(2012) 09 MP CK 0191

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1282 of 2012

Bharat Bhushan Bhargava — APPELLANT

Vs

Mohit Bhargava and Others — RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 3, 39, 41
Constitution of India, 1950 — Article 227

Citation : (2012) 4 MPLJ 566

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Judgement

S.K. Seth, J.—This petition is directed against the Order dated 25-3-2011 passed by the 9th Additional District Judge, Indore in Execution Case 14A/2002-2003. Relevant facts leading to this petition are as under. A registered partnership firm in the name and style of "Refrigeration Industries" was constituted. Petitioner and Late Shri Y.N. Bhargava-grandfather of respondent No. 1 and others were partners in the firm. Late Shri Y.N. Bhargava was the Managing Partner of the firm. A notice for dissolution was issued by some of the partners to the grandfather of the respondent No. 1. Ultimately, present petitioner filed a suit in the District Court of Gwalior for dissolution of the partnership firm and rendition of accounts.

2. On 27-4-1981 trial Court passed a preliminary decree declaring that the partnership firm stood dissolved and directed that the accounts be taken to settle mutual rights and liabilities. Receiver appointed during the suit was directed to continue till final decree was passed. A Chartered Accountant was also appointed as Commissioner to scrutinise the accounts of the firm.

3. After the preliminary decree was passed original judgment-debtor late Shri Y.N. Bhargava had executed a Will in favour of his grandson, the present respondent No. 1. The Will executed by late Y.N. Bhargava designating respondent No. 1 as legatee was probated.

4. After considering the Commissioner''s Report which was submitted after scrutinising accounts, trial Court passed the final decree in the suit. Under the final decree, late Shri Y.N. Bhargava was found liable to pay to the plaintiff a sum of Rs. 6,66,292.50; sum of Rs. 5,000/- as his share of fees to the Commissioner/ Receiver and sum of Rs. 10,83,757 to other partners. It was also directed that as per Agreement Ex.P-5 after the dissolution of the firm, petitioner would be entitled to use the properties of the Firm. In first appeal, this Court affirmed the final decree with slight modification, inasmuch as later part of the direction was set aside, and the trial Court was directed "to find out that after settlement of accounts, if any property of the firm is still remains, then the cost of the property be assessed and may be divided amongst all partners as per their share in accordance with the directions issued by the trial Court in the preliminary decree."

5. The decree-holder put the final decree in execution in the District Court Gwalior. In execution proceedings, the decree-holder, filed an application for an injunction restraining the person holding the building said to have been bequeathed to the judgment-debtor by his grandfather, from handing over possession of the same to the judgment-debtor and from handing over the documents of title to him. He also sought a direction restraining the Bank holding an account of the estate from permitting the judgment-debtor to operate the accounts. The executing Court passed an order on 19-3-2003 directing the occupant of the building as well as the Bank not to transfer to the judgment-debtor the properties enumerated in the list submitted by the decree-holder. The person holding the building moved the executing Court praying that he be relieved from the responsibility of managing the property. He also produced certain documents in the executing Court with a prayer that he be relieved of his obligations. On 7-7-2003, the executing Court, after taking notice of the documents produced by the occupant of the building concerned, directed that the documents be kept in safe custody of the Court. On 26-7-2003, an application was moved by the decree-holder submitting that he had received an offer for the purchase of the building in question, which was situate at 14, Bakshi Colony, Indore and praying that the said property may be sold by way of auction and the amount received be apportioned among the decree-holder and other partners.

6. This was objected to by the respondent No. 1 judgment-debtor on the ground that the executing Court lacked territorial jurisdiction to order the sale of the property situate in Indore lying outside its territorial jurisdiction. The application was made u/s 39 read with Order 21, Rule 3 of the CPC (for short "the Code"). The judgment-debtor also filed an independent objection to the prayer of the decree-holder for sale of the property at 14, Bakshi Colony, Indore. On 6-4-2004 the executing Court rejected the objections. It held that it had territorial jurisdiction to proceed with the execution. It also passed an order directing that the house at 14, Bakshi Colony, Indore be sold by public auction after due publicity.

