

(1960) 09 MP CK 0016
In the Madhya Pradesh High Court
Case No : M.C.A. No. 77 of 1959

Fulchand Rakhabdas and Others	Vs	APPELLANT
Vishvanath Kishanlal and Others		RESPONDENT

Date of Decision : 08-09-1960

Acts Referred:

Citation : (1961) JLJ 156 : (1961) MPLJ 154

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : G.M. Chaphekar, for the Appellant; S.D. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Krishnan, J.

This is an appeal by the decree-holders in execution from the concurrent orders of the lower Courts to the effect that the decree is executable not against the personal assets of the judgment-debtors but the assets, if any, of the joint shop Committee at Manasa of which the judgment-debtors were the office-holders. We are concerned with the interpretation on an award.

The facts of the case are simple and common ground. The decree-holders are a joint family firm in cloth business. At that time there were so called joint shop committees in various towns. We, in the instant case, concerned with the committee at Manasa. These committees had not been registered either as societies or as firms or the like; but dealings were made in the name of different office-holders acting on behalf of the association as a whole. Thus the association had no judicial existence, but the individuals who entered in the dealings could be sued or bring a suit in the representative capacity on behalf of the other members. The decree-holders sued the office-holders of the society conominee representing the association. The claim was originally for Rs. 3,000 and the matter went up to arbitration. The arbitrators awarded Rs. 2,500 by a written award of which the following sentences are of significance:-

We award the plaintiffs a sum of Rs. 2,500 which includes costs of the suit realisable from the defendants as the representatives of the joint shop committee. The plaintiffs shall not be entitled to realise anything from the defendants in their personal capacity. Therefore, we decide that the defendants as the executives of the joint shop committee of Manasa, are liable to pay a sum of Rs. 2,500 to the plaintiffs within a period of three months. Be it noted that the costs of the suit are already included in this amount.

The award was filed and the decree was prepared quashing the last sentence. When it was put into execution, the decree-holders tried to execute it personally against the judgment-debtors. They for their part urged that they were not personally liable, and the plaintiffs could, if they so chose, execute the decree against the assets of the association in the hands of the executive. This being difficult, the decree-holders went up in appeal urging that they were entitled to realise the decretal amount personally from the judgment-debtors it being upon them in their turn to levy contribution from the other members.

The question is as to the effect of the phrase that "they (decree-holders) will not be entitled to realise personally from the judgment-debtors" (Vyaktigat Rup men pane ka haq nahin hai). On behalf of the decree-holders it is urged that this phrase is not mentioned in the last and operative portion of the award. Again, wherever it is mentioned, it was not meant to save the judgment-debtors from personal liability, but has been put in by way of reassurance to them that they will be able to levy a contribution from other members. As against this, it is urged on behalf of the judgment-debtors that the award should be read as a whole. It is of no consequence if this or that sentence alone out of the award has been copied out in the decree; the executing Court should, in the manner laid down in *Dhanun v. Harbhajan* AIR 1926 Nag. 480, take account of the award on which the decree was based. Again, the right of the judgment-debtors to levy contribution from other members does not depend upon any recital in the award but upon the nature of relationship between the representatives sued in their names and the other members of the association. So it would be incorrect to suggest that the phrase has been put in, to convey reassurance to the judgment-debtors.

The fact remains that the arbitrators have taken pains to point out firstly that the judgment-debtors are liable as the executive (Karyakars) or the representatives (Pratinidhi) of the association. It is a correct proposition to assert that normally the representatives of an association sued in their names can be proceeded against in execution even in their personal capacity. However, if the decree-holder has already agreed to proceed only in this or that manner, he cannot without the consent of the judgment-debtor, proceed in new and substantially more onerous manner. The arbitrators have taken pains that there should be no mistake, by adding further that "the judgment-debtors could not be proceeded against personally". It was open to the decree-holder at that stage to make sure that it would be possible for him to realise the decretal amount in some manner

other than execution personally against the judgment-debtors. The only conceivable manner was to proceed against the assets in the hands of these judgment-debtors on behalf of the association as already noted, the association as such could not hold any property, but it is quite conceivable that movable properties were kept on its behalf by some of the members and a banking account was also being operated by them. If there are no such assets, the decree-holders have only to thank themselves as now they are bound by the condition of the award that they cannot proceed against the judgment-debtors personally.

Thus I find that there is no substance in this appeal and I dismiss it accordingly. Costs to the respondents and pleaders' fees according to rules payable by the appellants.