2024:BHC-OS:6879

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

EXECUTION APPLICATION NO. 1077 OF 2016

K. P. TRADERS)...APPLICANT

V/s.

UNION OF INDIA REPRESENTED BY CHIEF COMMERCIAL MANAGER)...RESPONDENT

Mr.Dhrumil Shah i/by Mr.Rahul Oak, Advocate for the Applicant.

Ms.Mohinee Chougule i/by Mr.Suresh Kumar, Advocate for the Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 29th APRIL 2024

P.C. :

1. Pursuant to earlier orders of this Court, today when the matter is called out, once again time is being sought on behalf of the Union of India for the Ministry of Railways.

2. On 8th February 2024, the following order was passed :

> *"1. Ms.Chougule, learned Counsel holding for Mr.Suresh Kumar, learned Counsel for the Respondent appears and seeks some accommodation in the matter submitting that Mr.Suresh Kumar is on his legs before another Bench of this Court.*
>
> *2. Mr.Shah, learned Counsel appears for the Applicant and submits that the execution application has been pending since the year 2016 and that at the time of filing of the execution application the dues payable pursuant to*

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an award were total of Rs.2,14,65,297/- along with further interest @ 18% on the principal dues of Rs.1,15,03,541/- and by now the dues would have amounted more than Rs.5 Crs. Considering the interest leviable @ 18%.

3. Be that as it may, for Mr.Suresh Kumar to consider the aforesaid and to appear on the next date, list on 28th February, 2024."

3. Again today, time is being sought.

4. Mr.Shah, learned Counsel, appears for the Applicant and submits that by order dated 3rd April 2024, a Division Bench of this Court has dismissed the Notice of Motion seeking to set aside order dated 14th January 2016 rejecting the non-removal of office objections under Rule 986 of the Bombay High Court (Original Side) Rules, 1980, as the Division Bench found no sufficient cause for condoning the delay of 1284 days in filing the Notice of Motion for restoration of the appeal. Learned Counsel would submit that as on 30th April 2024, a sum of Rs.3,95,94,720/- is outstanding. That, the Execution Application has been pending since the year 2016, and that, therefore, this Court attach the property by directing issuance of warrant of attachment under Order XXI Rules 43 and 54 of the Code of Civil Procedure, 1908, (the "CPC") against the Respondent, by attaching the movable and immovable properties set out in the Schedule in Column J of the Execution Application.

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5. It is observed that the Respondent is seeking time without any plausible reason. The execution proceedings have been pending since the year 2016. The appeal under Section 37 of the Arbitration and Conciliation Act, 1996 has already been dismissed and the restoration application has also been rejected. In my view, no useful purpose would be served by simplicitor attaching the property.

6. In the circumstances, this Court directs the Respondent – Railways to deposit Rs.3,95,94,720/- in this Court within a period of four weeks, failing which the learned Prothonotary and Senior Master to issue warrant of attachment attaching the property described in the Schedule in Column J. The property mentioned in the Schedule in Column J is as under :

> *"1. Furniture, fixture, fittings and all other attachable movable articles and immovable property belonging to and in possession of Respondent abovenamed lying and being in the premises at : Western Railway Building, Churchgate, Mumbai – 400020.*
>
> *2. Right, title and interest of the Respondent above named in its possession the business premises situated at : Western Railway Building, Churchgate, Mumbai-400020."*

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7. In the event of issuance of warrant of attachment, the learned Prothonotary and Senior Master to proceed with the warrant of sale in accordance with Rule 64 of Order XXI of the CPC.

(ABHAY AHUJA, J.)

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