(2019) 08 DEL CK 0394

Delhi High Court

Case No: Execution Petition No. 161 Of 2016, Eas No.846, 847 Of 2016, 358 Of 2018

Caper Travel Company Pvt Ltd	APPELLANT
Vs	
Rohit Srivastava	RESPONDENT

Date of Decision: Aug. 30, 2019

Acts Referred:
Code Of Civil Procedure, 1908 â€" Order 23 Rule 3, Order 21 Rule 32

Citation: (2019) 08 DEL CK 0394

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Akhil Sibal, Faheem Shah, Vivek Singh, Akarsh Bhalla, Shriya Misra, Kanwal Chaudhary, Rohan Dewan

Final Decision: Disposed Of

Judgement

Rajiv Sahai Endlaw, J

1. Execution, by arrest and detention of the judgment debtor and by attachment of the properties of the judgment debtor, is sought of a order/decree

dated 11th May, 2016 disposing of CS(OS) 2308/2015 in terms of Settlement Agreement dated 7th April, 2016 arrived at before the Mediation Cell of

this Court and by binding the judgment debtor to the undertaking Annexure Ã¢â‚¬Å“AÃ¢â‚¬ to IA No.5069/2016 under Order XXIII Rule 3 of the Code of

Civil Procedure, 1908 (CPC) filed by the parties.

2. The senior counsel for the decree holder and the counsel for the judgment debtor were heard at length on 21st August, 2019. The senior counsel for

the decree holder argued, (i) that the judgment debtor was an employee of the decree holder, carrying on business as a Travel Agent; (ii) that the

decree holder instituted the suit, of order/decree wherein execution is sought, for recovery of its dues from the judgment debtor and for injuncting the

judgment debtor from using the confidential information and data of the decree holder; (iii) that the parties in the said suit were referred to mediation,

and a Settlement Agreement dated 7th April, 2016 was signed, whereunder the decree holder gave up its monetary claim against the judgment debtor

and on the contrary paid an amount of Rs.15 lakhs to the judgment debtor and the judgment debtor agreed Ã¢â‚¬Å“that he shall not for a period of 6 years

(valid from 01.12.2015 which period the second party acknowledges as being a reasonable period) directly or indirectly, through without limitation, any

relatives, friends, company, firm, entity, person, present or future employer use or share in any manner the list of clients / agents of the first party as

mentioned in Annexure Ã¢â‚¬" A of the plaint filed in suit bearing CS(OS) No.2308/2015 or in any manner use any other confidential data of the first

party including but not limited to trade catalogues, tour itinerary, tour packages, tour programs, and its pricing policy, or approach any of the said clients

/ agents as mentioned in the annexure Ã¢â‚¬" A either for himself or without limitation, any relatives, friends, company, firm, entity, person, present or

future employerÃ¢â‚¬; (iv) that in terms of the aforesaid Settlement Agreement, the judgment debtor also furnished an undertaking in the form of an

affidavit dated 8th April, 2016 (at page 55 of Part-I file) whereunder the judgment debtor confirmed and undertook Ã¢â‚¬Å“that I am neither in the

employment of Indus Cureyatra Pvt. Ltd. nor I have any association with the said company and I undertake not to disclose any information of the

plaintiff company to Indus Cureyatra Pvt. Ltd. or any of its directors / stakeholdersÃ¢â‚¬; (v) that the judgment debtor has violated the said Settlement

Agreement and undertaking; (vi) that Mr. Ajai Singh, another ex-employee of the decree holder, is the Chief Executive Officer of Indus Cureyatra

Pvt. Ltd. and is controlling the said company; (vii) that the judgment debtor has commenced business in the name and style of Safe Hands Travels

Pvt. Ltd.; (viii) that in fact it is the judgment debtor who is behind Indus Cureyatra Pvt. Ltd. as well as Safe Hands Travels Pvt. Ltd. and is

clandestinely doing business on the strength of stolen confidential data of the decree holder; (ix) that the decree holder was having close business with

M/s Omnia, Romania for the last several years and which business was being handled by the judgment, debtor on behalf of the decree holder, during

his employment with the decree holder; (x) that the judgment debtor approached the said M/s Omnia and offered discounted prices and induced M/s

Omnia to withdraw from its arrangement with the decree holder; (xi) that the said M/s Omnia is handled by the judgment debtor in collusion with

Indus Cureyatra Pvt. Ltd.; and, (xii) that the judgment debtor is using the data of the decree holder in violation of the undertaking.

