
(2012) 03 BOM CK 0290

Bombay High Court (Goa Bench)

Case No: Writ Petition No. 182 of 2012

M/s. Sparrow
Technologies Ltd.

APPELLANT

Vs

Mr. Ravinder P. Kumar

RESPONDENT

Date of Decision: March 6, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 46, Order 21 Rule 46(A), Order 21 Rule 46(C)

Citation: (2012) 4 ALLMR 142 : (2012) 3 BomCR 294

Hon'ble Judges: F.M. Reis, J

Bench: Single Bench

Advocate: A. Palekar, for the Appellant; M.P. Singh, Advocate, for the Respondent

Judgement

F.M. Reis, J.

Heard Shri A. Palekar, learned Counsel appearing for the petitioner and Shri M.P. Singh, learned Counsel appearing for respondent no. 1.

2. At the outset, Shri A. Palekar, learned Counsel appearing for the petitioner seeks leave to delete the names of respondents no. 2 to 4 from the cause title. The respondents no. 2 to 4 are deleted at the risk of the petitioner.

3. Rule. Heard forthwith with the consent of the learned Counsel appearing for the respective parties. The learned Counsel appearing for respondent no. 1 waives service.

4. The above petition challenges the order dated 21/01/2012 passed by the learned Additional District Judge, South Goa at Margao in Execution Application no. 73/2010 whereby an application filed by the respondent no. 1 to execute the decree for a specific sum of money came to be allowed and the application filed by the respondent no. 1 under Order 21 Rule 46 of the CPC was partly allowed directing the attachment and payment of the amount to the respondent no. 1.

5. Shri A. Palekar, the learned Counsel appearing for the petitioners has assailed the impugned order as according to him such order could not have been passed without holding an appropriate inquiry. The learned Counsel has further pointed out that according to the petitioners, they are not parties to the original decree passed in favour of the respondent no. 1 and, as such, they are not liable to pay the decretal amount. The learned Counsel further pointed out that the learned Judge has taken into consideration the documents which were produced by the respondent no. 1 at the time of filing of the written arguments and no opportunity was given to the petitioners to rebut such documents. The learned Counsel has taken me through the impugned order and pointed out that the learned Judge has erroneously come to the conclusion that the petitioners are liable to pay the decretal amount without noting the fact that the petitioners are not in any way directed to pay such amount as per the decree sought to be executed. Learned Counsel has also taken me through the order passed by this Court whilst disposing of the Writ Petition No. 860 of 2010 by judgment dated 21/09/2011 and pointed out that the learned Judge was directed to decide the dispute afresh on all aspects and pass a reasoned order and in the present case the learned Judge has not at all given any categorical finding as to in what manner the petitioners who are not parties in the proceedings are liable to pay the decretal amount. The learned Counsel further pointed out that some documents produced by respondent no. 1 have been relied upon by the learned Judge without considering whether such documents have been duly proved by the respondent no. 1. The learned Counsel, as such, submits that the impugned order deserves to be quashed and set aside.

6. On the other hand, Shri M.P. Singh, the learned Counsel appearing for respondent no. 1 has supported the impugned order. The learned Counsel has pointed out that all the documents which have been produced are proved documents and, as such, the learned Judge was justified to rely upon such documents for the purpose of passing the impugned order. Learned Counsel further pointed out that the learned Judge was entitled to lift the corporate veil as according to him the judgment debtor and the petitioners are a group of companies having common share holders, and, as such, the learned Judge was justified to lift the corporate veil and direct the payment of the decretal amount to the petitioners. The learned Counsel has further pointed out that the proceedings are unnecessarily being dragged for quite sometime depriving the respondent no. 1 from withdrawing the amount which he is entitled as per the decree. The learned Counsel, as such, submits that there is no reason for any interference in the impugned order.

7. I have carefully considered the rival contentions advanced by the learned Counsel appearing for the respective parties. The application filed by the respondent no. 1 is under Order 21 Rule 46 of the CPC for a garnishee order which contemplates attachment of a debt not in possession of the judgment debtor. The learned Counsel appearing for the respondent no. 1 pointed out that the order of attachment directing the petitioners to deposit the rent is a garnishee order in terms of Order 21 Rule 46A of the Civil Procedure Code. On perusal of the provisions of Order 21 Rule 46C of the Civil Procedure Code, the

law contemplates that where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue the Court shall make such order or orders as it deems fit. In such circumstances, taking note of the stand taken by the petitioners in the reply filed to the application under Order 21 Rule 46 of the CPC to the effect that the petitioners are not responsible or liable to pay the amount claimed by the respondent no. 1 as according to them they are not judgment debtors in the execution proceedings, I find that the learned Judge was not justified to pass the impugned order without holding an inquiry as contemplated under Order 21 Rule 46C of the Civil Procedure Code. Apart from that, it is not in dispute that the documents produced by the respondents were at the stage of the written arguments filed by the respondent and though it is sought to be contended by the learned Counsel for the respondent that such documents have been proved, nevertheless, this aspect will also have to be gone into by the learned Judge at the time of holding an inquiry as contemplated under Order 21 Rule 46C of the Civil Procedure Code. The learned Judge, as such, was not justified to dispose of the objections of the petitioners without framing an issue and determining such issue in the manner as provided in the suit in view of Order 21 Rule 46C of the Civil Procedure Code. Without going into the merits of the rival contentions of the learned Counsel with regard to their respective claims about the liability of the petitioners to pay the amounts as per the decree, I find it appropriate that the impugned order passed by the learned Judge is to be quashed and set aside, and the learned Judge be directed to decide the application under Order 21 Rule 46 of the CPC filed by the respondent no. 1 after holding an inquiry in accordance with law. The learned Counsel for the respondent no. 1 submits that fresh orders may be directed to be passed on all the applications filed by the respondent against the petitioners herein. Taking note of the request of the learned Counsel appearing for the respondent no. 1, I find it appropriate that such inquiry is to be disposed of as expeditiously as possible and in any event preferably on or before 16/06/2012.

8. In view of the above, I pass the following order:

ORDER

- (i) The impugned order dated 21/01/2012 is quashed and set aside.
- (ii) The learned Judge is directed to decide all the applications filed by the respondent no. 1 against the petitioners after holding due inquiry and hearing the parties in accordance with law.
- (iii) The learned Judge is directed to dispose of the said proceedings as expeditiously as possible on or before 16/06/2012.
- (iv) The parties are directed to appear before the learned Judge on 12/03/2012 at 2.30 p.m. and abide by his further directions.

(v) The amount deposited by the petitioners shall continue to be in deposit before the learned Executing Court until the disposal of the above applications, in accordance with law.

(vi) Rule is disposed of in the above terms.

(vii) The petition stands disposed of accordingly with no order as to costs.