IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.5580 of 2015
Date of Decision: 24.12.2015

Baljit Singh **......Petitioner**

Vs

Food Corporation of India and others
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Rakesh Chopra, Advocate
for the petitioner.

Mr. K.K. Gupta, Advocate
for respondent No.1.

Mr. B.S. Mann, Advocate
for respondent No.11.

Mr. Rahul Sharma, Advocate
for respondents No.12 and 13.

Mr. Amandeep S. Rehal, Advocate
for respondent No.14.

Mr. Ashok Bhardwaj, Advocate
for respondent No.15(i), (ii) & (iii).

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

<u>RAJ MOHAN SINGH, J.</u>

[1]. Petitioner has assailed the order dated 24.07.2015 passed Additional Civil Judge (Sr. Divn.), Amloh, whereby

objection petition filed by the petitioner has been rejected and application dated 22.07.2015 has also been rejected.

[2]. Respondent No.1-Food Corporation of India (for short 'the Corporation') filed a suit for recovery which was decreed by the trial Court vide judgment and decree dated 30.10.1988 with interest. The said decree was executed by the Additional Civil Judge (Sr. Divn.) Amloh.

[3]. Respondent No.2 is a partnership firm. Respondents No.3 to 7 were the partners along with petitioner and other partners.

[4]. As per the said decree all the partners of the firm are jointly and severally liable to pay the dues of the firm. The objections filed by the petitioner have been dismissed by the Additional Civil Judge (Sr. Divn.) Amloh on the ground that the objector/partner cannot escape from the liability to pay the decretal amount to decree-holder by saying that there are other partners of the firm also. The property is attached and the same is liable to be sold. Attachment has been held to be legal by the trial Court. The factum of petitioner being partner has not been denied. Since the liability is joint and several, therefore, trial Court held that the objection filed by the petitioner is baseless and dismissed the same. The application for effecting the recoveries from all the partners by dividing/apportioning the

decretal amount was also dismissed by observing that the decree-holder can resort to recovery from any of the partner.

[5]. Learned counsel for the petitioner by challenging the impugned order has submitted that M/s Jagtar Singh & Company (hereinafter referred to as 'the Company') was the judgment-debtor and execution was filed for realisation of amount of Rs.9,24,357.88 as on 29.02.2000 along with interest @ 6% per annum till realisation of the amount.

[6]. The stand of the petitioner is that the property of the petitioner has been wrongly attached in the execution. There are other partners of the Company, who are having sufficient properties to answer the claim of the decree-holder. Nahar Singh son of Waryam Singh was partner of the Company, who died and his estate was devolved upon Harnek Singh and Gurmeet Singh being his sons. It is also stated that Ujjagar Singh son of Inder Singh was also partner of the Company and he was also having sufficient properties to answer the claim. After the death of Ujjagar Singh the property was mutated in the name of Jarnail Singh, Kuldeep Singh, Sikander Singh and Harjit Kaur. The other partners of the firm have also sufficient properties and means to pay the decretal amount.

[7]. The properties of the partners have been attached. Inderjit Singh son of Jagtar Singh filed objections on the ground

that his property has been wrongly attached. The objections filed by Inderjit Singh were dismissed by the Additional Civil Judge (Sr. Divn.) Amloh vide order dated 18.02.2014 and it was observed by the trial Court that in case any such frivolous objections comes from any of the partner or legal heirs of the partners of the Company, then the same shall be decided with heavy costs.

[8]. Thereafter decree-holder/Corporation moved an application to seek permission to give bid in auction of the land without depositing 1/4th amount of the sale consideration. The said application was allowed by the executing Court on 21.11.2014 and the Corporation was permitted to give bid in the auction as per auction schedule.

[9]. Thereafter statement of Inderjit Singh was recorded by the executing Court, who stated that he shall deposit an amount of Rs.2,50,000/- on or before 20.04.2015 for the realisation of decretal amount as per his share. The said statement was given on 16.03.2015 before the Additional Civil Judge (Sr. Divn.). Thereafter order dated 17.03.2015 was passed by the Additional Civil Judge (Sr. Divn.), wherein Area Manager of the Corporation had suffered statement that the judgment-debtors have intentionally delayed the execution proceedings by creating encumbrances of Rs.59,75,000/- on the attached

property and due to that reason auction of the attached property could not be conducted. The decree-holder also submitted additional list of properties of judgment-debtors/partners and stated that the same may kindly be attached. Earlier attached property be also kept intact.

[10]. Thereafter according to the petitioner the property of Inderjit Singh was neither subjected to auction, nor the amount was realised from him and in collusion his property has been targeted for realistion of the entire decretal amount.

