

**(1980) 08 DEL CK 0036**

**In the Delhi High Court**

**Case No :** Execution No. 62 of 1979

Manganese Ore (India) Ltd., Nagpur

APPELLANT

Vs

M/s. Mangilal Rungta, Calcutta

RESPONDENT

**Date of Decision :** 27-08-1980

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 37, 38, 39, 46

**Citation :** AIR 1981 Delhi 114

**Hon'ble Judges :** J.D. Jain, J

**Bench :** Single Bench

**Advocate :** S.V. Nati with J.N. Aggarwal, for the Appellant; A.K. Ganguli with K. Deb, for the Respondent

**Final Decision :** Dismissed

## Judgement

J.D. Jain, J.—The petitioner-decree-holder M/s. Manganese Ore (India) Limited obtained a decree for recovery of Rs. 3,84,375/- (the principal amount) with interest at 6% p. a. with effect from 11th April, 1969 to 20th June, 1979 amounting to Rs. 2,35,111/- and future interest at 6 % p. a. till realisation and costs of the suit against the Judgment-Debtor, M/s. Mangilal Rungta from the Court of Joint Civil Judge (S. D.- Nagpur) on 21st September, 1978. On the strength of a Transfer Certificate issued by the said Court, the petitioner took out execution in this Court with the prayer that the decretal amount be realised by attachment of debts payable by the Garnishee, Steel Authority of India Limited, New Delhi, to the Judgment-Debtor and ordering them to pay into this Court the amount necessary to satisfy fully the aforesaid decree. Accordingly, notice under Order 21, Rule 46-A of the Civil P. C. (hereinafter referred to as the Code) was issued to the Garnishee as well as the Judgment-Debtor. The Judgment-Debtor has filed an affidavit sworn by Shri Satya Narayan Rungta, a partner of the J. D. firm to the effect that the latter did not sell any manganese ore or iron ore to the Steel Authority of India Limited, New Delhi and that no amount is due from or payable by the said Authority to the J. D. firm on account of any alleged sale of

manganese ore or iron ore. He has further denied that there was any running contract or account between the J. D. firm and the said Garnishee for the purchase of manganese-ore or iron-ore. Similarly, counsel for the Garnishee (Steel Authority of India Limited) has made a statement that there was no contract between the J. D. firm and the said Authority for supply of manganese-ore or iron-ore and that no amount whatsoever is due from them to the J, D. firm on any account.

2. In view of this clear stand taken by the Garnishee as well as the Judgment-Debtor firm, the learned counsel for the D. H. has frankly stated that no further action is called for and the Garnishee be discharged. However, he has prayed that the judgment-debtor be summoned under Order 21, Rule 41 of the Code for making a statement disclosing their assets.

3. Thus, the short question for determination is whether this Court being a transferee Court has jurisdiction to go ahead with the execution proceedings or not.

4. Section 38 of the Code provides that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. Section 39 lays down the conditions under which a decree can be so sent. It runs as follows:

"(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court (of competent jurisdiction),

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed."

5. On a plain reading of this section it is manifestly clear that cls. (a), (b) and (c) of sub-section (1) only define the circumstances under which a decree may be transferred for execution to another Court and do not in any way restrict or limit

the powers of the Court to which a decree is transferred. However, sub-section (1) clearly lays down that a decree can be transferred for execution to a Court of competent jurisdiction and sub-section (3) thereof which has been recently inserted by Amendment Act 104 of 1976 defines "Court of competent jurisdiction" for the purposes of this section. It is also to be noted that the words "of competent jurisdiction" in sub-section (1) did not exist earlier and the same too have been inserted by Amendment Act of 1976. There can, thus, be no shadow of doubt that before a transferee Court can proceed with execution proceedings, it must have jurisdiction to try the suit in which such decree has been passed, at the time of making the application for the transfer of decree to it. As a necessary corollary, it would follow that the transferee Court must stay its hands in case it finds that it does not have jurisdiction to try the suit in which such decree has been passed having regard to various provisions contained in the Code which confer pecuniary as well as territorial jurisdiction upon a Court for trying the suit. Section 6 debars a Court from exercising jurisdiction over suits, the amount or the value of the subject matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction. Section 15 provides that every suit shall be instituted in the Court of lowest grade competent to try it and Sections 16 to 20 deal with the place of suing i.e. the territorial jurisdiction of a Court. Thus, it is crystal clear that the transferee Court must be possessed of both pecuniary as well as territorial jurisdiction to execute the decree before it embarks upon doing so. In case it lacks either pecuniary jurisdiction or territorial jurisdiction, it must stay its hands and report back to the transferor Court. This position has been abundantly clarified by Rule 5 of Order 21 as substituted for the former Rule 5 by Act 1C4 of 1976. It clearly lays down that:

"xxxx the Court to which the decree is sent, for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction."

6. Thus, a duty has now been imposed on the transferee Court to transfer the decree to the Court having jurisdiction to execute the decree if it has no jurisdiction to execute the same itself.

7. The submission made by the learned counsel for the D. H. with all the vehemence at his command, however, is that the aforesaid amendments have been introduced only with a view to set at rest the conflict which existed in judicial decisions as regards the competence of transferee Court to execute the decree irrespective of its pecuniary jurisdiction, a? would appear from the statement of objects and reasons. No doubt, a perusal of clause 19 of objects and reasons for the amendment would show that Section 30 has been amended to clarify the position by providing that the transferee Court must have pecuniary. competence to deal with the suit in which the decree was passed. However, that would not imply that the transferee Court need not have territorial competence to deal with the suit in which the decree was passed. It is well settled that the jurisdiction of a Court is circumscribed by and is coextensive with its territorial limits. As a general rule, therefore, territorial jurisdiction is a

condition precedent to a Court executing a decree and neither the Court which passed the decree nor the Court to which it is sent for execution can execute it in respect of property lying outside its territorial jurisdiction. To this rule, however, there are certain exceptions which have been judicially noticed.

