

(2019) 09 DEL CK 0356

In the Delhi High Court

Case No : Civil Revision Petition No. 135 Of 2019, Civil Miscellaneous Application No. 27649, 30032 Of 2019

Naveen Jain

APPELLANT

Vs

Sushma Jain

RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 47, 151
Arbitration And Conciliation Act, 1996 — Section 34

Citation : (2020) 1 RLR 33

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Manoj Khanna, Mukesh Kumar Singh, Akash Kedia, Aakriti Mittal ,
M.P.Chaudhary

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

C.R.P. 135/2019 & CM APPL. 27649/2019 (stay)

1. Petitioner impugns order dated 22.03.2019 and 27.04.2019 whereby the objections to the execution filed by the petitioner under Section 47 read with Section 151 CPC have been dismissed and consequently warrants of attachment issued.

2. The only objection raised by the petitioner is that the cause title of the award is M/s.Mahavir Papers vs. M/s.Naveen Board Co & others and the legal status of M/s. Mahavir Papers has not been mentioned and is not decipherable.

3. Learned counsel further submits that the execution is being prosecuted by Mrs. Sushma Jain claiming to be the proprietor of M/s.Mahavir Papers and it is not decipherable from the award that she is the proprietor.

4. Factual matrix is that a claim petition was filed on 05.04.2000 before the

Paper Merchants Association seeking recovery of Rs.51,984/- with regard to supply of material to the petitioner. Arbitral Tribunal was constituted and notices were issued by the arbitrator to the petitioners/respondents in the claim petition.

5. As per the award the petitioner appeared before the arbitrator on one date and thereafter failed to appear. Ex-party arbitral award was passed in favour of the respondents/claimants.

6. It is informed that the execution petition already stands satisfied and the amount has already been recovered by the respondent/claimant.

7. The objection of the petitioner is that the claim could not have been filed in the name of the proprietorship concern and the claim should have been filed by the sole proprietor in her own name, since it is alleged by the respondents that M/s. Mahavir Papers is a sole proprietorship of Mrs. Sushma Jain.

8. The record of FAO 182/2012 of this Court titled Smt. Sushma Jain vs. M/s. Naveen Board Co and Ors has been perused.

9. The record of the appeal shows that petitioner had filed objections under Section 34 of the Arbitration & Conciliation Act, 1996 seeking setting aside of the award dated 28.03.2003 (subject matter of the present execution petition) and in the objections the title of the objections show that the same were filed as Mrs. Sushma Jain, Proprietor of M/s. Mahavir Papers vs. Naveen Board Co. and Ors.

10. It is clear from the objections that the petitioner was aware as to who the claimant is and had even filed objections in the name Mrs. Sushma Jain showing here to be the sole proprietor of M/s. Mahavir Papers.

11. Learned counsel appearing for the respondents has produced a copy of the claim petition filed before the Papers Merchant's Association which was the claim petition in the arbitral proceedings. The memo of parties of the claim petition also shows that the name of the claimant as Smt. Sushma Jain, proprietor of M/s. Mahavir Papers.

12. Perusal of the record clearly shows that the respondent had not filed the claim in the name of the proprietorship concern but had filed the claim petition in her own independent name describing herself as the sole proprietor of M/s. Mahavir Papers. Even the petitioner filed the objections against the award with the same memo of parties. Merely because in the award the arbitrator has erred in not mentioning the name of the sole proprietor but mentioned the name of the proprietorship concern, it would not invalidate the award, more so in view of the fact that petitioner had filed objections to the award in which no such plea was taken.

13. Perusal of the Record reveals that such a plea could not have been taken by the petitioner because the claim petition was correctly filed by the sole proprietor in her own name.

14. I find no infirmity in the order of the Executing Court dated 22.03.2019

rejecting the objections filed by the petitioner.

15. There is no merit in the petition. The Petition is, accordingly, dismissed.