

(1973) 02 DEL CK 0006
In the Delhi High Court
Case No : L.P.A. No. 103 of 1971

R.S.G.R. Ram Chand and Sons

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 22-02-1973

Acts Referred:

Citation : AIR 1974 Delhi 69 : (1974) 10 DLT 21 : (1973) 2 ILR Delhi 143 : (1973) RLR 205

Hon'ble Judges : Narain Andley, C.J;S.N. Shankar, J

Bench : Division Bench

Advocate : Bakhshi Mehtab Singh, for the Appellant; Yogeshwar Dayal and Maheshwar Dayal, for the Respondent

Final Decision : Allowed

Judgement

S.N. Shankar, J.—This Letters Patent appeal is directed against the order of the learned single Judge dated March 4, 1971, rejecting the objections filed by Surrinder Lal during execution proceedings and directing the amount of Rs. 7809/10/- lying in deposit in Court to be paid to the State of U.P. (Roadways Wing) decree-holder.

2. The Litigation has a chequered history. On January 17, 1956 a decree for a sum of Rs. 46,904/- on the basis of an award was passed in favor of Surrinder Lal against the Governor General-in-Council (President of India) through the Chief Engineer, Eastern Command Ranchi, now represented by Union of India. In April, 1956. Surrinder Lal took out execution of this decree. Notice of the application was issued to the respondents for June 9, 1956. On August 11, 1956, in view of certain objections filed by the judgment-debtor that various orders of attachment had already been served on it in respect of the decree sought to be executed, the Court ordered that the decretal amount be deposited in court but may not be paid to the decree-holder. In compliance with this order the decretal amount was deposited in court. The execution file at this stage was transferred for administrative reasons to another court. On February 16, 1957 the counsel

for judgment-debtor made a statement that except for a sum of Rs. 7809/10/- the balance of the decretal amount deposited in court may be paid over to the decree-holder. After obtaining necessary particulars of the deposit by order dated March 9, 1957, the executing court handed over a cheque for Rs. 39,094/6/- to the appellant through his counsel retaining the sum of 7809/10/- aforesaid. On April 4, 1959, one Harbans Lal Sachdeva filed objections u/s 47 and 151 of the CPC stating that the decree under execution in fact related to a claim, under a contract in respect of repairs of buildings in Chakeri Division entered into between the President of India and the firm R.S.G.R. Ram Chand and Sons and that the amount allowed under the award on the basis of which the decree under execution was passed was allowed to the firm and Surrinder Lal who applied for the execution of the decree, was only a partner in this firm in the particular contract to which the award and the decree related. He alleged that under a deed of dissolution of the firm dated April 15/16, 1955, in terms of the dissolution deed, Surrinder Lal was allotted this decree to realise the decretal amount and pay off all the creditors of the firm. The balance of the firm assets if any, left after payment to the creditors was to be disbursed to equal shares amongst the two partners. Contrary to the terms of this deed of dissolution Surrinder Lal, he complained had received the sum of Rs. 39,094/6/- from the execution court fraudulently and by suppressing the real facts. He prayed that the balance amount lying in court be paid to the decree holder, U.P. Roadways and other creditors of the firm and that Surrinder Lal be further directed to redeposit the amount already realised by him in Court. On September 3, 1959, he also moved an application under Sections 151 and 152 of the CPC stating that the decree passed on January 17 1966 on the basis of the award may be amended and the name of the firm M/s. R.S.G.R. Ram Chand & Sons may be mentioned as the decree-holder in place of the name of Surrinder Lal. On January 26 1960, this application of Harbans Lal was accepted. The Court found that the award on the basis of which the decree was passed was in favor of the firm M/s. R.S.G.R. Ram Chand & Sons of which Surrinder Lal was only a partner and that the error in the description of the parties in the decree-sheet was purely clerical.

3. The result was that on February 19, 1960, the application filed by Surrinder Lal as the sole decree-holder was dismissed by the executing Court.

4. In the meantime U.P. State through General Manager, U.P. Roadways had also obtained a decree against "Harbans Lal, proprietor R.S.G.R. Ram Chand & Sons" and applied for execution of this decree on the basis of a transfer certificate to realise the amount of Rs. 7809/10/-. The application was registered as 166 of 1956 before the Subordinate Judge, Delhi. On January 19, 1957 the court issued a warrant of attachment in respect of the amount of Rs. 7809/10/- lying undisbursed in the executing court referred to above, and the amount was attached. On June 7, 1957, Surrinder Lal filed objections under Order 21, Rule 58. He alleged that the amount lying in deposit was not liable to attachment in execution of the decree against Harbans Lal alone and prayed that the same may be paid to him. On February 9, 1960, the court observed that the execution

application in which the deposit had been made by Union of India and in which the U.P. State had claimed ratable distribution had been consigned to the record room, and directed that execution application 166/56 be also consigned to the record room.

