

**Transport Corporation of India Ltd., Chandigarh v. Haryana State Industrial Development Corporation Ltd., Chandigarh (V. K. Jhanji, J.)**

not occasioned by any extraordinary or exceptional reason) in investigation and original trial for offences other than capital ones, plainly violates the constitutional guarantee of a speedy public trial under Article 21 of the Constitution.

(6) The inordinate delay in completion of trial in the instant case has occurred mainly due to the negligence on the part of the trial Court which erred in following warrant procedure instead of following the procedure meant for summary trial, without passing any specific order that the nature of the case was such that a sentence of imprisonment for a term exceeding one year ought to have been passed, or, that for any other reason it was undesirable to try the case summarily as contemplated under proviso 1 and 2 to Section 16(2) of the Act which came into force on 1st April, 1976 much before the impugned complaint was filed in the trial Court. Thus pendency of Criminal proceedings for the last six years certainly amounts not only to miscarriage of justice and abuse of the process of the Court but also amounts to negation of fundamental right of speedy trial to which the petitioner was entitled under Article 21 of the Constitution, particularly when the allegations in the instant case merely amount to technical offence under the Act and the Rules framed thereunder. I find support in my view from the Single Bench authority of this Court in *Dharam Pal v. State of Haryana* (3).

(7) For the foregoing reasons, the complaint Annexure P/1 and the resultant proceedings pending in the trial Court against the petitioner are hereby quashed. This petition is accordingly allowed.

R.N.R.

Before : V. K. Jhanji, J.

TRANSPORT CORPORATION OF INDIA LTD., CHANDIGARH.—  
*Petitioner.*

*versus*

HARYANA STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD., CHANDIGARH,—  
*Respondent.*

Civil Revision No. 74 of 1991.

15th April, 1991.

Code of Civil Procedure (V of 1908)—S. 47, O. 21 rl. 58—Companies Act, 1956—S. 536(2)—HSIDC seeking execution of decree against

(3) 1990 (2) C.C. Cases 287 (HC).

*judgment-debtor TCI—Under decree TCI was to take over entire shareholding of HSIDC in HDL Company.—However, before HSIDC was to transfer shares of HDL in favour of TCI, HDL ordered to be wound up by the High Court—Execution of decree not maintainable in view of bar of S. 536(2) of Companies Act—Any transfer of shares made after commencement of winding up are void—Trial Court cannot execute decree since obligations under the decree are impossible of performance.*

*Held, that a bare reading of sub-section (2) of S. 536 of the Companies Act shows that in the case of winding up of the Company, any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall be void. In view of this, HSIDC is not in a position to perform its obligation, then how it can be expected that by way of execution, TCI can be forced to make certain payments which were to be made on performance of certain obligations by HSIDC.*

(Para 8)

*Held, that the matter is clearly linked with the execution, discharge or satisfaction of the decree as provided under S. 47 of the Civil Procedure Code and it can be determined only by the Court executing the decree. Learned Executing Court was not right in saying that the Executing Court cannot go behind the decree. As noticed earlier, Mark A and Mark B formed part of the agreement which contained obligations on both sides and the performance of which has now become impossible because of the passing of the winding up order against HDL. If HSIDC is not in a position to perform its obligations under the agreement, then how the Executing Court can force TCI to perform its obligations under the execution of the decree.*

(Para 9)

*Petition under Section 115 C.P.C. for revision of the order of the Court of Shri N. K. Bansal, P.C.S. Senior Sub-Judge, Chandigarh dated 13th November, 1990, dismissing the case and leaving the parties to bear their own costs.*

*Claim:—Objection under Section 47, Order 21 rule 58 of CPC regarding the maintainability of this execution of decree.*

*Claim in Revision:—For reversal of orders of Lower Court.*

P. N. Arora, Advocate, for the Petitioner.

Ashutosh Mohunta, Advocate, for the Respondent.

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### JUDGMENT

V. K. Jhanji, J.

(1) This order of mine will dispose of Civil Miscellaneous Nos. 836-CII of 1991 and 837-CII of 1991 as also Civil Revision No. 74 of 1991.

(2) Haryana State Industrial Development Corporation Limited (for short the HSIDC) sought execution of the decree, dated 18th March, 1985 passed against Transport Corporation of India Limited (for short the TCI). TCI filed objections under Section 47 read with Order XXI Rule 58 of Civil Procedure Code regarding maintainability of the execution of the decree. Objections were dismissed by the learned Senior Subordinate Judge, Chandigarh,—*vide* order, dated 13th November, 1990. The present revision has been filed impugning the said order.

(3) Briefly, the facts are that a suit for mandatory injunction was filed by HSIDC against TCI and during the pendency of the suit, a compromise was arrived at between the parties. In terms of the said compromise, the suit was decreed. At the time of decreeing the suit, the following order was passed by Miss Raj Jain, Sub-Judge Ist Class, Chandigarh, on 18th March, 1985:—

“In view of above recorded statement of counsel for the parties as well that of defendant and photostat copies of the agreement mark A and Mark B. Suit of the plaintiff is decreed leaving the parties to bear their own costs. Decree sheet be prepared accordingly. Mark A and Mark B agreements shall form part and parcel of the decree-sheet. File be consigned to record room.”

