

-

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
CIVIL MISCELLANEOUS SECOND APPEAL No.7 of 2007

-

JUDGMENT:

The unsuccessful petitioner in E.A.No.133 of 2003 in E.P.No.28 of 2003 in O.S.No.292 of 2001 before the II Additional Senior Civil Judge, Vijayawada preferred this appeal, aggrieved by the judgment in A.S.No.16 of 2005 on the file of the II Additional District Judge, Vijayawada. The trial Court dismissed the claim petition filed under Order XXI Rule 58 of C.P.C. and the same was confirmed by the appellate Court and thus, there is a concurrent finding with regard to the factual aspect.

2. The present appeal is filed challenging the concurrent finding of the appellate Court on various grounds. The substantial questions of law raised before me are as follows:

1. Whether decree-holder/respondent No.1 is required to obtain leave to proceed to recover the amount against the partner as required under Order XXI Rule 50 of C.P.C., if not, whether the attachment of share of Sistla Venkata Durga Nageswara Sastry, partner in the firm M/s. Lakshmi Show Room, is legal or not?

2. Whether decree-holder/respondent No.1 is entitled to recover the amount proceeding against the assets of the appellant/claim petitioner when a decree was obtained against another firm i.e., M/s. Lakshmi General Stores or not?

-

POINT No.1:

3. The first and foremost contention raised by the learned counsel for the appellant/claim petitioner is that without obtaining leave, as

required under Order XXI Rule 50 (2) of C.P.C., the decree-holder/respondent No.1 is not entitled to proceed to recover the amount. Order XXI Rule 50 of C.P.C. contemplates the procedure to be followed for execution of decree passed against a firm and Clause (1) says that where a decree has been passed against a firm, execution may be granted against any property of the partnership; against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner; or against any person who has been individually served as a partner with a summons and has failed to appear. But according to Clause (2), where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such persons prescribed under clauses (b) and (c) of sub-rule (1) may apply for leave to the Court which passed the decree to proceed against persons other than mentioned in clauses (b) and (c) of Clause (1) of Order XXI Rule 50 of C.P.C. This bar is only applicable in case the execution proceedings are initiated against the partners of the firm i.e., respondent No.2 -

M/s. Lakshmi General Stores/J.D.R. other than a person who has appeared in his own name under rule 6 or rule 7 of Order XXX of C.P.C. but whom notice was served individually under clause (c). If decree-holder wants to proceed against the persons other than mentioned in clauses (b) and (c) of Clause (1) Rule 50 of Order XXI of C.P.C., leave is required to be obtained to execute the decree. But here, the decree sought to be executed against the partner of M/s. Lakshmi General Stores represented by Sistla Venkata Durga Nageswara Sastry, who is one of the partners in the firm

M/s. Lakshmi Show Room – the claim petitioner. Before the trial Court, the said Sistla Venkata Durga Nageswara Sastry represented the firm and therefore, he is covered by sub-clause (b) of Clause (1) of Rule 50 of Order XXI of C.P.C. Hence, respondent No.1/D.H.R. is not proceeding against any person not covered by sub-clauses (b) and (c).

Therefore, no leave is required to be obtained, as contemplated under Clause (2) of Rule 50 of Order XXI of C.P.C. Accordingly, the point is answered against the appellant/claim petitioner and in favour of the respondents.

4. In fact, the objection about maintainability of the petition for want of leave was not raised before the executing Court or the appellate Court, but for the first time, such contention is urged before this Court. However, I answered this substantial question of law.

POINT No.2:

5. The second contention raised by the learned counsel for the appellant/claim petitioner is that the decree-holder cannot proceed against the property of the appellant/claim petitioner, which is a different firm, when a decree was obtained against M/s. Lakshmi General Stores represented by its partner Sistla Venkata Durga Nageswara Sastry. Undisputedly, the said Nageswara Sastry is a partner of both the firms and his liability is unlimited. In **Ashutosh v. State of Rajasthan**^[1], the Hon'ble Apex Court held that a partner is always liable for partnership debts unless there is an implied or express restriction. Here, the decree-holder sought for attachment of share of Sistla Venkata Durga Nageswara Sastry in the sale proceeds deposited to the credit of O.S.No.232 of 1996 filed for dissolution of partnership firm and for appointment of a Receiver for sale of assets of the firm. Undisputedly, Sistla Venkata Durga Nageswara Sastry is having undivided share in the sale proceeds lying in the deposit to the credit of O.S.No.232 of 1996. Order XXI Rule 49 Clause (2) of C.P.C. permits proceeding against the share of a partner in the other firm. Therefore, attachment of share of Sistla Venkata Durga Nageswara Sastry in the sale proceeds lying in deposit to the credit of O.S.No.232 of 1996 is in accordance with law. The trial Court though assigned different reasons, the appellate Court, after analyzing the material on

record, limited the attachment to the share of Sistla Venkata Durga Nageswara Sastry in the claim petitioner firm –

M/s. Lakshmi Show Room. Hence, attachment of share of Sistla Venkata Durga Nageswara Sastry in the sale proceeds lying in deposit to the credit of O.S.No.232 of 1996 on the file of

III Additional Senior Civil Judge, Vijayawada does not suffer from any illegality, warranting interference of this Court.

6. Hence, I find no ground to interfere with the findings of the trial Court as well as the appellate Court and the appeal deserves to be dismissed as it is devoid of any merit. Accordingly, the point is answered.

7. In the result, Civil Miscellaneous Second Appeal is dismissed but without costs in the circumstances.

8. Consequently, Miscellaneous Petitions, if any, pending in this Civil Miscellaneous Second Appeal shall stand closed.

-

M.SATYANARAYANA MURTHY, J

Date: 18.06.2015

lvd

[\[1\]](#) AIR 2005 SC 3434