

(1976) 09 P&H CK 0001
In the Punjab And Haryana At Chandigarh

M/s Key Chaudhry And Company (P) Ltd., Jullundur	APPELLANT
Vs	
M/s Madan Roller Flour Mills, Jullundur	RESPONDENT

Date of Decision : 22-09-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 4

Citation : (1976) 09 P&H CK 0001

Hon'ble Judges : Rajindra Nath Mittal, J

Bench : Single Bench

Advocate : Munishwar Puri, for the Appellant; K.S. Rai Puri and A.K. Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

Rajindra Nath Mittal, J.—This revision petition has been filed by the judgment-debtor against the judgment of the Senior Subordinate Judge. Jullundur, dated March 30, 1976

2. Briefly the facts of the case are that M/s. Madan Roller Flour Mills, decree-holder, filed an application for execution of order of ejectment dated February 27, 1974, order was passed on the basis of a compromise between the parties according to which the judgment-debtor had to give up possession of 5 Marlas of property towards Madan Roller Flour Mills immediately and the decree holder was entitled to erect a boundary wall around the said 5 Marlas and in case the judgment debtor failed to deliver the possession, the decree-holder was entitled to recover it by execution. It was stated by the decree holder in the execution application that the judgment-debtor had failed to deliver the possession of 5 Marlas of land as agreed to between the parties and, therefore, it was entitled to execute the decree. The judgment debtor contested the execution application inter alias on the ground that application had been filed by Hari Chand, one of the partners of the firm, that he had died on September 17, 1975 and that the application could not proceed unless his legal representatives were brought on the record. Anil Kumar, another partner of the firm contested the objections and,

in reply, pleaded that he being another partner of the firm, was entitled to prosecute the execution application. The learned executing Court held that the execution application could be continued, by Anil Kumar, the other partner of the firm. The judgment debtor has come upon revision against the order of the executing Court to this Court.

3. The only question that arises for determination is, whether another partner, after the death of Hari Chand, could continue execution proceeding or the legal representative of the deceased had to be brought on the record. It is not disputed that a suit can be instituted in the name of the firm registered under the Partnership Act. If a suit is instituted by a firm, it is sufficient if the pleading or any other, document which is required to be signed or verified by the plaintiff under the Code of Civil Procedure, is signed or verified by any one of the partners. Similarly in the case of execution one partner can execute the decree on behalf of and in the name of the firm. Order 30, rule 4 of the CPC provides that where a suit is instituted in the name of a firm and any one of the partners dies,, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representatives of the deceased as a party to the suit. A reading of the foresaid rule establishes that a suit instituted by a firm will not abate on the death of a partner and it is not necessary to bring on record the legal representatives of the deceased partner. Therefore, the irresistible conclusion is that the laws of abatement are no applicable in a case where a partner of a firm dies. Order 2, rule I expressly says that rules 3 and 4 of Order 22 which relate to the procedure in case of death of one of several plaintiffs or of sole plaintiff, and of procedure in case of death of one of the several defendants or of sole defendant, respectively, shall not apply to proceedings in execution of a decree or order. From the aforesaid rule it can safely be concluded that rule of abatement also does not apply in case any decree-holder or judgment debtor dies. The aforesaid rule is equally applicable in case of execution by firms, In the aforesaid circumstances it cannot be held that on the death of Hari Chand it was necessary to bring on record his legal representatives. Anil Kumar, as a partner, could continue the execution proceedings.

4. For the aforesaid reasons I do not find any merit in the revision petition and the same is dismissed with costs. Counsel fee Rs. 100/-.