3. The senior counsel for the decree holder, on 21st August, 2019 contended that the judgment debtor, in his reply to the Execution Petition, has not

specifically denied ownership by him of Safe Hands Travels Pvt. Ltd. and of business done by Indus Cureyatra Pvt. Ltd. with M/s Omnia in collusion

with Safe Hands Travels Pvt. Ltd. and thus a case of violation of the undertaking given by the judgment debtor was made out and there was no need

to frame an issue and to record evidence thereon.

4. The counsel for the judgment debtor, on 21st August, 2019 stated that neither M/s Omnia nor Grand Voyage in Spain, mentioned in the Execution

Petition, were mentioned in Annexure-A to IA No.5069/2016.

5. On 21st August, 2019, attention of counsels was drawn to Order XXI Rule 32 of the CPC which provides the mode of execution of a decree for

injunction by detention of the judgment debtor in civil prison, or by the attachment of the property of the judgment debtor or by both only if the

judgment debtor has had an opportunity of obeying the decree and has wilfully failed to obey it. The senior counsel for decree holder was informed that I would be loathe to commit a judgment debtor to detention in civil prison under Order XXI Rule 32 of the CPC, on the basis of implied

admissions, when the judgment debtor was otherwise found to be denying any violation of the decree. It was observed, that mere violation of the

decree for injunction had not been made executable and a decree for injunction was made executable only on proof, also of the fact that (a) the

judgment debtor has had an opportunity of obeying the decree; and, (b) the disobeyance is wilful. Both the said ingredients required an element of

mens rea to be established before the Court, before detention in civil prison or attachment of property could be ordered. Attention was invited to

Novartis A.G. Vs. Wander Pvt. Ltd. (2009) 161 DLT 598, where I rejected an execution petition not containing an averment, of the judgment debtor,

notwithstanding opportunity, having not complied with the decree and the disobedience being wilful. Appeal thereagainst, being EFAO (OS) 37/2009 is

found to have been dismissed on 9th August, 2010. Reference was also made to Kedarnath Khetan Vs. Jainarain Ram Lundia 1954 SCC OnLine Pat

38 (DB), The Corporation of the City of Belgaum Vs. Vijayalaxmi Narayan Wandre 1999 SCC OnLine Kar 190, Shivamurthy Vs. Dannammadevi

Cycle Mart 1986 SCC OnLine Kar 94 and Arjuna Gounder Vs. Govindaraju Reddiar 1990 SCC OnLine Mad 281.

6. It was also suggested on 21st August, 2019 that the following issues be framed in the execution:

Ã¢â‚¬Å“(I) Whether the judgment debtor, notwithstanding an opportunity of obeying the Settlement Agreement and the undertaking, has wilfully disobeyed

the Settlement Agreement and/or the undertaking? OPDH

(II) Relief.Ã¢â‚¬â€‹

7. However on 21st August, 2019, Annexure Ã¢â‚¬Å“AÃ¢â‚¬ referred to in the Settlement Agreement was found to have been not filed by the decree holder;

the senior counsel for the decree holder otherwise also stated that he would need to take instructions; the hearing was adjourned to 23rd August, 2019 and direction issued for requisitioning the file of the suit, of order/decree wherein execution was being sought.

8. Thereafter, on 23rd August, 2019 and 27th August, 2019, the matter could not be taken up and was adjourned to today.

9. Today, the senior counsel for the decree holder and the counsel for the judgment debtor have been further heard. File of CS(OS) No.2308/2015 has

also been received.

10. It cannot be lost sight of, that even Ajai Singh, the face behind Indus Cureyatra Pvt. Ltd. is admitted to be an ex-employee of the decree holder.

Just like the judgment debtor is claimed to be aware of the confidential data of the decree holder, so would Ajai Singh be aware of the same. There is

no decree against the said Ajai Singh and no bar against him, as is claimed against the judgment debtor under the decree and/or under the undertaking.

