be equated with bad faith or lack of bona fide**. The scope of the two are different. In one a person may be honest and his grievance genuine yet the court may not be able to grant him any relief either because the cause of action or any part of it did not arise within the territorial jurisdiction exercised by the High Court or the petition may be defective as the person approaching may not be entitled to file it. That is something akin to lack of jurisdiction. **The other, namely, dismissal for bad faith arises due to improper conduct of the person invoking jurisdiction either before or after presentation of the petition. Even an unassailable cause or illegal and arbitrary order may fail to move the conscience of the court due to inequitable and unjustifiable behaviour or conduct in equitable jurisdiction**. ...".*
>
> (Emphasis supplied)

[9] 1991 Supp (1) SCC 520

32. Accordingly, in the facts of this case, since the liability of the Petitioners is admitted and the Petitioners are unwilling to discharge the said liability and the Petitioners have not made any grounds for exercise of equitable jurisdiction in their favour, the present petition is dismissed. Consequently, the interim order 10th May, 2016, stands vacated.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 10, 2024/hp/aa