

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1018 of 2012
Date of Decision : January 29th, 2015

M/s Nabha Solvex Pvt. Limited Petitioner

Versus

M/s Vimal Industries and another Respondents

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. Sherry K. Singla, Advocate,
for the petitioner.

Mr. Ranjit Saini, Advocate,
for the respondents.

Dr. BHARAT BHUSHAN PARSOON, J.

A decree dated 29.10.1999 for recovery of an amount of Rs.5,73,091.75 with interest @ 12% per annum, obtained by M/s Vimal Industries, a partnership firm, respondent No.1 herein, is pending for execution before the Executing Court i.e., Additional Civil Judge [Senior Division], Nabha. The decree was originally passed by Civil Court at Ahmedabad [Gujarat] and was got transferred by the Decree Holder to the Court at Nabha, for execution.

2. Attachment of property of M/s Nabha Solvex Pvt. Limited [petitioner herein] and order of sale of such attached property by the Executing Court resulted in filing of the Objection Petition under Order XXI Rule 58 read with Section 151 of Code of Civil Procedure by the objectors - M/s Nabha Solvex Pvt. Limited, petitioner herein on 4.2.2008 wherein the objector – Judgment Debtor [JD] had claimed that it had nothing to do with the decree under execution and in no way is connected with the same and hence, it sought release of the attached property.

3. Though, it is not necessary to frame issues in all cases requiring adjudication of Objection Petition under Order XXI Rule 58 read with Section 151 CPC, but as third party claims right, title and interest in

the attached property in its own right as owner, the decision of such Objection Petition is not to be done summarily and in-depth fathoming is required to cause justice to the parties.

4. While dismissing the Objection Petition, the Executing Court has primarily relied upon the following facts:-

- i]. J.D No. 4, Murari Lal Jindal, who is respondent no. 5 in this petition, is brother of Managing Director of the Objector-Company.
- ii] Objection Petition of said Murari Lal Jindal, JD No.4, respondent No. 5 herein, had already been dismissed on 25.08.2006 holding that Murari Lal Jindal, respondent No. 5 herein is a Director of the Objector Company.
- iii]. The Objector Company has failed to produce any material or evidence that Murari Lal Jindal, JD No. 4 had never remained the Director of the Objector Company.

5. Learned Counsel for the petitioner-Objector has urged that merely because Sunil Jindal, Managing Director of the Objector Company is a brother of Murari Lal Jindal, respondent No. 5 herein, does not *ipso facto* make Murari Lal Jindal a stake holder in the objector company. It is claimed that he is merely a share holder in the Company with very small share holding and is neither a Director nor holds any position of responsibility muchless has any stakes in the Objector company.

6. Learned counsel for the Decree Holder, on the other hand, has urged that Murari Lal Jindal was earlier Director of this Company and even now continues to have stakes and the objector Company thus, is liable to satisfy the decree.

7. It remains a fact that the Objector is a private limited company and is not a partnership concern. No parallel can be drawn thus, between the Decree Holder and the Objector Company. Share holder of a company and partner of a partnership firm have no similarity of stakes as also of responsibility. Reference may be made to **Mrs. Bacha F. Guzdar,**

Bombay Vs. Commissioner of Income Tax, Bombay AIR 1955 SC 74

[1]. The difference between a partnership firm and a Company has also been vividly explained in **Dhulia-Amalner Motor Transport Ltd., Amalner Vs. Raychand Rupsi Dharamsi and others, AIR 1952 Bombay 337.**

8. In a case where the petitioner was brother of Judgment Debtor and his property was attached during execution of a decree, in **Sanjeev Kumar Kapil Vs. Jai Krishan Kaushal 2008(1) HRR 662**, this Court had set-aside the order of the Executing Court whereby objection of the Objectors were set-aside and the case was remitted to the Executing Court to decide the matter afresh after hearing the objections raised in the petition.

9. Since the objection petition, [which is based on right, title and interest of a third party in the Objector Company, which prima facie appears to have no link with the JDs], has not engaged the attention of the Courts below it required in law; and, when no opportunity was granted to the parties to produce material evidence in support of their respective pleas, consequently, setting aside the impugned orders, the case is remitted to the Executing Court to decide the Objection Petition afresh after giving opportunity to the parties to lead evidence after framing of the relevant issues.

10. As the matter is pretty old, not more than three months' time would be taken by the Executing Court to decide the Objection Petition. Even day-to-day proceedings should be conducted, if found necessary.

11. The petition is allowed in the above terms.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

January 29th, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?