It is felt that it needs to be established by way of cogent evidence, that it was not Indus Cureyatra Pvt. Ltd. and/or Ajai Singh which contacted M/s

Omnia and it was not Indus Cureyatra Pvt. Ltd. and/or Ajai Singh who collaborated with the judgment debtor and/or Safe Hands Travels Pvt. Ltd.

who are merely serving M/s Omnia at the instance of Indus Cureyatra Pvt. Ltd. If the judgment debtor and/or Safe Hands Travels Pvt. Ltd. served

M/s Omnia at the behest of or in collaboration with Indus Cureyatra Pvt. Ltd. and/or Ajai Singh, the same may not amount to wilful violation of the

decree, inasmuch as a reading of the Settlement Agreement and the undertaking does not seem to impose any such bar. It is thus felt that the decree

holder needs to establish by evidence, the violation within the meaning of Order XXI Rule 32 of the CPC.

11. The senior counsel for the decree holder, with reference to the undertaking of the judgment debtor as reproduced in paragraph 1.10 of the

Execution Petition, contends that execution is sought of the following paragraphs of the undertaking:

Ã¢â‚¬Å“(2) That I undertake to this HonÃ¢â‚¬â„¢ble Court that shall not for a period of 6 years (valid from 01.12.2015) which period the Judgment Debtor acknowledges as being a reasonable period) directly or indirectly, through without limitation, any relatives, friends, company, firm, entity, person,

present or future employer use or share in any manner the list of clients / agents of the Decree Holder as mentioned in Annexure Ã¢â‚¬"A of the present

suit or in any manner use any other confidential data of the Decree Holder including but not limited to trade catalogues, tour itinerary, tour packages,

tour programs and its pricing policy, or approach any of the said clients / agents as mentioned in the annexure Ã¢â‚¬" A either for myself or without

limitation, any relatives, friends, company, firm, entity, person, present or future employer. I also confirm that as at the date of this settlement

agreement, I have irretrievably destroyed any or all the data belonging to the Decree Holder that I had in my possession.

(3) I confirm and undertake that I am neither in the employment of Indus Cureyara Pvt. Ltd. nor I have any association with the said company and I

undertake not to disclose any information of the Decree Holder company to Indus Cureyatra Pvt. Ltd. or any of its directors / stakeholders.Ã¢â‚¬â€‹

12. It is stated that execution is not sought because the judgment debtor is dealing directly with any of the clients set out in Annexure Ã¢â‚¬" A to the

Settlement Agreement. Rather, it is the case of the decree holder that the judgment debtor, through Indus Cureyatra Pvt. Ltd., with whom the

judgment debtor had undertaken not to associate, is using the confidential data of the decree holder. On enquiry, it is stated that neither M/s Omnia nor

Grand Voyage is included in Annexure Ã¢â‚¬" A to the Settlement Agreement.

13. The senior counsel for the decree holder, under instructions, states that the decree holder gives up the claim of breach of undertaking of Clause 2

supra and confines the claim only to breach of undertaking in Clause 3 of the undertaking aforesaid.

14. The following issues are framed in the Execution Petition:

(I) Whether the judgment debtor has disclosed any information of the decree holder to Indus Cureyatra Pvt. Ltd. in violation of the undertaking, inspite

of having had a opportunity of obeying the undertaking? OPDH

(II) Whether the judgment debtor undertook not to associate with Indus Cureyatra Pvt. Ltd. in future also and if so, whether the judgment debtor has

violated the said undertaking, notwithstanding having an opportunity to comply with the same? OPDH

(III) Relief.

15. No other issue arises or is pressed.

16. The parties to file their list of witnesses within thirty days.

17. The decree holder to file affidavits by way of examination-in-chief of all its witnesses within eight weeks.

18. It is made clear that framing of issues will not come in the way of the decree holder relying on admissions, even now claimed to be in the reply of

the judgment debtor.

19. I have also drawn attention of the senior counsel for the decree holder to the Prohibition of Benami Property Transactions Act, 1988 and enquired,

as to how it is open to the decree holder to take a plea of the judgment debtor being the face behind Indus Cureyatra Pvt. Ltd. and whether not the

said plea is barred by the said Act. Even otherwise, it appears from the pleadings that the possibility of the decree holder proving the issues aforesaid

is, as of now, minimal.

20. It is thus clarified that while deciding the aforesaid issue, the aspect of Benami Law shall also be taken into consideration and the decree holder, in

the event of failing in the execution, shall be liable for actual costs of the judgment debtor as well as exemplary costs.

21. Option given of having evidence recorded on commission has been declined.

22. List before the Joint Registrar on 21st October, 2019 for scheduling the date/s of trial.

23. In view of the aforesaid, EA No.847/2016 is disposed of.