

(2010) 11 BOM CK 0063
In the Bombay High Court
Case No : Writ Petition No. 650 of 2009

Penguin Alcohols Pvt. Ltd.

APPELLANT

Vs

Dr. K. Subbaramaiah, Proprietor of Proprietary Concern
functioning under the name and style of The White Horse
Distilleries and Andhra Pradesh Beverages Corporation,
Limited

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 5, Order 21 Rule 6, 39, 40
Constitution of India, 1950 — Article 227

Citation : (2011) 2 ALLMR 197 : (2011) 1 BomCR 14 : (2011) 3 MhLj 270

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Judgement

A.P. Lavande, J.—Heard Mr. D. Pangam, Advocate for the petitioner. The respondents though served by publication in the newspaper has chosen not to put in appearance.

Rule. Heard forthwith.

2. By this petition under Article 227 of the Constitution of India the petitioner challenges order dated 30/7/2009 passed by the II-Additional Civil Judge, Senior Division, Margao, in C.M.A No. 5/09/II in Special Civil Suit No. 63 of 2009, by which application filed by the petitioner under Sections 39 and 40 r/w Rules 5 and 6 of Order 21 of the Civil Procedure Code, 1908 has been dismissed.

3. The petitioner filed Special Civil Suit No. 63/2009 in the Court of Civil Judge, Senior Division, Margao against the respondent for recovery of money. The trial Court by judgment and decree dated 10/7/2008 decreed the suit with costs against the respondents herein and directed the respondent to pay a sum of Rs. 11,42,296/- as on 31/3/2001 along with further interest thereon at the rate of 18% per annum until effective payment.

4. On 9/4/2009, the petitioner who is the decree-holder filed an application under Sections 39 and 40 of the Civil Procedure Code, 1908 for transfer of the decree to the District Judge, Nellore, in Andhra Pradesh State for execution against the respondent herein on the ground that the respondent No. 1 resides and carries on business in Nellore, Andhra Pradesh which falls within the jurisdiction of the District and Sessions Judge, Nellore District. Another ground urged in the application was that the judgment-debtor had property within the local limits of the District and Sessions Judge, Nellore in Andhra Pradesh. The Executing Court by the impugned order has dismissed the application solely on the ground that the address of defendant in the suit was shown to be in Nellore, District in State of Andhra Pradesh.

5. Mr. Pangam, learned Counsel appearing for the petitioner submitted that the reason given by the Executing Court for rejecting the application is patently unsustainable in law. Mr. Pangam further submitted that in terms of Sections 39 and 40 of CPC the Executing Court was bound to transfer the decree to the District and Sessions Court, Nellore since the judgment-debtor resides within the jurisdiction of the said Court as well as his property is within the local limits of the jurisdiction of that Court. He therefore submitted that the impugned order is patently unsustainable in law and therefore the impugned order is liable to be set aside and the application for transfer of the decree is liable to be allowed.

6. As stated above, the respondent has chosen not to put in appearance in spite of service.

7. I have considered the submissions made by Mr. Pangam and perused the record.

8. Section 39 of CPC reads thus:

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 a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purpose 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.

9. From a bare perusal of Section 39 it is clear that if the judgment-debtor resides within the jurisdiction of another Court or carries on business within the local limits of jurisdiction of some other Court or if the judgment-debtor has no property within the local limits of the jurisdiction of the Court which has passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, the court which passed the decree may send it for execution to the other court for execution. In the present case, the petitioner has made a categorical statement in the application that the judgment-debtor was not only residing within the jurisdiction of Nellore District of Andhra Pradesh but also that he has property within the local limits of the District and Sessions Judge, Nellore. This being the position, I am unable to appreciate the reason given by the Executing Court for rejecting the application for transfer of the decree. The reason given by the Executing Court for rejecting the application is patently unsustainable in law. The petitioner being the decree-holder is entitled to execute the decree against the respondent in accordance with the provisions of the Civil Procedure Code, which clearly entitle the petitioner to seek transfer of the decree to the Court within whose jurisdiction the judgment-debtor resides and/or carries on business and also has property.

10. In view of the above discussion, the impugned order dated 30/7/2009 is liable to be quashed aside and is hereby quashed and set aside. The Executing Court is directed to transfer the decree to the court of District and Sessions Judge at Nellore for execution.

11. Rule is made absolute in the aforesaid term with no order as to costs.