
(1958) 10 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Execution First Appeal No. 203 of 1953

Punjab National Bank Ltd., Amritsar

APPELLANT

Vs

Raj Mal Pahar Chand and Others

RESPONDENT

Date of Decision : 13-10-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 50 , Order 21 Rule 50(2), Order 30 Rule 1

Citation : AIR 1959 P&H 362

Hon'ble Judges : I.D. Dua, J;D. Falshaw, J

Bench : Division Bench

Advocate : S.L. Puri, for the Appellant; K.S. Thapar, for the Respondent

Final Decision : Allowed

Judgement

Gurnam Singh, J.—This appeal arises out of execution proceedings. On 12-12-1947, the Punjab National Bank Limited, appellant before me, obtained a decree against firm Rajmal-Paharchand. The decree, however, was not fully satisfied. On 9-11-1952 present application was submitted by the decree-holder under Order XXI Rule 50, Civil Procedure Code. On notice of the application, the respondents appeared and raised various objections. One of the major objections raised by them was that they were members of a joint Hindu family firm and therefore the decree could not be executed against them in their individual capacity. Before the executing court, counsel representing the appellant-Bank made an admission that the judgment-debtor was a joint Hindu family firm.

2. It is an admitted fact that in an agreement dated 26-2-1940, the judgment-debtor-firm is described as a joint Hindu family firm. A supplementary agreement was executed on 5-6-1948. This is signed by all the three respondents and below their signatures word "partners" is written. On the basis of the latter agreement, learned counsel, for the appellant argues that they being partners, Order XXI Rule 50, Civil Procedure Code, is applicable. The other side places reliance on the admission of the counsel for the Bank wherein he had admitted that the

respondents were a joint Hindu family firm. No doubt, counsel for appellant-Bank later submitted an affidavit showing therein that he had made that admission under a mistaken belief and in absence of instructions from the Bank.

At the same time learned counsel for the respondents had admitted only the signatures of the respondents on the later agreement. Learned counsel for the appellant-Bank from this argues that he should be allowed to withdraw this admission as it was made in the absence of instructions from the Bank and under a mistaken belief. On the other hand it has been pointed out by the respondents' counsel that the admission of a counsel made during proceedings is binding. On this he has cited several authorities.

3. The main question contested by the parties is the applicability of Order XXI Rule 50. Learned counsel for the appellant-Bank argues that it has application and for this contention he places reliance on *Alekh Chandra and Others Vs. Krishna Chandra Gajapat Narayan Deo*, in which it was held

"Order 21 Rule 50 relates to execution and must be read with those rules of Order 30 which relate to suits by or against firms or partnerships. Rule 10 of Order 30 applies to a joint Hindu family trading firm also. Therefore, the procedure under Order 21 Rule 50 applies to the execution of a decree against such a firm."

In the course of judgment, Fazl Ali J. observed--"Now, it appears that in the Lahore High Court a provision has been inserted in Order 30 Rule 1 to the effect that the rule applies to a Joint Hindu family trading partnership also. Therefore, in cases decided in that High Court, no difficulty has ever arisen in the case of a joint Hindu family, because the courts have assumed that members of a joint Hindu family which carries on trading business form a partnership and the procedure laid down in Order 21, Rule 50. Clause (2) is applicable to a decree obtained against them."

From the other side. *Maturi Mall and Another Vs. Bhagaban Das Purna Mall and Another*, and *Motilal Chhajulal Vs. Giridharilal Rameshwarlal*, are cited giving the contrary view. In Orissa authority it was held-

"Order 21, Rule 50 (2) has no application to the case of a joint family concern carrying on business in an assumed name and its application "must be" limited to cases of contractual partnerships only.

Order 30 Rule 10, contemplates suits against a Single Individual carrying onbusiness in a name or style other than his own.

If the decree-holder wants to make more than one person liable under the decree, Rule 10 would not be applicable."

In this authority a detailed reference is made to the judgment of Fazl Ali J. reported in *Alekh Chandra and Others Vs. Krishna Chandra Gajapat Narayan Deo*, No authority of this High Court or that of Lahore High Court was cited

before me There is thus a conflict of views at least between two High Courts . The question involved is of considerable importance and is of daily occurrence. In my opinion, therefore, it is desirable that it should be determined by a larger Bench. The main question for consideration is, whether Order 21, Rule 50 CPC has application in the case of a joint Hindu family firm.

Counsel for the parties submit that the case being an old one it should be heard before vacation and should be decided as a whole by the Bench hearing the reference. This request appears to be reasonable. The question referred to above will really determine the fate of the appeal. I, therefore, order that the case be heard before summer vacation. It be laid before the Hon"ble Chief Justice for the constitution of the Bench.

JUDGMENT

D. Dua, J.

4. This appeal is on behalf of the decree-holder appellant against the order dated the 10th of August 1953 passed by a learned Subordinate Judge, Ist Class, Amritsar, holding that Order XXI Rule 50 of the CPC was not applicable in this case. This appeal was initially heard by a learned Single Judge of this Court on the 22nd of March 1957. The facts are hilly set out in the referring order in which it has been stated by the learned Single Judge that there was a conflict of views at least between two High Courts on the question whether or not the provisions of Order XXI Rule 50(2) of the CPC apply to joint Hindu family firms carrying on business in the firm's name.