5. On March 7, 1960, U.P. State, through the General Manager, U.P. Government Roadways again applied for execution of its decree. It came up before Shri Dalip Singh, Sub-Judge 1st Class, Delhi. By order dated March 7, 1960, the learned Judge held that this court was not the court which passed the decree. In new of the provisions of Section 38 of the CPC the application was Therefore returned for presentation to the proper court.

6. In the meantime, aggrieved from the order dated February 19, 1960, dismissing this application for execution, Surrinder Lal filed an appeal in the High Court. This appeal was dismissed on May 19, 1967.

7. On May 29, 1967, Surrinder Lal again applied for execution of the decree passed on the basis of the award in the High Court. He prayed that the amount of Rs. 7809/10/- deposited in the executing court of the Subordinate Judge which had been lying for the last 10 years may be ordered to be paid over to him. He also mentioned that the said amount had previously been claimed by Harbans Lal and U.P. Roadways and notice of the application may be served on them. This application was registered as execution case No. 66/1967 in this Court.

8. On receipt of notice issued by the Court objections were filed on behalf of U.P. Government Roadways as well as Harbans Lal. On behalf of U.P. Government Roadways it was contended that the sum of Rs. 7809/10/- was retained in court on the application of the State Government and that separate proceedings were pending in execution for the realisation of this amount and that the money was due and payable to U.P. Government Roadways and not to Surrinder Lal. Harbans Lal supported the U.P. Government Roadways.

9. On February 15, 1971, U.P. State also applied u/s 24 of the CPC to this Court that execution case No. 166/56, U.P. State v. Harbans Lal Sachdeva Proprietor R.S.G.R. Ram Chand & Sons, which was pending the court of Subordinate Judge be withdrawn and may be tried and disposed of by this Court. The prayer was not opposed by Surrinder Lal. By order dated February 18, 1971, Mr. Justice B.C. Misra directed that the execution case No: 166/56 may be transferred to this Court for trial along with execution case No: 66/67. Thereafter, both the applications were considered by this Court calumniating in the order which forms the subject-matter of this appeal.

10. In answer to the claim of the U.P. Government Roadways that the amount of Rs. 7809/10/- lying in court may be paid to them, it was contended on behalf for Surrinder Lal that this was property belonging to the partnership and the decree-holder was bound to take recourse to the provisions of Order 21 Rule 49 and was not entitled to its payment. The learned single Judge after hearing the parties,

held that the provisions of Order 21 Rule 49 applied only to subsisting partnership and as the firm R.S.G.R. Ram Chand and Sons had admittedly been dissolved this provision was not attracted. He directed that the money lying in deposit may be paid over to the State of U.P. It appears that during the pendency of this execution the money had been realised by Surrinder Lal on furnishing surety. He was directed by the learned single Judge to re-deposit the amount for being paid over to the decree-holder.

11. After filing this Letters Patent Appeal the appellant applied for stay of implementation of the order and ex parte stay was granted but it was subsequently vacated on July 20, 1971 and it is admitted that the sum of Rs. 7809/62 paise is now lying in court.

12. Bakshi Mehtab Singh appearing for the appellant while assailing the order of the learned single Judge raised the following contentions:--

1. that the order of transfer of the execution proceedings of U.P. State Roadways to this Court u/s 24 was illegal.

2. that the amount of Rs. 7809/10/- had never been attached and, Therefore no order directing payment of this amount to the respondent could be made.

3. that the said amount was in any case money belonging to the partnership and the decree-holder was bound to proceed in execution in respect of this amount under Order 21 Rule 49.

13. After hearing Shri Yogeshwar Dayal appearing for the respondent we see no merit in the first contention of Bakshi Mehtab Singh. A reference to the Execution File of the learned single Judge shows that prayer of the respondent for transfer of its execution application from the records of the lower court to this Court was not opposed. This apparently was because in pursuance of the execution application dated December 21, 1956 (Execution Case No. 166/56) the executing Court after attaching the amount of Rs. 7809/10/- simply directed the application to be consigned to the record room without making any actual order for payment because of the controversy that had been raised before it after the amendment of the decree as to whether the amount was to be paid to the decree-holder or not. This order consigning the application to the record room was understood by both the parties not to be a final disposal of the execution application and hence the prayer for transfer was not opposed. Having regard to these circumstances, Bakshi Mehtab Singh subsequently did not press this point.

