

Order Below Exh. 1(Passed on 3rd day of November, 2018)

1. Perused application. Perused record. Heard Ld. Counsel of the applicant at length. The applicant filed this application u/sec. 39 of CPC for transfer of decree to the court at Nagpur for execution against non-applicant/ original defendant no.1. Learned counsel of decree holder submitted that applicant filed Special Civil Suit No. 138/ 2011 (New RCS No. 68/2012) for specific performance of contract and permanent injunction alongwith alternate prayer for refund of earnest amount. By judgment and decree dtd. 23/04/2018 suit was partly decreed against defendant no.1. The claim of specific performance of contract was refused and thereby defendant no.1 was directed to return the amount Rs.1,00,000/- with interest @ 6% p.a. from date of agreement i.e. from 28/11/2010 till its realization. Ld counsel of applicant further argued that non-applicant resides and carries on business at Nagpur which falls within the jurisdiction of District and Sessions Judge, Nagpur.

2. Perused decree annexed with the application. It reveals that the property in respect of which specific performance of contract was sought by plaintiff/applicant is situated at Hinganghat within the territorial jurisdiction of this court. Generally decree will be executed by the court which has passed the judgment. In exceptional circumstances the judgment will be implemented by the court which is having competency in that regards. From a bare perusal of sec.39 of CPC it is clear that if the J.D. resides within the jurisdiction of another court or carries on business within the local limits of jurisdiction of such other court or if the J.D. has no property within the local limits of jurisdiction of the court which has passed the decree, sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other court. The court which passed the decree may send it for execution to the other court.

3. The decree can be executed by attachment and sale of property belonging to J.D. In this matter applicant has not filed execution proceeding in this court to realize decretal amount by sale of property of defendant, which was subject matter of the suit for specific performance. No document on record to show that J.D. has disposed of suit property situated at Hinganghat, i.e. within the jurisdiction of this court. Further there is no document of record to show that J.D. has property within the limits of the jurisdiction of Nagpur court. When there is no documents on record to show that J.D. has property at Nagpur merely J.D. and D.H. resides at Nagpur decree cannot be transferred for its execution. Decree can be satisfied from the sale of property of judgment i.e. suit property situated at Hinganghat.

4. In the present matter the applicant has made a categorical statement that J.D. has residing within the jurisdiction of Nagpur court and also carrying the business of hardware and selling building materials but the applicant has not placed on record any document to show that non-applicant has running business of hardware and building materials at Nagpur, in support of this contention.

5. In support of his contentions Ld. Counsel of the applicant relied on ratio laid down in ..

- i. Nehar Ganguli & oth. Vs. Rai Anath Nath Basu & oth. reported in AIR 1956 PATNA 269.
- ii. P. A. Pvt. Ltd. Vs. Subbaramaiah reported in 2011 (3) Mh.L.J.
- iii. Mohanlal Goenka Vs. Benoy Kishna reported in AIR 1953 SC 65.
- iv. Swati Land Developers (p) Ltd. Vs. Vrajlal Tapubhai Lodhia reported (2004) 13 AIC 83 (Guj)

I have gone through the above cited case laws. With due respect it is submitted that due to difference of facts the ratio laid down in above cited cases are not applicable to the case in hand.

6. As discussed earlier normal rule is that the court which passed the judgment alone is entitled to execute the decree. The decree cannot be transferred to other court for execution as a matter of course or for merely shifting of the bounden duty of the court. The court which transfers the decree shall transfer the decree in exceptional circumstances, for facilitating the decree holder to get the fruits of decree. Admittedly the original suit was for specific performance of contract. Thus the non-applicant was having property within the jurisdiction of this court. The applicant has not filed on record copy of judgment of which decree is sought to be transferred. Further applicant himself has not explained anything in this application as to why he has not taken steps to recover decretal amount through this court by sale of property of non-applicant which is situated within territorial jurisdiction of this court. From the above discussion no grounds appear to transfer the decree to the court at Nagpur for execution against non-applicant/ original defendant no.1, application is liable to be rejected. Hence the following order.

ORDER

1. Application is rejected.
2. No order as to costs.

Hinganghat
Date. 03/11/2018

(R.V.Dafrey)
2nd Jt. Civil Judge Jr. Dn.
Hinganghat.