

(1992) 08 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Revision Petition No. 270 of 1992

Om Prakash

APPELLANT

Vs

Hargovind Rajkumar

RESPONDENT

Date of Decision : 10-08-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 38, 39(1)

Citation : AIR 1993 Raj 68 : (1992) 2 RLW 203 : (1992) 2 WLN 93

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : R.K. Singhal, for the Appellant; D. Maheshwari, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, J.—This is judgment-debtor's revision directed against the order passed by learned Addl. Dist. Judge, Nohar in civil execution case No. 1/90 on 15-2-92 whereby his objection regarding jurisdiction has been rejected.

2. Brief facts of the case are that the nonpetitioner decree-holder obtained a decree against the firm M/s. Nardurga Trading Co. and its four partners on 9-12-86 from the Court of Addl. Dist. Judge, Nohar of Rs. 1,96,264/-. The decree-holder moved an application for execution of the decree against one of the judgment-debtors Rameshwarlal, a partner of the firm. On an application by the judgment-debtor u/s 24, C.P.C., the execution case No. 10/88 was transferred from A.D.J. Court, Nohar to Addl. Dist. Judge Court No. 2, Hanumangarh vide order dt. 11-8-88. The property of judgment-debtor No. 2 Rameshwarlal was attached in the execution proceedings but the parties have entered into a compromise and after realising Rs. 30,000/- from the judgment-debtor No. 2 Rameshwarlal, the decree-holder got the execution petition dismissed on 17-11-89. The decree-holder moved an application against the present-petitioner before the executing Court for realising the remaining decretal amount. The petitioner raised an objection on 20-7-91 that the executing Court at Nohar ceased to have jurisdiction as execution proceedings had earlier been transferred

from the Court of Addl. Dist. Judge, Nohar to Addl. Dist. Judge, Hanumangarh, and prayed for dismissal of the application. The decree-holder filed a reply on 3-8-91 stating that the first execution application was dismissed as being partly satisfied against the judgment-debtor No. 2 Rameshwarlal only and not against the petitioner, as such it is maintainable before the executing Court being a fresh application. The learned trial Court rejected this objection of jurisdiction on 18-2-92. Hence, this revision.

3. Mr. R.K. Singhal, learned counsel for the petitioner submits that the Court below has no jurisdiction to entertain application as case has been transferred and thus executing Court has acted illegally and with material irregularity. He has further submitted that the Court of Nohar has no jurisdiction to execute the same till the certificate of non-satisfaction of the decree had been received by the executing Court.

4. Mr. Maheshwari, submits that the Court below has rightly dismissed objection and no interference is called for in the order.

5. I have heard learned counsel for the parties and perused the relevant provisions of law. The question for determination is as to whether after transfer of execution case u/s 24, C.P.C. only the Court where the execution proceeding has been transferred has jurisdiction to entertain the execution? To resolve the controversy it is proper to go through the relevant sections.

6. u/s 24, C.P.C. which deals with general power of transfer and withdrawal, the High Court or the District Court at any stage may transfer any suit, appeal or other proceeding including proceeding for the execution to a competent Court.

7. Section 38 provides that a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

8. Section 39(1), C.P.C. provides that the Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction.

9. Section 41, C.P.C. provides that the Court to which a decree is sent for execution shall certify to the Court which passed it, the fact of such execution, or where the former Court fails to execute the same, the circumstances attending such failure.

10. Section 42, C.P.C. deals with the powers of Court in executing transferred decree-- (1) The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself.

11. A perusal of the said sections show that there is no bar in law to prevent simultaneous executions of the cases and there is nothing in law to prevent decree-holder from executing the decree in a fresh execution filed within the jurisdiction of the original Court even other execution case which was instituted earlier has been transferred u/s 24, C.P.C, from original Court to the transferee

Court.

12. In the instant case the admitted facts are that the decree-holder obtained a decree against the firm as well as its partner. The decree-holder filed execution petition against one Rameshwarlal only and Omprakash was not made a party earlier. The judgment-debtor got the case transferred on the ground that he is not going to get any relief from the Presiding Officer. Admittedly, the decree was not transferred by the decree-holder, therefore, the provisions of Section 39, C.P.C. are not applicable and the argument that the certificate of non-satisfaction is not obtained has no substance. This being a fresh application is maintainable against another judgment-debtor. As discussed above, not only the transferee Court but also the original Court from where the execution case has been transferred can entertain a fresh execution application as simultaneous execution of the case is no bar. In view of this, the learned Court below has not acted in the exercise of its jurisdiction illegally or with material irregularity in dismissing the objection.

13. Accordingly, this revision has no force, so it is hereby dismissed.