(2014) 02 KL CK 0212

In the High Court Of Kerala

Case No : Civil Revision Petition No. 466 of 2011

Cement Corporation of India Ltd. APPELLANT

Vs

Rack Marketing Agents RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 50, Order 30 Rule 1, Order 30 Rule 3, Order 30 Rule 30, Order 30 Rule 6

Partnership Act, 1932 — Section 30

Citation : AIR 2014 Ker 186 : (2014) 3 KHC 204 : (2014) 3 KLT 167

Hon'ble Judges : K. Harilal, J

Bench : Single Bench

Advocate : E.M. Joseph, Advocate for the Appellant

Judgement

K. Harilal, J.—This Revision Petition is directed against the order passed in E.P. No. 196 of 2009 on the files of the Additional District Court-I, Thiruvananthapuram. The revision petitioner, a Government of India undertaking, is the decree holder and the respondent, a partnership firm represented by its Managing Partner, is the judgment debtor. A decree for realisation of Rs. 1,12,82,248/- was passed by the High Court of Delhi in suit No. 1484 of 1994 in favour of the petitioner in terms of arbitration award dated 28.06.1994. The decree was transferred to the District Court, Thiruvananthapuram, by the High Court of Delhi and the decree holder filed the above E.P. to execute the decree against the respondent/judgment debtor. The judgment debtor has not chosen to enter appearance to contest the execution petition on merits. The execution petition was filed, seeking realisation of the said amount, from the property sought to be attached of the respondent herein, who is the Managing Partner of the firm. The court below considered the question whether the property of the Managing Partner of the partnership firm can be proceeded with to execute the decree against the firm? After considering the above question, the court below refused to proceed against the property of the Managing Partner by passing the impugned order and posted the case for further steps, if any. The legality, propriety and regularity of this order are under challenge in this Revision Petition. The learned counsel for the revision petitioner advanced arguments assailing the finding that execution of the decree against the property of the Managing Partner is not permissible unless statutory requirements under O. 21 R. 50 of Code of Civil Procedure (for short the ''CPC) are satisfied. According to the learned counsel, in the arbitration proceedings, the Managing Partner entered appearance representing the firm. Therefore, the decree can be executed under clause (b) of sub-rule (1) of R. 50 of O. 21 of the C.P.C. That apart, the revision petitioner has produced certain documents in this Revision Petition to show that in those documents the Managing Partner himself admitted that he is the Managing Partner of the firm. Therefore, the decree can be executed against the personal property of the Managing Partner in view of the second limb of Clause (b) of sub-rule (1) of R. 50 of O. 21 of the C.P.C. The learned counsel for the revision petitioner further cited the decision in Topanmal Chhotamal Vs. Kundomal Gangaram and Others, and drew my attention to paragraph 2(a).

2. In view of the contentions raised by the learned counsel for the revision petitioner, the short question that arises for consideration in this Revision Petition is, whether the personal property of the partner of the partnership firm can be proceeded with, attachment and sale in execution of the decree against the firm? This question in controversy throws light to clause (b) of sub-r. (1) of R. 50 of O. 21 of Code of Civil Procedure, which reads as follows:

50. Execution of decree against firm.--(1) Where a decree has been passed against a firm, execution may be granted.--

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under Rule 6 or Rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of [Section 30 of the Indian Partnership Act, 1932 (9 of 1932)].

For the proper application of the above Rule, I must analyse the method of service of notice against the firm provided under O. XXX of the C.P.C.

3. Order XXX of the C.P.C. deals with suits by or against firms and persons carrying on business in names other than their own. According to O. XXX (1) Rule 1 of the C.P. C any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm, if any, of which such persons were partners at the time of accruing of the cause of action. R. 3 of O. XXX states on whom summons shall be served, where persons are sued as partners in the name of their firms. According to R. 3, where persons are sued as partners in the name of their firm, the summons shall be served

either

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within India, upon any person having, at the time of service, the control or management of the partnership business there, as the court may direct; and such service shall be deemed good service upon the firm so sued. According to R.6, where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but subsequent proceeding shall, nevertheless, continue in the name of the firm. As per R. 7, where summons is served in the manner provided by R. 3 upon a person having control or management of the partnership business no appearance by him shall be necessary unless he is a partner of the firm sued.

