
(2013) 10 CHH CK 0002
In the Chhattisgarh High Court
Case No : Civil Revision No. 53 of 2004

M/s. Premier Road Carriers	Vs	APPELLANT
Chhattisgarh State Electricity Board		RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2014) 1 CGLJ 320

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : B.P. Sharma, for the Appellant; B.P. Gupta, Counsel, for the Respondent

Judgement

P. Sam Koshy, J.—Through the instant civil revision the applicant has assailed the order dated 11.12.2003 passed by Additional District Judge, Korba in Execution Case No. 24-B/91 whereby the Court below has rejected the application filed by the applicant objecting the execution proceedings initiated by the respondent on the ground that the respondent was not in fact the decree holder and therefore the said decree which is sought to be executed by the respondent is an un-executable decree. Brief facts leading to the filing of the revision is that under the erstwhile state of Madhya Pradesh, the Madhya Pradesh Electricity Board (for short "MPEB") has filed the Civil Suit against the applicant for the transaction between the parties in respect of consignment of a machine booked by M/s. Pennwalt India Ltd., Mumbai for delivery at Korba (now in C.G.). The respondent/Board's contention in the trial Court was that there was default on the part of the applicant/transporter in not delivering the goods at Korba, the consignment was to upload at Korba not Nagpur and when request was made on behalf of the respondent/Board to deliver the consignment at Korba, the applicant company sought for extra freight and demurrage charges amounting Rs. 15,000. The respondent/Board thereafter filed a suit against the applicant for recovery towards the price of the consignment. After considering the parties of either side, the trial Court passed a decree on 22.02.2001 in favour of the Board for Rs.

1,79,952 towards price and Rs. 16,360 towards interest with further interest @ 6% per annum till the date of realization.

2. By the time the trial Court could pass the judgment and decree, the State of Chhattisgarh had come into existence and the Electricity Board for the State of Chhattisgarh was thereafter known as Chhattisgarh State Electricity Board (For short "CSEB"). Subsequently, the CSEB filed the execution application for recovery of total sum of Rs. 5,45,421 including interest upto 31.12.2001. The said execution application was signed and verified by Superintending Engineer (Stores), CSEB, Korba (East) who was the officer-in-charge of the concerned division where the tender was pertaining to. On receipt of the notice of the Execution Court, the applicant/judgment debtor filed an application u/s 47 of the CPC raising an objection that the decree cannot be executed by CSEB as CSEB was not a party before the Court below and the same cannot be executed by the respondent. On the same day respondent/Board moved an application under Order 21 Rule 101 and 104 read with Section 151 and 153 of the CPC requesting for reading the words MPEB as CSEB in the judgment and decree. After considering the submissions and objections raised by the either party, the Court below finally passed the impugned order dated 11.12.2003 rejecting the objection raised by the applicant/judgment-debtor in respect of the non-executability of the judgment and decree dated 22.02.2001. It is this order which has been assailed by the applicant in the instant Civil Revision.

3. After hearing the rival submissions made by the either side it is found that the admitted position in the instant case is that the suit was filed by MPEB under the erstwhile state of Madhya Pradesh that is much prior to the formation of the state of Chhattisgarh. However, the judgment and decree was passed only on 22.02.2001 and by the time the CSEB had already come in existence for the territories which falls in the state of Chhattisgarh. The other admitted position which stands today is that the judgment and decree passed on 22.02.2001 has since attained finality and what is to be born in mind is that the Chhattisgarh state came into effect w.e.f. 01.11.2000 and by notification dated 05.11.2000 a separate Electricity Board by name Chhattisgarh State Electricity Board was formed and accordingly all assets, rights and liabilities of MPEB stood transferred to CSEB by virtue of the agreement between them. Thus, for all practical purposes where it was MPEB on earlier occasion henceforth it would be CSEB.

4. If we read provision of Order 22 Rule 10 of CPC it specifically enumerates that in the event of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. Similarly if we read provisions of Section 49 of the CPC wherein also it enumerates that every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

5. The Hon"ble Supreme Court in the matter of Jaskirat Datwani Vs. Vidyavati

and Others, in a very categorical terms while dealing with somewhat issue has held that the judgment-debtor would continue to be bound by the decree and order which has been passed in a suit particularly when it had the knowledge of the proceedings. The view taken by the Hon"ble Supreme Court in the above case (supra) was based on a judgment passed by the Supreme court in the matter of Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, wherein dealing with the issue Order 22 Rule 10 the Hon"ble Supreme Court categorically held that cases of assignment, creation and devolution of interest during the pendency of the suit it is held that the trial of a suit cannot be brought to an end merely because the interest of a party in the subject-matter of the suit has devolved upon another during its pendency. It was held that such a suit may be continued with the leave of the Court by or against the person upon whom such interest has devolved. The Supreme Court has further held that the parties would continue to be bound by the decree or order which has been passed in the suit.

6. Contention of the counsel for the applicant was that after division of MPEB there has been settlement regarding apportionment of the assets and liabilities and therefore if at all the decree is executable by the CSEB, the CSEB would be entitled for only that much share from the decree to the extent of the share as has been apportioned by way of agreement between the two Boards and for this reason the decree becomes in-executable and if at all executable only to the extent of its apportionment as agreed between the two electricity Boards.

7. Contention of Shri Gupta, counsel for the respondent was that the question of apportionment was not available on the date the executing proceedings were filed and therefore the revision should be rejected holding it to be devoid of merits. He also argued that if at all there was some apportionment to be done between the two parties i.e. MPEB and CSEB the same can still be done even after the CSEB gets the decree executed and thereafter they can share the decretal amount in accordance with apportionment as agreed between the parties.

8. Taking into consideration the admitted position that the CSEB had already come into force on the date when the judgment and decree was passed and that the execution proceedings have been initiated by the same office from where the suit was also filed. Thus, considering all these facts, I am of the considered view that the objection raised by the applicant/judgment-debtor is devoid of merit. For the reasons mentioned in the preceding paragraphs and in the light of the two decisions referred above, passed by the Supreme Court, the instant civil revision filed by the applicant being devoid of merits is liable to be and is hereby dismissed. No order as to cost.