The learned Single Judge has in his referring order referred to Alekh Chandra and Others Vs. Krishna Chandra Gajapat Narayan Deo, and, Motilal Chhajulal Vs. Giridharilal Rameshwarlal, The decision of the Patna High Courts holds in favour of Order XXI Rule 50 read with Order XXX of the CPC being applicable to joint Hindu family trading firms whereas the Orissa and the Calcutta cases hold to the contrary,

In all the three cases, however, the provisions of Order XX of the CPC have been interpreted without there being any explanation like the one added by this Court to Rule 1 of the said Order. The conflict between the Patna case on the one hand and the Calcutta and Orissa cases on the other centres round the construction of Rule 10 of Order XXX. IN Alekh Chandra and Others Vs. Krishna Chandra Gajapat Narayan Deo, Fazl Ali J., as he then was, construed the word "person" occurring in Rule 10 of Order XXX so as to include a joint Hindu family.

By thus construing Rule 10 of Order XXX the DIVISION Bench of the Patna High Court in the reported case held that the provisions of Order XXX were applicable to joint Hindu family firms and, therefore, a decree against such a firm could be executed against individual partners under the provisions of Order XXI Rule 50 of the CPC if the conditions laid down in the various sub-rules of Rule 50 were complied with. In holding this the learned Judges followed an earlier decision of

their own Court in Sakaldeo Singh Vs. Emperor, It would not be out of place at this stage to mention that Fazl Ali J while dealing, with this question expressly observed as follows at page 598 column 1:-

Now, it appears that in the Lahore High Court a provision has been inserted in Order XXX Rule 1 to the effect that the rule applies to a joint Hindu family trading partnership "also. Therefore in cases decided in that High Court, no difficulty has ever arisen in the case of a joint Hindu family because the Courts have assumed that members of a joint Hindu family which carries on trading business form a partnership and the procedure laid down in Order XXI Rule 50, Clause 2) is applicable to a decree obtained against them." Then the learned Judge proceeded to deal with those cases where, unlike this High Court there was no provision applying the procedure laid down in Order XXX to joint Hindu family firms. In Matun Mall's case AIR 1950 Orissa 189 a Division Bench of that Court, however held that Order XXI Rule 50(2) had no application to a case of a joint family concern carrying on business in an assumed name and its application must be limited to cases of contractual partnerships only.

Their Lordships referred to Alekh Chandra and Others Vs. Krishna Chandra Gajapat Narayan Deo, but for reasons which at least I have not been able to appreciate, distinguished the Patna decision. It certainly lays down a rule of law contrary to that laid down in the Patna case. In Motilal Chhajulal Vs. Giridharilal Rameshwarlal, a learned Single Judge of the Calcutta High Court adopted the same view as has been taken by the Orissa High Court.

5. All these three cases, as I have mentioned above, deal with the provisions of Order XXX without the amendment which this Court, as also the Lahore, Peshawar and the Sind High Courts, have incorporated in Rule 1 of Order XXX. By means of this amendment an explanation has been added to Rule 1 making the provisions of Order XXX applicable to joint Hindu family firms. Reading together the provisions of Order XXX Rule 1 as amended and the provisions of Order XXI rule 50(2) there can hardly be any doubt that a decree passed against a joint Hindu family firm can legally be executed in accordance with the provisions of Order XXI Rule 50(2) of the CPC in precisely the same way in which decrees against contractual partnership firm can be executed against its partners.

To me the position seems to be so clear that it is hardly open to argument to contend to the contrary. Indeed when asked to refer to any authority of a High Court, which had added to Order XXX Rule 1 an explanation like the one added by this Court holding to the contrary, Mr. K. S. Thapar, learned counsel for the respondents, expressed his inability to do so. The learned counsel merely urged, and that too in a half-hearted manner, that the construction that we were placing on Order XXI Rule 50 would mean that a member of a Joint Hindu family firm can be personally held liable in execution of a decree against the joint Hindu family firm itself.

I quite agree with the learned counsel that it would be so; but in my opinion such

is the intention of the statute, and I do not see anything Wrong if that is so. The moment the explanation mentioned above is added to the provisions of Order XXX Rule 1 the position of the partners of a joint Hindu family firm becomes similar to that of the partners of a contractual firm and if the partners of the latter firm can be proceeded against under the provisions of Order XXI, Rule 50, then there is no logical reason why the partners of a joint Hindu family firm should also not be liable to be proceeded against under Rule 50 of Order XXI of the Code of Civil Procedure.

6. In fact in another case (Ghakki Mal v. Punjab National Bank Ltd., R.F.A. No 36 of 1956 (Punj)) which came up for decision before us a few days ago we have applied the provisions of Order XXX Rule 4 of the CPC to a joint Hindu family firm by reason of the explanation added by this Court to Rule 1 of Order XXX; on the same reasoning I would be inclined to hold that rules 5 and 7 of this Order would also be applicable to joint Hindu family firms. And if that is so, then Order XXI Rule 50(2) can properly be pressed into service by decree-holders while executing their decrees against the partners or members of the joint Hindu family firms.

7. For the reasons stated above, this appeal must be allowed and the order of the learned Subordinate Judge, 1st Class, dated the 10th of August 1953 set aside. There will, however, be no order as to costs in this Court.

8. The parties are "directed to appear before the executing Court on the 3rd of November 1958 when the Court would give them another date for further proceedings in the matter.

D. Falshaw, J.

9. I agree.