

Deepak Jain Vs. Century Textiles Industries Company and anr.

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Court : Madhya Pradesh

Decided On : Nov-18-2004

Reported in : 2005(1)MPHT241; 2005(1)MPLJ464

Judge : S.K. Pande, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47 and 152

Appeal No. : Civil Revision No. 364/2004

Appellant : Deepak Jain

Respondent : Century Textiles Industries Company and anr.

Advocate for Def. : Rakesh Pandey, Adv. for Non-applicant No. 1

Advocate for Pet/Ap. : N.S. Ruprah, Adv.

Disposition : Revision allowed

Judgement :

ORDER

S.K. Pande, J.

1. The revision under Section 115 of CPC is directed against the order dated 8-5-2004 passed by Second ADJ, Jabalpur in Execution Case No. 2/2004.

2. Non-applicant Century Textiles Industries Ltd. in C.S. No. 76/93 obtained a money decree against non-applicant M/s. Surya Trading Company Proprietor D.K. Jain, 744, Sarafa Bazar, Kamaniya Gate, Jabalpur (Document No. 5). The Court of Joint Civil Judge Sr. Division, Chandrapur (Maharashtra) thereafter transferred the decree to Jabalpur for its execution. In Execution Case No. 2/2004, notice to M/s. Surya Trading Company Proprietor D.K. Jain, 744, Sarafa Bazar, Kamaniya Gate, Jabalpur returned unserved. An attempt was made to serve the notice upon applicant Deepak Jain s/o Sumer Chandra Jain, 745, Sarafa, Jabalpur. Since non-applicant, Century Textiles Industries Ltd. was endeavouring to execute the decree against the applicant, an objection was preferred. The District Judge vide order dated 14-8-2001 (Document No. 7) held that it can not go behind the decree as such the decree against M/s. Surya Trading Company Proprietor D.K. Jain can not be executed against applicant Deepak Jain s/o Sumer Chandra Jain. Being aggrieved, by the order aforesaid non-applicant preferred C.R. No. 379/2002. Vide order dated 21-8-2002 (Document No. 8) the revision was disposed of with the direction that in case non-applicant Surya Trading Company files an appropriate application disclosing and satisfying the identity of proprietor, an enquiry thereon shall be held by the Executing Court and the same shall be decided in accordance with law. Therefore, an enquiry was held by the Executing Court and the evidence was led on the issue framed as under:-

Whether the objector Deepak Jain s/o late Sumcr Chandra Jain, Advocate, Sarafa Bazar, Kamaniya Gate, Jabalpur is the owner of M/s. Surya Trading Company ?

3. The Executing Court declined to accept the evidence adduced by the applicant, instead held that applicant Deepak Jain s/o late Sumcr Chandra Jain, Advocate, 743, Sarafa, Jabalpur was the owner of M/s. Surya Trading Company a proprietorship concerned. As such vide impugned order dated 8-5-2004 directed execution of the decree against the applicant. Being aggrieved, applicant has preferred this revision under Section 115 of CPC.

4. The proprietorship concerned called M/s. Surya Trading Company opened account No. 453 in the Bank giving the specimen signature of its proprietor D.K. Jain. Applicant also opened an account No. 454 in the same Bank by giving his

specimen signature. Applicant was designated as an authorized stockist of non-applicant Century Textiles Industries Ltd. (Document No. 3-A) and in pursuance applicant Deepak Jain had furnished a bank guarantee (Document No. 3-A). The cheque dated 2-8-92 (Document No. 4) was said to have been issued in favour of Century Textiles Industries Ltd. by D.K. Jain proprietor M/s. Surya Trading Company. The cheque aforesaid being dishonored, C.S. No. 76/93 was instituted before the Joint Civil Judge Sr. Division Chandrapur (Maharashtra) against M/s. Surya Trading Company Proprietor D.K. Jain, 744, Sarafa Bazar, Kamaniya Gate, Jabalpur. In the said suit applicant Deepak Jain s/o late Sumer Chandra Jain, Advocate, 743, Sarafa, Jabalpur was not a party. As such vide judgment (Document No. 5) in C.S. No. 76/93, a money decree against M/s. Surya Trading Company Proprietor D.K. Jain, 744, Sarafa Bazar, Kamaniya Gate, Jabalpur, was passed. Since notice to D.K. Jain could not have been served, Century Textiles Industries Company Ltd. intended to execute the decree against applicant Deepak Jain, s/o late Sumer Chandra Jain, Advocate, 743, Sarafa, Jabalpur. Vide order dated 14-8-2001, the District Judge rightly held that the Executing Court can not go behind the decree. This Court in C.R. No. 379/2002 vide order dated 21-8-2002 (Document No. 8) simply held that in case Century Textiles Industries Ltd. files an appropriate application disclosing and satisfying the identity of the proprietor, an enquiry thereon shall be held and decided in accordance with law. An application under Section 47 of CPC could not have been filed to require the Executing Court to adjudicate whether the decree could be executable against an individual who has not been named and impleaded as a party to the suit. A question arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree. Admittedly, applicant Deepak Jain s/o late Sumer Chandra Jain, Advocate, 743, Sarafa, Jabalpur was not named and impleaded as a party to the suit C.S. No. 76/93.

5. In *Topanmal Chhotamal v. M/s. Kundomal Ganguram and Ors.*, AIR 1960 SC 388, it has been held :-

A decree against a firm can be executed- (i) against the property of the partnership, (ii) against any person who has appeared in the suit individually in his

own name and has been served with a notice under Rule 6 or 7 of Order XXX of the Code of Civil Procedure, (iii) against a person who has admitted on the pleadings that he is or has been adjudged a partner, or (iv) against any person who has been served with notice individually as a partner but has failed to appear. The decree against the firm can be executed against the personal property of such persons.

6. Where a decree against the Firm and assets of firm in hands of partners is ambiguous, to construe the Executing Court may look to pleadings and judgment. However, the Executing Court can not go behind it and must take it as it stands. The case of non-applicant Century Textiles Industries Ltd. in C.S. No. 76/93 in fact related to the transaction with M/s. Surya Trading Company Proprietor D.K. Jain, There is no reference of applicant Deepak Jain s/o late Sumer Chandra Jain, Advocate, 743, Sarafa, Jabalpur in the judgment (Document No. 5). Without seeking amendment under Section 152, CPC of judgment-decree (Document No. 5) non-applicant is erroneously endeavouring to execute the money decree against him.

7. Therefore, the Court below erred in allowing the application under Section 47, CPC filed by non-applicant Century Textiles Industries Ltd. to enable him to execute the decree of C.S. No. 76/93 against him. The order impugned suffers from material irregularity-illegality.

8. Consequently, revision is allowed. Order impugned dated 8-5- 2004 is set aside. No order as to costs.

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