
(1970) 01 RAJ CK 0011

In the Rajasthan High Court

Case No : C. Execution First Appeal No. 15 of 1966

Gyarsilal

APPELLANT

Vs

Firm Ramgopal Radheysham

RESPONDENT

Date of Decision : 28-01-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 9

Citation : (1970) WLN 43

Hon'ble Judges : C.B. Bhargav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.B. Bhargava, J.—This appeal by Gyarsilal one of the Judgment-debtors, is directed against the order dated 18th April, 1986, of the District Judge Partabgarh.

2. Firm Ramgopal Radheshyam obtained a decree for Rs. 10027/2/9 against the appellant from the court of Senior Civil Judge, Kishengarh on 31st July, 1952. The decree-holder got the decree transferred for execution to the court of District Judge, Partabgarh. When the decree-holder took out execution proceedings, the appellant raised two objections, namely, (1) that there had been an adjustment of the decree due to which it had become inexecutable and (2) that it was barred by limitation. These objections were disposed of by the learned District Judge Partabgarh on 9th July, 1930, in execution case No. 43 of 1958. Judgment-debtor's appeal against the aforesaid order was also dismissed by a Division Bench of this Court on 6th August, 1962, in D.B. Civil Execution First Appeal No. 29 of 1960. The decree-holder took out fresh execution proceedings and this time objection was raised by the judgment-debtor to the effect that he himself was a partner of the decree-holder firm and as such the decree holder could not execute the decree without the leave of the court. This application purported to be made under Order 30 Rule 9 C.P.C., which is as follows:

9. Suits, between co-partners.--This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

The decree-holder contested the judgment-debtor's objection, and the learned District Judge Partabgarh by his order dated 9th December, 1963 rejected the objection-petition as being barred by the principle of res-judicata inasmuch as the judgment-debtor had failed to take this objection in the previous execution proceedings. The judgment debtor preferred an appeal against the order of the District Judge and a Division Bench of this Court in D.B. Civil Miscellaneous First Appeal No. 2 of 1964. Gyarsilal Agarwal of Chhoti Sadri v. Firm Ramgopal Radhev Shyam of Kishangarh, dismissed the appeal in limine on 3rd February, 1964. The Court while disposing of the appeal observed that "even in the objections raised by him in the executing court in this connection, no proper foundation had been laid for the submission" that there were any equities which the judgment-debtor could adjust against the decree obtained by the decree-holder.

3. After the above decision, the judgment-debtor filed fresh objections, before the Executing Court on 9th April, 1965, in which he gave detailed reasons why the accounts of the decree-holder firm were required to be taken before execution could be levied against him. The learned District Judge again rejected the application holding that the matter is concluded by the previous order dated 9th December, 1963. Further, it was neither desirable nor necessary in his opinion to take accounts of the partnership firm in the execution case. It was also brought to the notice of the learned District Judge that the judgment-debtor had instituted a suit for accounts against the firm Ramgopal Radheshyam in Kishangarh court but he allowed the suit to be dismissed in default. The learned District Judge finding no merits in the application under Order 30 Rule 9 dismissed it. It is against this order that the present appeal has been filed.

4. Learned counsel for the appellant relying upon a recent decision of the Supreme Court in Shivashankar Prasad Shah and Others Vs. Baikunth Nath Singh and Others, contends that the learned District Judge was in error in holding that the present objection is barred by the principle of res judicata in view of the previous decision dated the 9th December, 1963. He says that the objection whether it was necessary to hold an inquiry and take accounts of the decree-holder firm was necessary or not was neither heard nor decided in the previous execution applications and as such the previous orders cannot operate as either res-judicata or constructive res-judicata. Further he says that it would be quite anomalous to allow the decree-holder to recover the decretal amount and appropriate it wholly to itself although the judgment-debtor appellant is also a party of the decreeholder firm. In my view the contention has no force. As already stated, the judgment-debtor had raised objections in the first execution

application and failed to take objection under Order 30 Rule 9 asking the court to hold an inquiry and take accounts of the decree-holder firm. In the objections filed by him on the second time, objection was taken under Order 30 Rule 9 that the execution application could not be proceeded with without the leave of the court and that objection was rejected by the court on 9th December, 1963. In the appeal before the High Court, objection was raised that in the circumstances of the case it was necessary that an inquiry be held and accounts be taken of the decree-holder firm, but the High Court rejected this objection also on the ground that no foundation was laid in the application for allowing such prayer. In such circumstances the decision upon relied by the learned counsel cannot be applied to the facts of this case because here the judgment debtor raised objections including the objection about holding an inquiry and taking accounts and that was rejected by the court after hearing the appellant. I am, therefore, of the view that it is not open to the judgment-debtor to raise this objection again as it is barred by the principle of res judicata. The previous order of the District Judge dated 9th December, 1963, and of the High Court dated 3rd February, 1964, operate as a bar against this objection being raised again.

5. This appeal has, therefore, no force and is accordingly dismissed with costs.