(4) As per clause 2 of Mark A, TCI was to take over the entire shareholding of HSIDC in Haryana Detergents Limited (for short the HDL) at face value plus interest at the rate of 9 per cent per annum on

the investment in four annual instalments starting from 31st March, 1986 as per Schedule given below:—

Date	Amount payable towards purchase of equity shares at face value	Interest payable on equity investment being purchased	Total amount payable
31.3.86	5,64,000	5,85,799.90	11,49,799.90
31.3.87	5,64,000	6,01,048.50	11,65,048.50
31.3.88	5,64,000	5,92,253.45	11,56,253.45
31.3.89	7,52,000	7,84,975.75	15,36,975.75
	24,44,000	25,64,077.60	50,08,070.60

(5) Admittedly, as per clause 1 of Mark A, TCI had already paid a sum of Rs. 6,00,000 to HSIDC and the said Rs. 6,00,000 were to be adjusted against part of the amount payable on 31st March, 1986 as indicated in the Schedule. Under the said agreement, Mark A, HSIDC was to transfer 26 per cent shares of HDL which they were holding in favour of TCI but before the amount as indicated in the Schedule was to be paid or in turn shares could be transferred by HSIDC to TCI, HDL was ordered to be wound up,—*vide* order, dated 11th April, 1985 of this Court in Company Petition No. 68 of 1982. Obviously the winding up order was passed after the passing of the decree, dated 18th March, 1985 but before the reciprocal obligations could be performed by the parties to the agreement, Mark A which formed part of the decree. When HSIDC sought execution, TCI filed objections under Section 47 read with Order XXI Rule 58 of Civil Procedure Code on the ground that the application regarding execution of the decree is not maintainable. Regarding maintainability of the execution of the decree, it was alleged in the objection petition that the execution of the decree, dated 18th March, 1985 is based on the agreements, Mark A and Mark B and as per the agreement, TCI was to take over 26 per cent shareholding of HSIDC in HDL and agreements, Mark A and Mark B dealt only with the shares, assets and liabilities of HDL but because of the passing of the order of winding up, the said obligations cannot be performed and

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thus the decree cannot be executed. The learned trial Court dismissed the objection petition holding that since the decree was passed against TCI in a suit filed by HSIDC, it has no effect on the execution of the decree as HDL was ordered to be wound up who was not a party to the judgment and decree in the suit. Being aggrieved of the order, dated 13th November, 1990 of the learned Executing Court, the present civil revision has been preferred by TCI.

(6) Learned counsel for the petitioner has contended that after the winding up order of HDL, HSIDC cannot transfer the shares and thus in turn is not entitled to receive payments as per the agreement, Mark A from TCI. He has further contended that there is a complete bar contained in sub-section (2) of Section 536 of The Companies Act, 1956 (hereinafter referred to as the Act) for transfer of shares in the Company in case of winding up of the Company and in this case the first payment was to be made on 31st March, 1986 ending with the last payment on 31st March, 1989 when HSDIC was to transfer the shares of HDL in favour of TCI.

(7) On the other hand, learned counsel for the respondent has submitted that the order of learned Executing Court is absolutely in accordance with law as the Executing Court cannot go behind the decree. However, he has admitted that under the law, HSIDC cannot transfer the shares of HDL in favour of TCI after the winding up order has been passed in the Company Petition No. 68 of 1982.

(8) After hearing learned counsel for the parties, I find that the order of learned Executing Court is liable to be set aside. Learned Executing Court has observed that there is no effect of winding up order of HDL on the execution since the decree was passed against TCI. The learned trial Court while observing this lost sight of the fact that under the agreement, on receipt of certain payments, HSIDC was to transfer shareholding of HDL in favour of TCI. Section 536 of the Act reads as under:—

“536.(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

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- (2) In the case of a winding up by or subject to the supervision of the Court, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void."

A bare reading of sub-section (2) of Section 536 of the Act shows that in the case of winding up of the Company, any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall be void. In view of this, HSIDC is not in a position to perform its obligation, then how it can be expected that by way of execution, TCI can be forced to make certain payments which were to be made on performance of certain obligations by HSIDC. It has been ruled by the Supreme Court in *Jai Narain v. Kedar Nath* (1), that where a decree imposes reciprocal and interlinked obligations, then the Executing Court can go into the question as to whether the defendant is in a position to perform his part of the decree.

(9) This matter is clearly linked with the execution, discharge or satisfaction of the decree as provided under Section 47 of Civil Procedure Code and it can be determined only by the Court executing the decree. Learned Executing Court was not right in saying that the Executing Court cannot go behind the decree. As noticed earlier, Mark A and Mark B formed part of the agreement which contained obligations on both sides and the performance of which has now become impossible because of the passing of the winding up order against HDL. If HSIDC is not in a position to perform its obligations under the agreement, then how the Executing Court can force TCI to perform its obligations under the execution of the decree.

(10) For the aforesaid reasons, I find that the execution of the decree is not maintainable. Consequently, the revision petition is allowed and the order of the Executing Court is set aside but with no order as to costs.

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*R.N.R.*

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(1) A.I.R. 1956 S.C. 359.