

(2014) 04 GAU CK 0028
In the Gauhati High Court
Case No : C.R.P. No. 500 of 2006

M/s. P.N. Pharma Marketing Service Pvt. Ltd., a private limited company incorporated under the Companies Act and Sri Swapan Paul APPELLANT

Vs

M/s. Nicholas Piramal India Limited, a public limited company incorporated under the Companies Act RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 115, 47, 96

Citation : AIR 2014 Guw 84

Hon'ble Judges : Abhay Manohar Sapre, C.J

Bench : Single Bench

Advocate : J.C. Gour, Advocate Mr. D. Baruah, Advocate for the Respondent

Judgement

Abhay Manohar Sapre, C.J.—This is a civil revision filed by the plaintiff (decree holder) u/s 115 of CPC against the order 14.8.2006 and 23.8.2006 passed in Misc. (J) Case No. 158 of 2005 by Civil Judge (Sr. Division) No. 2 Guwahati. By impugned order, the Civil Judge (Sr. Division No. 2) acting as an executing court allowed the application filed by the defendant/judgment debtor u/s 47 of CPC and in consequence set aside the judgment and decree dated 30.3.2002 passed in Title suit No. 180/97.

2. So the short question which arises for consideration in this revision petition is whether executing court was justified in allowing the application filed by the judgment/decree u/s 47 ibid and in consequence was justified in declaring by holding that the judgment/decree passed by the said court dated 30.3.2002 in Title Suit No. 180/97 was a nullity and hence deserves to be set aside on such ground?

3. Facts of the case lie in a narrow compass.

4. The petitioner is the plaintiff/decree holder whereas the respondent is the

defendant/judgment debtor.

5. The petitioner filed a suit against the respondent being Title suit No. 180 of 1997 for declaration/permanent injunction and other ancillary reliefs flowing from the declaration etc. The suit was contested by the respondent on merits by filing written statement and adducing evidence.

6. The Trial court by judgment/decree dated 30.3.2002, decreed the suit and passed a money decree for Rs. 11,61,813.54. The defendant/judgment debtor instead of filing a regular first appeal u/s 96 of the CPC filed an application u/s 47 of the CPC in executing court contending inter alia that the decree dated 30.3.2002 passed by him in aforesaid suit was a "nullity" because they had already paid the entire dues to the plaintiff and that there was nothing for the defendant to pay to the plaintiff again. In support, they filed certain documents and called upon the executing court to probe into these factual issue for declaring the decree as being "nullity".

7. The petitioner (decree holder) opposed the application contending that the application filed by the judgment debtor was not maintainable, it was really misconceived in nature, that such factual inquiry cannot be undertaken by the executing court u/s 47 at the instance of the judgment debtor for holding the decree to be nullity, that remedy of the judgment debtor lies in filing regular first appeal against the judgment/decree u/s 96 and raise all the pleas which they intend to raise in this application before executing court in regular first appeal and lastly since the executing court cannot go behind the decree and has to execute as it is and hence entertaining the application would allow the executing court to go behind the decree which is against the well settled principal.

8. The executing court did not accept the objection raised by the decree holder and allowed the application filed by the judgment debtor and in turn held the decree dated 30.3.2002 a "nullity". It is against this order; the decree holder has felt aggrieved and filed this revision petition u/s 47 ibid.

9. Having heard the learned counsel for the parties and on perusal of the record of the case, I am constrained to allow the revision and while setting aside the impugned orders dismiss the application filed by the respondent (judgment debtor) u/s 47 ibid.

10. I am constrained to observe that executing court went beyond his jurisdiction in entertaining the application filed by the judgment debtor u/s 47 and then erred in law in allowing the application by holding the decree dated 30.3.2002 as " Nullity". Indeed the impugned order is ex-facie without jurisdiction and liable to be set aside having been passed against the well settled principal of law namely - executing court cannot go behind the decree and has to execute the decree as it is.

11. When I read the contents of the application filed by the judgment debtor and the impugned order of the executing court, it is so apparent that executing court

virtually became and acted as original court as if it was deciding the suit or it acted like a first appellate court as if it was hearing regular first appeal arising out of the decree and went ahead in probing the facts, evidence and then appreciated both and then returned a factual finding contrary to what was held in main judgment on the same set of facts and some additional facts and evidence.

12. In my view it was not legally permissible to do u/s 47 at the instance of judgment debtor. In no case, the decree howsoever good or bad it may be whether on facts or in law, the court had the jurisdiction to pass it in the suit. A decree, once passed could be challenged only in appeal by the defendant u/s 96 *ibid* or in review jurisdiction under Order 47 Rule 1.

13. In the present case, the well known principle regarding jurisdiction of executing court was not applied much less in letter and spirit and the executing court on facts declared that decree was "nullity". The executing court did not appreciate the scope while deciding the application as an executing court and the appeal. This distinction in my opinion had to be kept in mind while deciding the application u/s 47 *ibid*.

14. I do not wish to go into the factual issues involved in the suit and now in execution to show the factual errors. In my view, what is visible on mere reading of the order impugned is enough for setting aside of the order.

15. As a consequence of aforesaid discussion, I allow the revision, set aside the impugned orders and dismiss the application filed by the respondent (defendant/judgment debtor) u/s 47. As a result, the decree dated 30.3.2001 passed in Title Suit 180/1997 is held as legal.

16. The respondent/defendant is however free to file regular first appeal u/s 96 of the CPC to the first appellate court against the aforesaid judgment and decree. In case if they file the appeal within 90 days, then the appellate court would decide the appeal on merits strictly in accordance with law uninfluenced by any of my observation which I have refrained from making on the merits. No cost.