
(2013) 11 AHC CK 0058
In the Allahabad High Court
Case No : Civil Revision No. 479 of 2013

M/s. Zaz Fashion

APPELLANT

Vs

M/s. UT Worldwide (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2014) 1 ADJ 39 : AIR 2014 All 8 : (2014) 1 ALJ 759 : (2014) 102 ALR 41 : (2014) 1 AWC 447 : (2014) 122 RD 232

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Shashi Nandan and Udayan Nandan, for the Appellant;

Judgement

Manoj Misra, J.—The instant revision application has been filed by the revisionist, who is the judgment-debtor, against the order dated 19.9.2013 passed by the Additional District & Sessions Judge, Court No. 2, Kanpur Nagar in Misc. Case No. 11/74/2013 by which the objection of the revisionist (Application No. 3 Ga), u/s 47 of the Code of Civil Procedure, has been rejected. The facts relevant for deciding this case are that the plaintiff-respondent/decreed-holder instituted a suit No. 512 of 2008 against the revisionist, which was decreed ex parte, on 23.8.2010, by the Court of Additional District & Sessions Judge, Central-17, Delhi for recovery of an amount of Rs. 6,28,005/-. As the judgment-debtor/revisionist was outside the local limits of its jurisdiction, in exercise of power u/s 39 of the Code of Civil Procedure, 1908, the decree was sent for execution to the District Court, Kanpur Nagar, as the revisionist resided within its jurisdiction, which gave rise to Execution Case No. 101 of 2011. When the notice of the aforesaid execution case was served on the revisionist, he applied for setting aside of the ex parte decree which application, according to the revisionist, is pending before the concerned Court at Delhi. In the meantime, the judgment-debtor filed objection, u/s 47 C.P.C., before the Court of Additional District & Sessions Judge, Court No. 2, Kanpur Nagar claiming, inter alia, that the Court of Civil Judge (Senior Division) alone has jurisdiction to proceed with the execution, inasmuch

as, the said Court alone, in its ordinary jurisdiction, is the Court competent to try such a suit and not the Court of Additional District & Sessions Judge, Court No. 2, Kanpur Nagar which, in its ordinary jurisdiction, is not a Court of original jurisdiction to try a suit of the nature whose decree was under execution. The aforesaid objection of the revisionist did not find favour with the Court below and was rejected by the impugned order.

2. Assailing the order of the Court below, Sri Shashi Nandan, learned senior counsel appearing on behalf of the revisionist, submitted that u/s 39 of the Code of Civil Procedure, 1908, the Court which passed a decree may, on an application of the decree-holder, send it for execution to another Court of competent jurisdiction. It has been submitted that the expression "competent jurisdiction" is of significance, which means that the Court to which the decree has been transferred must be competent to try the suit. It has been submitted that as the Court of Additional District & Sessions Judge is not a Court which, in its ordinary jurisdiction, can entertain a suit, therefore, the Court of competent jurisdiction, with respect to the valuation of the suit concerned, would be the Court of Civil Judge (Senior Division) and, as such, the Court of Additional District Judge had no jurisdiction to proceed with the execution of the decree. In support of his submission, reliance was placed on three decisions namely, Mohit Bhargava Vs. Bharat Bhushan Bhargava and Others, ; Prem Raj alias Prem Singh Vs. IIrd Addl. Dist. Judge, and others, ; and Manganese Ore (India) Ltd., Nagpur Vs. M/s. Mangilal Rungta, Calcutta, .

3. Before proceeding to assess the weight of the submission of the learned counsel for the revisionist as also the authorities cited by him, it would be useful to first examine the provisions of Section 39 of the Code of Civil Procedure, 1908, which are as follows:

39. Transfer of decree.--(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 no 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 the 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.

(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

4. By U.P. Act No. 31 of 1978, sub-section (3) of Section 39 of the Code of Civil Procedure, has been substituted in the State of Uttar Pradesh, with effect from 1.8.1978, as follows:

STATE AMENDMENT

Uttar Pradesh,--In Section 39, for sub-section (3), substitute the following sub-section, namely, :--

(3) For the purpose of this section, a Court shall be deemed to be a Court of competent jurisdiction if the amount or value of the subject-matter of the suit wherein the decree was passed does not exceed the pecuniary limits, if any, of its ordinary jurisdiction at the time of making the application for the transfer of decree to it, notwithstanding that it had otherwise no jurisdiction to try the suit.

5. Section 40 of the Code of Civil Procedure, 1908 provides that where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State. Accordingly, it is undisputed that the amended provisions of sub-section (3) of Section 39, as applicable in the State of Uttar Pradesh, would be applicable with reference to the execution in question.

