

Mridula Ben Vs. Rajendra Kumar

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Court : Madhya Pradesh

Decided On : Sep-25-2012

Appellant : Mridula Ben

Respondent : Rajendra Kumar

Advocate for Def. : Shri. Aditya Narayan Sharma

Advocate for Pet/Ap. : Shri. Vivek Agarwal

Judgement :

W.P.No.7785 o

25. 09.12 Shri Vivek Agarwal, counsel for the petitioner.

Shri Aditya Narayan Sharma, counsel for the respondents.

With the consent of the parties, the petition is heard finally on merits.

The petitioner/ decree holder has filed this petition under Article 227 of the Constitution of India for quashment of order dated 9.7.09 (Annex.P/1) passed by V ADJ.Bhopal in Execution Case No.315/08 whereby such execution proceedings filed by the petitioner to recover the sum of the decree dated 25.1.02 passed in Co.No.23- A/2000 by XIV ADJ.Indore, has been dismissed.

Having heard the counsel at length, I have perused the papers placed on the record along with the impugned order.

Undisputedly the impugned decree under execution was passed by this court at appellate stage on compromise of the parties in FA No.271/02 vide dated 1.12.05 (Annex.P/4).Such appeal was arisen out of the judgment of the trial court passed in the civil suit No.23-A/2000.

According to such compromise decree (Annex.P/4).besides the other settlement between the parties the respondents and the other judgment debt ORS.namely Smt Aarti and Master Devang were directed to pay the sum of mesne profit to the decree holder.

pursuant to it on principle of merger defined under section 37 of the CPC the order/decreed (Annex.P/4) became the executable decree between the parties.

On perusing the compromise application which is a part and parcel of the compromise decree/order Annex.P/4, it is apparent that as per settlement, to pay the decretal sum to the decree holder, the joint liability had been saddled against all the judgment debtors including the respondents.

True it is that the present respondents/ judgment debtors have paid more than 2/3rd part of the decretal sum to the petitioner/ decree holder and for remaining sum their case was before the executing court that they are not bound to pay such sum because such remaining sum is to be paid by the other judgment debt ORS.namely, Aarti and Master Devang the legal representatives of deceased Ashok Kumar.

Considering the aforesaid aspect, the executing court by holding that the present respondents have paid the decretal sum of their part and not the decree holder may recover the remaining sum only from the aforesaid judgment debtor Smt Aarti and Master Devang, dismissed the execution proceedings against the present respondents.

Being dissatisfied with such order, the petitioner has come to this court.

Although the respondents counsel has tried to convince me that inspite holding joint liability against all the judgment debt ORS.the decree holder/ petitioner is bound to execute the decree against the judgment debtors till the extent of their

respective shares and not for more than that and, in such premises, the trial court has not committed any error in passing the impugned order, but in view of the aforesaid specific averments in the compromise application the part of the impugned decree and the order of this court dated 1.12.05 (Annex.P/4) holding the joint liability against all the judgment debtors to pay the decretal sum.

Such argument has not appealed me.

It is settled proposition of the law whenever the decree is passed by the civil court by saddling the joint and several liability against the judgment debtors then there is choice with the decree holder to execute the same either against all the judgment debtors or any of them or some of them.

In such premises it could be said that after satisfying the entire decree by any of the judgment debtor, he can recover the sum of the share of other judgment debtors from the concerning judgment debtor of such decree in accordance with the procedure but any of the judgment debtor could not be permitted to escape from the liability to pay the decretal sum by saying that he/they are responsible to pay the decretal sum of their share only.

In view of the aforesaid, the impugned order of the executing court Annex.P/1 being perverse and contrary to the propriety of the law, deserves to be and is hereby set aside.

Pursuant to it, by restoring the impugned execution proceeding the matter is remitted back to the executing court with a direction to proceed with the execution proceedings in accordance with the procedure prescribed under the provision of order 21 of the CPC.

Petition is allowed as indicated above.

C.C as per rules.

(U.C.Maheshwari) Judge MKL

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