8. A Full Bench of the Calcutta High Court held in *Prem Chand Dey v. Mokhoda Debi*, ILR (1890) Cal 699 (FB), that the rule of territorial jurisdiction was equally applicable to execution proceedings. It was observed:

"So far as the Procedure Code is concerned execution of a decree is only a continuation of the suit and there appears no legitimate reason why a Court in the later stage of a suit should have greater powers than it possessed at its institution. But, however, that, may be, a comparison of Section 223 (Sections 38 and 39 of the present Code) with the last paragraph of Section 649 (Section 37 of the present Code) seems to us to indicate that territorial jurisdiction is a condition precedent to a Court executing a decree."

9. Following his and other authorities cited therein this Court (Hardyal Hardy, J.) held in *S. N. Sunderson & Co. v. Harbans Singh Sabit & Co. (P) Ltd.*, ILR (1972) Del 263. that the rule of territorial jurisdiction which governs suits also governs execution of decrees though there are exceptions to that rule. Hence, when a property sought to be attached is outside the jurisdiction of the Court which passes the decree, the Court cannot attach it, but it must transfer the case to the Court within whose jurisdiction the property is situated; Order 21, Rule 48 being the only exception to the rule contained in Order 21, Rule 46. In this view of the matter, therefore, it is crystal clear that before entertaining an execution petition the transferee Court is bound to satisfy itself that it has got both pecuniary as well as territorial jurisdiction to try the suit in which the said decree was passed.

10. Faced with this situation, the learned counsel for the D. H. has urged that once a decree is transferred by the Court which passed it to another Court, the latter is vested with the jurisdiction to execute the same and it cannot go behind the transfer certificate. In other words, the transfer order is binding on the transferee Court and it must be deemed to have jurisdiction to go ahead with the same. Reference in this context has been made to Section 46 of the Code. However, this argument is simply fallacious and does not bear scrutiny. Section 46 evidently deals with precepts, the object of which is simply to enable the attachment of the property of the J. D. situated within the jurisdiction of another Court, in order to prevent the J. D. from alienating or otherwise dealing with it to the detriment of the decree-holder till proper proceedings for the sale of the property in pursuance of an application can be taken. That is why the effect of the attachment in pursuance of the precept is limited to two months and power is given to the Court which passed the decree to extend the time in order to meet the contingencies which may arise due to the delay in transferring the decree to the Court to which the precept is sent. In other words, no such attachment can continue for more than two months unless the period is extended by the order of the Court which passed the decree unless the decree is

transferred for execution to the attaching Court and decree-holder has applied for the sale of the property. Section 46 does not contemplate an order for permanent attachment, rather it clearly envisages transfer of the decree itself for execution to the Court by which attachment has been made. Thus, an attachment u/s 46 is merely a step taken to facilitate execution. The decree-holder, therefore, derives no assistance from the same.

11. Finding himself in predicament, the learned counsel came forth with the argument that even if the question of jurisdiction is involved it is for the transferee Court to decide whether it has jurisdiction or not and it is with that object in view that he has prayed for examination of the judgment-debtor under Order XXI, Rule 41 for disclosing whether any debt is owed to him and whether he has any and, if so, what other property or means for satisfying the decree. Thus, according to him this Court can investigate into this matter by calling upon the judgment-debtor to make a disclosure regarding the assets owned by him and if Court still finds that the judgment-debtor firm owns no assets within the jurisdiction of this Court, it may decline to act further in the matter. This argument to my mind is absolutely devoid of any merit even though it looks specious on its face. It is like putting the cart before the horse. Surely examination of the judgment-debtor under Order XXI, Rule 41 presupposes that the Court executing the decree is competent to do so. When a decree is transmitted for execution to another Court the presumption is that the decree was intended to be executed against the properties within the jurisdiction of the latter Court and not against properties situated within the jurisdiction of some other Court. At any rate, the decree-holder must aver the facts which confer jurisdiction on the transferee Court to execute the decree and it is only then that the transferee Court may, if such facts are controverted embark upon an enquiry as to whether it has jurisdiction to execute the decree or not. I am afraid the Court cannot launch on a fishing inquiry to find facts giving jurisdiction to it when there is not even an averment by the decree-holder that the judgment-debtor owns assets within its jurisdiction which can be attached or proceeded against. It is well settled that a plaint must incorporate facts which would confer jurisdiction both pecuniary as well as territorial on a particular Court and it is only then that the Court would be justified in entertaining the suit. There is no valid reason why the same principle should not hold good in the case of an execution petition. In the instant case, the decree-holder has not even remotely suggested that the judgment-debtor does own any assets within the jurisdiction of this Court, rather according to the statement made by his counsel on 21st July, 1980. to the knowledge of the decree-holder, the judgment-debtor does not own any assets movable or immovable within the jurisdiction of this Court and that is why he is leaning against Rule 41 of Order 21 of the Code.

12. To sum up, therefore, I find that this Court has no jurisdiction to entertain and execute this decree. The execution application is accordingly dismissed as unsatisfied and this fact be certified to the transferor Court. The decree-holder shall also bear the costs of the judgment-debtor and the Garnishee. Counsel's

fee Rs. 200/- each.