

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.M.S.A.No.53 of 2008

JUDGMENT:

This appeal is preferred against the order and decretal order dated 17-10-2008 passed in A.S.No.119 of 2005 on the file of II Additional District Judge, Vijayawada. The appellant filed E.A.No.542 of 2004 in E.P.No.177 of 2003 in O.S.No.262 of 1998 on the file of I Additional Junior Civil Judge, Vijayawada on the ground that the property of the petitioner M/s.Coastal Adhesives represented by Managing Partner Smt.Ravi Sree Lakshmi cannot be attached for realization of the decretal amount as the firm is the owner of the schedule property.

The claim was resisted by the respondent/D.Hr alleging that the property does not belong to the firm but it belongs to Ravi Krishna Mohan Rao, 2nd J.Dr who is the managing partner of the Coastal Acqua Feeds. During enquiry, the petitioner was examined as PW.1 and marked Exs.A-1 to A-3 and on behalf of the respondents, RW.1 was examined and no documents were marked. The trial Court disbelieved the contentions of the plaintiff holding that the property attached belongs to Ravi Krishna Mohan in view of the sale deed executed by Zonal Manager, Andhra Pradesh Industrial Infrastructure Corporation (APIIC), Vijayawada dated 30-11-1994, dismissed the claim.

Aggrieved by the order of the trial Court, the appellant herein preferred the appeal before the II Additional District Judge,Vijayawada, wherein the finding of the trial Court was confirmed holding that the property attached belongs to the 2nd J.Dr. and dismissed the appeal.

Aggrieved by the dismissal in appeal dated 17-10-2008, the present appeal is preferred on various grounds. This Court framed three substantial questions of law. They are as follows:

1. Whether the order passed by the trial Court confirmed by the

1st Appellate Court is in conformity with Order 21 Rule 49 of C.P.C.?

2. Whether the decree passed against partnership firm can be executed against some other partnership firms to discharge the debt simply because one of the partners of the J.D.R firm is also a partner in Claim petitioner Firm?
3. Whether the properties of the partnership firm can be attached and sold for discharge of the debt incurred by other partnership firm irrespective of the share of one of the partner of J.Dr firm?

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POINTS 1 to 3:

The D.Hr obtained a decree against the respondents 2 and 3 herein. For realization of decretal amount, the D.Hr filed E.P. and in the process of realization the schedule property was attached. The main contention of the appellant is that the property attached belongs to the petitioner M/s.Coastal Adhesives represented its managing partner Smt.Ravi Sree Lakshmi, the property belong to the firm cannot be attached, in view of bar under Order XXI Rule-49 of C.P.C. The petitioner produced Ex.A.1 sale deed dated 30-11-1994 pertaining to the schedule property. As seen from the document Ex.A.1, the Zonal Manager, APIIC, Vijayawada executed sale deed in favour of Ravi Krishna Mohan Rao who is carrying on business in the name and style of M/s.Coastal Acqua Feeds. Therefore, the property attached exclusively belongs to Ravi Krishna Mohan Rao, 2nd J.Dr but not to the firm Sri M/s.Coastal Adhesives represented by its Managing Partner. If the property belongs to the petitioner, the document would have been executed by the Zonal Manager, APIIC, Vijayawada in favour of Coastal Adhesives represented by its Managing partner. Though the 2nd J.Dr is the partner of the firm but still the immovable property, which is attached exclusively belongs to the 2nd J.Dr. According to Rule 49 of Order XXI C.P.C., the property belongs to the partnership shall not be attached or sold in execution of a decree other than the decree passed against the firm or against the partners in the firm as such. Therefore, the exemption under Order XXI rule 49 C.P.C. has no application.

Thus, it is clear from clause 1 of Rule 49 of Order-XXI C.P.C. except in case a decree passed against the firm, property of the firm cannot be attached. There is no dispute about the contentions raised by the counsel for the appellant. However, the second J.Dr is the owner of the schedule property attached by the D.hr for realization of the decretal amount. Since the property does not belong to the appellant, the property is liable to be attached and bar under Order XXI Rule 49 of C.P.C. will have no application to the present facts of the case.

When the property belong to the 2nd J.Dr a decree was obtained against him for realization of the decree, the D.Hr can proceed against the 2nd J.Dr through the 1st J.Dr for recovery of the amount. Hence I find no substance in the appeal. Hence the trial Court and the appellate Court rightly held that the property attached by the D.Hr in execution of the decree obtained against 1st J.Dr-M/s.Coastal Acqua Feeds and its partners is the exclusive property of the 2nd J.Dr who is the managing partner of 1st J.Dr. Therefore, there is no illegality in the order passed by both the Courts and accordingly the substantial questions of law are answered holding against the appellant and in favour of the respondent/D.hr.

In view of my foregoing discussion, I find no merits in the appeal and the appeal is dismissed. In consequence, Miscellaneous Petitions, if any, pending in this Appeal shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 03-06-2015

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