4. Going by R. 50 of O. 21, it is seen that even though a decree has been passed against a firm, it can be executed against the partner in person or his property if the decree satisfies the requirements under clauses (b) and (c) of sub-r. (1) of R. 50 of O. 21 of the CPC. According to clause (b), the decree passed against firm can be executed against any person who had appeared in his own name, under R. 6 or R. 7 of O. XXX or has admitted on the pleadings that he is or who has been adjudged to be a partner. According to R.6, where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but subsequent proceedings shall continue in the name of the firm.

5. But it is also to be remembered that though C.P.C. Amendment Act 1976 conferred wide powers to court executing transferred decree under S. 42 of the C.P.C. sub-section (4)(b) specifically states that nothing in this section shall be deemed to confer on the court to which a decree is sent for execution any power to grant leave to execute such decree against any person other than such person as is referred to in Clause (b) or Clause (c) of sub-r. (1) of R. 50 of O. XXI, in the case of a decree passed against the firm.

6. In the light of the above discussions, it can be held that a decree passed against a partnership firm can also be executed against the partner in person and his property, if he (i) has appeared in the suit individually in his own name and has been served with notice under R. 6 or R. 7 of O. XXX of the C.P.C., or (ii) has admitted on the pleadings that he is or has been adjudged to be a partner or (iii) has been individually served as a partner with summons and has failed to appear.

7. Going by the decree, it could be seen that the decree is passed against M/s. Rack Marketing Agency, Smarana, Near Kalabhavan, Vazhuthacaud. Thiruvananthapuram. It is pertinent to note that none of the partners represent the firm in the decree. None of the partners are sued as partners in the name of their firm. Consequently, the decree is seen passed against the firm alone. But now, the personal property belongs to the Managing Partner of the firm is sought to be attached and sold in execution of the decree.

8. Admittedly, the Managing Partner has not been sued as partner in his own name or in the name of his firm. There is nothing on record to show that summons has been served on him under clause (a) or (b) of R. 3 of O. XXX of the C.P.C. So, he has not appeared in his own name under Rules 6 and 7 sub-r. (6) or Rules 6 or R. 7 sub-r. (7) of O. XXX or has not admitted on pleadings that he is or has been adjudged to be a partner. So also, there was no circumstance to appear before the court in his own name either under Rules 6 and 7 sub-r. (6) or Rules 6 or R. 7 sub-r. (7) or O. XXX. Consequently, no decree has been passed against the Managing Partner in his own name or in the name of the firm. Similarly, nothing on record to show that summons has been individually served on him as Managing Partner and he failed to appear before the court. Hence the decree sought to be executed would not come under sub-r. (b) or (c) of R. 50 of O. 21.

9. The learned counsel for the revision petitioner produced copy of the proceedings of the Arbitrator dated 24.2.1993 and 13.3.1993 as Annexures A1 to A3 in this Revision Petition. But in these proceedings the Managing Partner is seen represented the firm before the Arbitrator, in one sitting of the arbitration. Merely on that reason, it cannot be interpreted to mean that he has admitted on the pleading that he is or has been adjudged to be a partner, particularly, in view of the meaning of pleadings contemplated under O. 6 R. 1 of C.P.C. According to O. 6 R. 1 of C.P.C. pleadings shall mean plaint or written statement. Therefore, it can safely be concluded that either in the plaint or in the written statement there must have an admission by the partner that he is the partner of the firm. Mere representation for the company seen in a document cannot be treated as admission in pleadings. To sum up, the decree sought to be executed cannot be executed against the Managing Partner in person or against the personal property belonging to him. Going by the decision in Topanmal Chhotamal Vs. Kundomal Gangaram and Others, , it is seen that the Supreme Court has reiterated the requirement of satisfaction of the court under sub-r. (1) of R. 50 of O. 21 of the C.P.C. and the above decision does not render any aid, assistance or help to the revision petitioner. In the light of the above discussions, I find that the court below has exercised its jurisdiction perfectly and there is no illegality or impropriety in the impugned order under challenge. Hence this Revision Petition will stand dismissed. It is also made clear that this order will not stand in the way of seeking the other remedies, if any provided under law.