6. A bare perusal of sub-section (3) of Section 39, as in operation in the State of Uttar Pradesh, with effect from 1.8.1978, would go to show that the Court shall be deemed to be a Court of competent jurisdiction if the amount or value of the subject-matter of the suit wherein the decree was passed does not exceed the pecuniary limits, if any, of its ordinary jurisdiction at the time of making the application for the transfer of decree to it, notwithstanding that it had otherwise no jurisdiction to try the suit. Meaning thereby that the transferee Court would be a Court of competent jurisdiction to execute the decree even if it had otherwise no jurisdiction to try the suit provided the subject-matter of the suit wherein the decree was passed does not exceed the pecuniary limits, if any, of its ordinary jurisdiction at the time of making the application for the transfer of decree to it.

7. It is not disputed by the learned counsel for the revisionist that in the State of Uttar Pradesh, the Court of Additional District Judge is a Court of unlimited pecuniary jurisdiction, therefore, there exist no dispute that the subject-matter of the suit wherein the decree was passed would not, in any case, exceed the pecuniary limits of the Court of Additional District Judge.

8. In order to wriggle out of the clutches of the sub-section (3), as in operation in the State of Uttar Pradesh, the learned counsel for the revisionist submitted that the use of the expression "ordinary jurisdiction" in sub-section (3) suggests that the transferee Court must in ordinary course have jurisdiction to try the suit. It has been submitted that since the Court of Additional District Judge in ordinary course does not have jurisdiction to try a suit, therefore, it is not a Court of competent jurisdiction.

9. The interpretation as suggested by the learned counsel for the revisionist cannot be accepted in view of the clear language adopted by the State Legislature in Sub-section (3) which provides, in no uncertain terms, that it is not necessary for the transferee Court to have jurisdiction to try the suit. Accordingly, the expression "ordinary jurisdiction" used in sub-section (3) is not in reference to the jurisdiction of a Court to try a suit in ordinary course, but is in reference to the pecuniary limits of that Court. As, admittedly, the Court of Additional District Judge is a Court of unlimited pecuniary jurisdiction, it cannot be said that the Court had no jurisdiction to proceed with the execution u/s 39 of the Code of Civil Procedure.

10. The decisions that have been cited by the learned counsel for the revisionist do not support the revisionist. The decision of the Apex Court in the case of Mohit Bhargava (supra) holds that by virtue of the amendment i.e. Act No. 22 of 2002, by which sub-section (4) has been inserted in Section 39 of the Code, there lies no option to the Court which passes a decree to execute such decree against any person or property outside the local limits of its jurisdiction than to transfer the same to the Court having jurisdiction over the property, which is not a question to be decided in this case. The said decision nowhere deals with the U.P. Amendment to sub-section (3) of Section 39. Thus, it is of no help to the revisionist. The decision of this Court in the case of Prem. Raj alias Prem Singh (supra) does not help the revisionist, inasmuch as, in paragraph 9 of the judgment, it has been observed that the expression "competent jurisdiction", used in sub-section (3) of Section 39 C.P.C. as amended by State of Uttar Pradesh refers to "pecuniary jurisdiction only" and, therefore, if the transferee Court had pecuniary jurisdiction to try the suit in which the decree is sought to be executed, the transferee Court would be a Court of competent jurisdiction within the meaning of Section 39 C.P.C. In paragraph 10 of the report, it has further been clarified that the Court executing the decree may not have jurisdiction over the subject-matter to pass the decree in the suit itself. Further, in paragraph 12 of the report, it has been observed that the language used in sub-section (3) of Section 39, as substituted in State of U.P., gives a clear indication that while interpreting the scope of Sub-section (3) of Section 39 the Courts have only to keep it in mind that it refers to pecuniary jurisdiction and not the jurisdiction over the subject-matter. So far as the decision of the Delhi High Court in the case of Manganese Ore (India) Ltd. (supra) is concerned, the same does not deal with the U.P. Amendment, therefore, it is of no help to the revisionist.

11. Coming to the instant case, as, admittedly, the Court of Additional District Judge is a Court of unlimited pecuniary jurisdiction, it would have jurisdiction to proceed with the execution even though, otherwise, it may not, in its ordinary course, have jurisdiction to try the suit. In view of the discussion made herein above, this Court is of the view that the Court below, where the execution is pending, is a Court of competent jurisdiction to proceed with the execution. The revision application, therefore, lacks merit and is dismissed.