14. There is also no substance in the second contention that the amount of Rs. 7800/10/- had not been attached of Rs. 7809/10/- had not been attached. As stated earlier in Execution case No. 166/56 the executing court had made an order of attachment on January 19, 1957 and the record shows that the amount had actually been attached on February 2, 1957.

15. The arguments before us were confined to the third contention. Order 21, Rule 49 reads as under:-

49. "(1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favor of the decree-holder by such partner or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged on in the case of sale being directed, to purchase the same.

(4) Every application for an order under Sub-rule (2) shall be served on the judgment-debtor and on his partner or such of them as are within India.

(5) Every application made by any partner of the judgment-debtor under Sub-rule (3) shall be served on the decree holder and on the judgment-debtor and on such of the other partners as do not join in the application and as are within India.

(6) Service under Sub-rule (4) or Sub-rule (5) shall be deemed to be service on all the partners and all orders made on such application shall be similarly served."

It is not disputed that after the amendment of the decree on the basis of the award the decree in pursuance of which the amount of Rs. 46904/- was deposited in Court was a decree in favor of the partnership Surrinder Lal received a sum of Rs. 39,094/- out of this amount thereby leaving a balance of Rs. 7809/10/- which is now lying in court. This amount necessarily is the property of the partnership. The decree under execution it is also admitted is not against both the partners Constituting this partnership but is against one of its partners only namely. Harbans Lal Provisions of Order 21 Rule 49 are thus clearly attracted. Sub-rule (2) of Rule 4 prescribes the procedure in a case where the decree sought to be executed is against one of the partners only. It provides that on an application by the decree-holder in such a case the court may make an order charging the interest of the judgment debtor partner in the partnership property and profits with payment of the amount due under the decree. According to the plea of Surrinder Lal Harbans Lal was a partner in the firm to which the amount lying in court was payable. When according to him, differences arose between the partners, the same were referred to arbitration and the arbitrator made his award on September 25, 1951 which was filed in court of the First Civil Judge, Kanpur (Misc. Case No. 43/1969) and the partnership was dissolved from Judge 1951. Surrinder Lal, according to the award was entrusted with the winding up of partnership affairs and to realise the outstandings and

effects and make payments and discharge liabilities of the firm from this realisation. The balance left after these disbursements was to be divided between the two partners. The executing court has to pass appropriate orders under Order 21. Rule 49 in the light of those allegations to afford appropriate relief to the decree-holder.

16. In coming to the conclusion that provisions of Order 21. Rule 49 were not attracted the learned single Judge was influenced by the considerations that this provision was made by the Legislature because in case of a running partnership the Legislature did not consider it advisable to attach and seize the property of the firm during the continuance of the partnership as it involved the freezing of the assets and running of the business, but after the dissolution of the firm, it was said that these considerations did not prevail and so Rule 49 was not attracted. In support of this view, reference was also made to Rao Sahib P.V. Rangayya Vs. Tatavarty Nagapotha Rao and Others, . We are unable to sustain this reasoning. According to the scheme of the Partnership Act, on a dissolution of the partnership the amount due to a particular partner of the firm cannot be predicated without the settlement of its accounts. Subject to other provisions of the Act, according to Section 49 in Chapter VI of the Act where there are joint debts due from the firm the property of the firm has to be applied in the first instance in payment of the debts of the firm and if there is any surplus left then and then alone the share of each partner has to be applied in payment of his separate debt. The purpose of Sub-rule (2) of Rule 49 is to secure observance of this basic principle. This principle applied as much to a running firm as to a dissolved partnership. So long as the partnership subsists no partner can claim any exclusive rights over the assets of the partnership. The same position continuous after its dissolution until the final accounting takes place. After dissolution of the fir, according to Section 46 of the Partnership Act, every partner or his legal representative is entitled to law to have the property of the firm applied in payments of debts and liabilities of the firm and then only to have the surplus distributed amongst the partners or their legal representatives. Therefore, partnership property will retain its character as such even after the dissolution of the firm until its winding-up. This being the position a law, the proposition that any property belonging to the partnership is liable to attachment in execution of a decree against one or more but not all its partners--in other words, a decree which is not against the firm or all its partners--simply because the partnership is dissolved cannot be sustained. For these reasons. We are unable to subscribe to the observations made in the Madras case relied upon by the decree-holder and referred to in the order of the learned single Judge.

17. As a result of the foregoing discussion, we accept this appeal and set aside the order of the learned single Judge. The case is remanded to the executing court to proceed under Order 21, Rule 49 to make appropriate orders in the light of the above observations. In the circumstances of the case, the parties will bear their own costs.?