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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA No.317/2010

RAMESH CHAND

..... Appellant

Through: Mr. Rahul Sharma and Mr. Raj
Kishor Garg, Advs.

Versus

ATTAR SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.10.2015

CMs No.23666/2015 (of appellant for execution of decree against LR of JD) & 23667/2015 (of appellant u/O XXI R-54 CPC)

1. This appeal was preferred against the judgment and decree of dismissal of a suit filed by the appellant / plaintiff. Vide order and decree dated 19th October, 2011, the appeal was partly allowed and a decree for recovery of a sum of Rs.4,75,000/- with interest stipulated therein, was passed in favour of the appellant / plaintiff and against the respondent / defendant.

2. These applications have been filed stating that the respondent / defendant / judgment debtor (JD) has died before the decree could be executed and seeking to execute the decree against the legal heirs of the respondent / defendant / JD.

3. It has at the outset been enquired from the counsel for the appellant / applicant, as to how these applications lie before this Court, inasmuch as in my experience of the practice prevalent is of execution against legal heirs of

JD being filed and entertained without making a separate application seeking permission therefor.

4. The counsel for the appellant / applicant has drawn attention to Section 50 of the Code of Civil Procedure, 1908 (CPC), Sub-section (1) whereof is as under:

“50. Legal representative—(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.”

On the basis thereof, it is contended that the appellant as decree holder (DH) has to apply to this Court which passed the decree for permission to execute the same against the heirs of the JD.

5. In my view, the language of Section 50 cannot be read in such pedantic manner. The expression “the holder of the decree may apply to the Court which passed it to execute the same against the legal representative (LRs) of the deceased” cannot be read as requiring the DH to first make an application to the suit or the Appellate Court whichsoever passed the decree for permission to execute the same and to only thereafter apply for execution of the decree against the LRs of the JD. Such a pedantic interpretation, if adopted would lead to multiplicity, with first this Court (instead of the executing Court) being faced with the question, whether the decree is executable against the legal heirs and if so against which of the legal heirs and the execution being deferred till then.

6. The expression “the holder of the decree may apply to the Court which passed it to execute the same against the LRs of the deceased” in my

view means, apply for execution against the LR's of the deceased. It may be noticed that Section 38 of the CPC defines the "Court by which decree may be executed" as either the Court which passed it or the Court to which it is sent for execution. A decree is thus executable by the Court which passed it and hence the requirement in Section 50 of 'applying to the Court which passed the decree to execute the same against the LR's of the deceased' is met by applying for execution against the LR's. Where the Trial Court has passed a decree of dismissal of a suit and the Appellate Court has reversed the said decree and passed a decree for recovery of money, as in the present case, the decree for recovery of money passed by the Appellate Court would be deemed to be the decree of the Trial Court and be executable by the Trial Court only.

7. The issue is no longer *res integra*. This Court in ***The Board of Trustees of the Port of Bombay Vs. M/s A. Kumar & Company*** ILR (2003) I Delhi 234 was dealing with execution of a decree transferred to this Court for execution. Upon it being discovered that the JD had died after the passing of the decree by the Bombay High Court and before the filing of the execution, the DH applied to this Court for substitution of the LR's of the JD in the execution proceedings. The same was resisted by the LR's setting up Section 50 supra and contending that the decree holder should apply to the Bombay High Court which had passed the decree for execution of the degree against the LR's of the judgment debtor. Rejecting the said contention it was held that the natural corollary flowing from Section 50 CPC is that the executing Court can entertain the application for substitution of the LR's of the deceased judgment debtor. It was reasoned that to ask the decree holder to apply to the Court which passed the decree for substitution of LR's of JD

would be against the principles of natural justice and would frustrate the execution itself and would impliedly mean as if execution proceedings are not different from the suit proceedings. It was further reasoned that the decree has to be executed without even bringing the LR's of the JD on record though where the JD dies before the decree has been fully satisfied the LR's are required to be brought on record for the purpose of execution of the decree. It was rather further held that Section 50 of the CPC is only in respect of those execution proceedings which are pending before the same Court which had passed the decree and has no application before the Court where the execution proceedings have either been transferred for execution or are pending for execution.

8. Notice in this regard may also be taken of Section 42(2)(b) of the CPC which empowers a Court to which a decree has been sent for execution to execute the decree against the LR's of the deceased JD under Section 50.

9. Mention in this regard may also be made of *Sameera Rasheed Vs. Amina Bai* (1992) 1 Madras Law Journal 420 holding that Section 50 uses the word 'may' and gives an option to the DH to file an application before the Court which passed the decree but nothing therein prevents the DH from filing an application before the executing Court to implead the LR's of the JD in the execution proceedings as the DH is concerned only with execution of the decree. Accordingly, filing of execution application against the LR's of the JD showing the LR's as JD was held to be not illegal.

10. Similarly, in *Mohammad Aleem Vs. Maqsood Alam* AIR 1989 Raj 43, filing of the execution petition against the LR's of the JD was held to be valid when notice of the execution was issued to them. Notice in this regard

may also be taken of Order XXI Rule 22 of the CPC which requires the executing Court to issue notice when the application for execution is made *inter alia* against the LR of a party to the decree. Therefrom also, it is evident that Section 50 is not a bar to filing execution directly against the LRs of the deceased JD and it is not mandatory to first apply under Section 50.

11. ***Kunwar Bhagwat Pratap Vs. Keshav Shukla*** 1970 Allahabad Law Journal 56 (DB) and ***Mazbut Singh Vs. Indrani*** AIR 1936 Oudh 152 have also taken a view that a separate application under Section 50 merely for substituting the LRs is not necessary and an application under Section 50(1) is necessary only when further execution is asked for, again denoting that the same has to be to the executing Court only.

12. The applications are thus disposed of with the aforesaid observations, with liberty however to the appellant / applicant to, if finds any difficulty in execution, again apply to this Court.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 16, 2015

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