7. The judgment-debtor challenged all the three Orders of the executing Court in a writ petition filed under Article 227 of the Constitution of India. This Court while setting aside the order dated 6-4-2004 held that the executing Court at Gwalior, lacked territorial jurisdiction to continue the execution especially in respect of properties outside its jurisdiction or to order sale of Building No. 14, Bakshi Colony, Indore and consequently set aside the order dated 6-4-2004 and transferred the execution to the Court concerned at Indore for proceeding with the execution. But the challenge to the earlier orders dated 19-3-2003 and 7-7-2003 passed by the executing Court at Gwalior was repelled. Both parties were dissatisfied with the order therefore they filed appeals in the Supreme Court. Their Lordships of the Supreme Court in the decision reported in Mohit Bhargava Vs. Bharat Bhushan Bhargava and Others, refused to interfere with the order of this Court and dismissed appeals preferred by both the parties.

8. The respondent No. 1 in order to save the immovable property at Indore from the auction sale, deposited Rs. 17,57,424/- in the executing Court at Indore and prayed that the deposit was in full and final satisfaction of the decree, therefore, execution proceedings be dismissed.

9. By the Order impugned, learned 9th ADJ, Indore before whom the execution case was pending, accepted the contention of respondent No. 1 and dismissed the execution proceedings recording that decree stood satisfied. Hence this petition.

10. I have heard the rival submissions at length and perused the material on record. In the considered opinion of this Court, Order impugned is unsustainable both on facts and in law. It is distressing to note that the executing Court in a most perfunctory manner dismissed the execution proceedings holding that the decree stands satisfied with the deposit of amount made by respondent No. 1.

11. In execution cases law is well settled that the executing Court cannot go behind or beyond the decree and it must execute the decree as it is and nothing more or less. This principle equally applies to the Court to which a decree is transferred for execution. It is also the law that the Court to which a decree is transferred has the same powers as the transferor Court.

12. Let us now come to the final decree in question. As per Annexure P-5 filed along with petition, it reads as under:-

13. It is thus clear that defendant No. 1 was to pay Rs. 10,83,757/- for distribution of share of" partners as per the preliminary decree; defendant No. 1 was also to pay Rs. 6,66.292.50 to Receiver Shri B.B. Bhargava and Rs. 5,000/- as fees for the Commissioner. It is an admitted position that defendant No. 1 has deposited Rs. 17,57,424/- in the transferee Court at Indore. The impugned Order on the basis of this deposit has treated the decree fully satisfied, which is clearly mistaken since the amount so deposited has apparently yet to be distributed to the claimants mentioned in the final decree. This apportionment or distribution of amount could be clearly within the competence of the transferee Court.

14. It is also appears from the impugned Order (contained in an order sheet, instead of in a separate Order) that there has been no compliance of the provisions of section 41 of the CPC regarding certification of the result of the execution by the transferee Court to the transferor Court.

15. We now come to the 2nd part of the final decree that as per agreement Ex.P. 5, all the properties of the firm, after its dissolution shall remain with Shri B.B. Bhargava who shall be at liberty to use it at his own volition. This direction has been struck down by the Gwalior Bench in First Appeal No. 121 of 2003. So this direction in the final decree is rendered non-est and need not detain us.

16. From what is discussed above it would be clear that the Order impugned has to be quashed, and it is hereby quashed. The Court below shall now proceed with the matter in accordance with law afresh and execute the final decree and after such execution, shall issue necessary certification u/s 41 of the CPC to the transferor Court. Respondent No. 1 shall pay Rs. 5,000/- as costs of this petition to petitioner No. 1. Counsel''s fee Rs. 2,500/- if certified. Ordered accordingly.

