

IN THE COURT OF THE DISTRICT JUDGE, KHURDA
AT BHUBANESWAR.

EXP Case No.83 of 2013.

The Indian Performing Right Society Limited.

... **Decree Holder.**

-V e r s u s-

1. Debashis Patanaik, Director, Hotel The Crown, A1/(a) I.R.C. Village, Nayapalli, Bhubaneswar - 751 015, District - Khurda.
2. Hotel The Crown, A1/(a) I.R.C. Village, Nayapalli, Bhubaneswar - 751 015, District - Khurda.
3. Hotel Sukhamaya Pvt. Ltd., A1/(a) I.R.C. Village, Nayapalli, Bhubaneswar - 751 015, District - Khurda.

... **Judgment Debtors.**

Counsel:

For Decree Holder : Mr. Amit Prasad.

For Judgment Debtors: Mr. S.N. Das & Associates.

Date of argument : 13.11.2014.

Date of order : 03.12.2014.

No.28, Dated 03.12.2014.

Learned counsel appearing for the decree-holder filed a memo not to press the petition under section 151 of the C.P.C. So, the same is rejected being not pressed.

Put up later for orders on the execution petition.

Dictated.

District Judge, Khurda at BBSR.

03.12.2014.

Later / Dated 03.12.2014.

O R D E R

The record is put up today for orders on the execution petition. The decree-holder has filed the execution case to execute the judgment and decree passed by the Hon'ble High Court of Delhi against the judgment-debtors. It is further averred in the petition that the Hon'ble High Court of Delhi have been pleased to pass ex parte decree dated 15.01.2007 granting permanent injunction and other benefits against the judgment-debtors. Since the properties of the defendants/judgment-debtors are situated at Bhubaneswar, the Hon'ble High Court of Delhi have been pleased to transfer the decree to this Court for execution as per the provisions of law.

2. It was submitted by learned counsel appearing for the decree-holder that there is already attachment of the Bank account of the judgment-debtors to the tune of Rs.8,12,085.28p., but the execution in respect of the other part of the decree i.e. permanent injunction is still not executed. He prayed to issue warrant of attachment of all and any equipment used for playing of music by live or any other means, or by way of mechanical devices at the hotel operated by the defendants/judgment-debtors, issue warrant of attachment for attachment of judgment-debtors' Bank account, their detention in civil prison for the maximum period permissible under the law, directing the judgment-debtors to pay Rs.4,91,788.57 paise plus interest @ 10% compounded annually and to attach any other properties of the judgment-debtors and sell the

same for satisfaction of the decree.

3. The judgment-debtors filed objection, stating that the petition is not maintainable in the eye of law and there is no cause of action to file the execution case. The execution case is barred by limitation. It is further pleaded that the judgment-debtors had no knowledge about the judgment and decree passed by the Hon'ble High Court of Delhi as the same have been passed ex parte. The judgment-debtors have also denied about service of summons on them to appear before the Hon'ble High Court of Delhi. The allegations made in the execution petition are totally denied by the judgment-debtors. According to the judgment-debtors, this case has been filed only to harass them. Learned counsel appearing for the judgment-debtors submitted that the execution case has already reached its finality as per the order dated 04.04.2014 passed by this Court and in that order the Bank account of the judgment-debtors has already been attached for which there is no necessity for further order in this case.

4. I have heard the parties and perused the petition, objection, judgment and decree, letter of transfer of the Hon'ble High Court of Delhi, and other materials on record. This is a case filed under Intellectual Properties Right law by the decree-holder before the Hon'ble High Court of Delhi bearing No.CS(OS) 1160 of 2005 to pass permanent injunction with consequential reliefs. The defendants/judgment-debtors did not appear and that suit was decreed ex parte by the Hon'ble High Court of Delhi and the

relevant portion of the decree is as follows :

“This suit coming on this day for hearing before this Court in the presence of counsel for the plaintiff while none appeared on behalf of defendants, as aforesaid, it is ordered that the decree for permanent prohibitory injunction be and the same is hereby passed in favour of the plaintiff and against the defendants restraining the defendants, its agents, employees and all other acting on its behalf from playing music by live or any other means, or by way of mechanical devices at the hotel operated by the defendants and/or channelling musical and/or literary works of the plaintiff or those of its sister copyright societies, by way of mechanical devices such as Radio, Cable TV and/or RA system within the defendants’ premises without obtaining a license from the plaintiff society and without paying the requisite royalties, thereby amounting to infringement of the plaintiff society’s copyrights in the same.

It is further ordered that the defendants shall pay a sum of Rs.1,41,788.57 towards the actual and compensatory damages suffered by the plaintiff.

It is further ordered that the defendants shall pay to the plaintiff punitive damages amounting to Rs.3,00,000/-.

It is further ordered that plaintiff shall be entitled to interest @ 10% per annum on these amounts from the date of decree till payment.

It is lastly ordered that the plaintiff would be entitled to costs of proceedings which are quantified at Rs.50,000/-.”

5. It is further revealed about transfer of the decree to this Court for execution as the properties of the judgment-debtors are situated within the jurisdiction of this Court. In the execution petition, the decree-holder has prayed the different modes of execution to satisfy the decree. It has been prayed therein to issue warrant of attachment to attach the Bank account of the judgment-debtors and other equipments used for playing music by live or any

other means, or by way of mechanical devices at the hotel operated by the defendants/judgment-debtors. It has also been prayed to detain the judgment-debtors in civil prison for the maximum period permissible under the law.

6. In the case of *Kanwar Singh Saini Vs. High Court of Delhi* reported in **(2012) 4 Supreme Court Cases 307**, Their Lordships have been pleased to observe at para-25 that :

“It is a settled legal proposition that the executing court does not have the power to go behind the decree. Thus, in absence of any challenge to the decree, no objection can be raised in execution.”

7. With due respect to the said decision, I find that the Executing Court cannot go behind the decree. Moreover, in the case of *Samee Khan Vs. Bindu Khan* reported in **AIR 1998 SC 2765**, Their Lordships have been pleased to observe at para-11 that :

“At the first blush the above interpretation appeared attractive. But on a closer scrutiny, we feel that such interpretation is not sound and it may lead to tenuous results. No doubt the wording as framed in Order 21, Rule 32(1) would indicate that in enforcement of the decree for injunction a judgment-debtor can either be put in civil prison or his property can be attached or both the said courses can be resorted to. But, sub-rule (5) of Rule 32 shows that the Court need not resort to either of the above two courses and instead the Court can direct the judgment-debtor to perform the act required in the decree or the Court can get the said act done through some other person appointed by the Court at the cost of the judgment-debtor. Thus, in execution of a decree the Court can resort to a threefold operation against disobedience of the judgment-debtor in order to compel him to perform the act. But

once the decree is enforced the judgment-debtor is free from the tentacles of Rule 32. A reading of that Rule shows that the whole operation is for enforcement of the decree. If the injunction or direction was subsequently set aside or if it is satisfied the utility of Rule 32 gets dissolved.”

8. With due respect to the above decision, I find that in the instant case, the decree-holder has prayed for all possible steps for satisfaction of the decree. On going through the order dated 04.04.2014 passed by this Court, it is found that at the first instance order was passed to attach the Bank account of the judgment-debtors as no payment has been made by the judgment-debtors. Their Bank account has already been attached as per the materials available on record. In that order, it has been observed that if attachment is not sufficient towards realization of the decretal dues, steps would be taken for attachment of the other properties. Now, learned counsel for the decree-holder prays for attachment of the properties for satisfaction of the decree towards permanent injunction. There is nothing found from the objection of the judgment-debtors that they are not playing music by live equipments, as alleged by the decree-holder in spite of permanent injunction by the Hon'ble High Court of Delhi. So, this part of the decree has also to be satisfied by way of attachment of the properties of the judgment-debtors. If the attachment of the properties will not be satisfied by the decree of permanent injunction, then alternative way of civil imprisonment can be resorted to as per the decision mentioned supra. So, music

instruments like live or channelizing system of music and other equipments for playing music by judgment-debtors in their hotel as per the decree are to be attached. The Execution Case is disposed of accordingly.

9. Since there is no report forthcoming from the side of the decree-holder as to which properties like music instruments or channelizing music system are to be attached for satisfaction of the decree for permanent injunction, the decree-holder is directed to submit on the next date as to the list of such properties of the judgment-debtors liable to be attached for satisfaction of the decree of permanent injunction.

Put up on **16.01.2015** when decree-holder to take steps.

District Judge, Khurda at BBSR.

03.12.2014.

Dictated & Corrected by me.

District Judge, Khurda at BBSR.

03.12.2014.