[11]. Learned counsel for the petitioner contends that the petitioner always remained ready and willing to satisfy the decree to the extent of his share.

[12]. On 28.08.2015, learned counsel for the petitioner submitted before this Court that his liability comes out to be $1/9^{th}$ share of the decretal amount. Some of the partners have also come forward like Inderjit Singh and offered computation of decretal amount to the extent of their shares.

[13]. The Court passed an order dated 28.08.2015, directing the petitioner to bring a demand draft for a sum of Rs.2,00,000/- at that stage, subject to final computation of the amount at the time of final outcome of the case as there was likelihood that other partners may also offer their share of amount in the meanwhile.

[14]. On 12.10.2015, this Court again passed the order in the following manner:-

"In compliance to order dated 28.08.2015, the petitioner has brought demand draft No. 872342 dated 09.10.2015 in favour of Area Manager Food Corporation of India, in sum of Rs. 2 lac. The demand draft in original has been handed over to Mr.K.K Gupta, Advocate appearing on behalf of respondent No.1. Photocopy of the same is retained on the record. Admittedly, petitioner is one of the partner in the firm. Learned counsel for the respondent has opposed the revision petition by arguing that all the partners of the firm are jointly and severely liable to pay decretal amount with interest. Learned counsel for the petitioner on the last date showed his readiness and willingness to satisfy the decree to the extent of his liability. Whether his lability is jointly or severely is a mute point to be argued on the adjourned date.

Adjourned to 30.11.2015.

In the meanwhile, petitioner may undertake to serve all the unserved respondents and also to file necessary applications for impleading legal representatives of deceased respondents. Learned counsel for the respondent accepts the demand draft without prejudice to his right to recover the balance decretal amount. Till then auction may not be conducted.

It is made clear that the learned counsel may make every endeavour to serve the unserved respondents and be ready for arguments on the *adjourned date. Correct address of respondent No.10 be also filed in the registry."*

[15]. Thereafter no other partner came forward to answer the claim of the decree-holder as per their shares and the petitioner remained the only person who has filed the present revision petition.

[16]. Learned counsel for the petitioner by relying upon Section 13 and 25 of the Partnership Act contends that once the partners are party to the profits in equal shares, they are also partners of equal intensity in losses. The decree as a whole has to be executed against all the partners. Learned counsel relied upon Order 21 Rule 50 CPC in the aforesaid context.

[17]. I have considered the arguments advanced by learned counsel for the petitioner.

[18]. According to learned counsel for the petitioner, the decree is ambiguous in nature inasmuch as that the executing Court has to construe its opinion by looking into the pleadings and judgment and it cannot go beyond it. Therefore, the offer made by the petitioner to the extent of satisfying his decretal share should have been accepted by the executing Court.

[19]. Section 25 of the Partnership Act 1932 provides that every person is liable jointly with all other partners and severally for all the acts of the firm done while he is a partner. A firm is

not a legal entity, it is only a collective compendious name of the partners. In this way a firm does not have any existence other than its partners. A decree in favour or against a firm has the same effect as a decree in favour or against the partners. The liability of the firm can be assumed against the partners as joint and several for all the acts of the firm. The principles highlighted in ***Dena Bank vs. Bhikhabhai Prabhudas Paresh, 2000(2) RCR (Civil) 729*** can be relied on the aforesaid proposition.

[20]. Secondly when execution is filed against a partnership firm, the execution against a partner can be filed, if decree is against the firm. The execution can be granted against the partnership property as well as against the partner. The decree-holder may proceed against the separate properties or the partners as well.

[21]. While relying upon ***Dena Bank's*** case (supra) the Hon'ble Apex Court in ***Ashutosh vs. State of Rajasthan & Ors., 2005(4) RCR (Civil) 56***, held by interpreting Order 21 Rule 50 CPC that the execution under this Rule can be granted when decree is against a firm and execution can be granted against the partnership property as well as against the partners in which case decree-holder can proceed against separate property of the partners and while holding such a proposition, the Hon'ble Apex Court relied upon ***Sahu Rajeshwar Rao vs.***

I.T.O., AIR 1969 Supreme Court 667 to rule that the liability of partner of a firm is joint and several and it is open to the creditor of the firm to recover the debt from anyone of the partners. When the decree is against the partnership firm, each partner is personally liable except the minor whose liability is limited to his assets in the partnership. In *stricto sensu* a suit by or in the name of firm is really a suit by or in the name of all its partners. The reference was made to ***Her Highness Maharani Mandalsa Devi vs. M. Ramnaram Private Ltd., AIR 1965 Supreme Court 1718.***

[22]. In ***Third Income Tax Officer, Circle-I, Salem and another vs. Arunagiri Chettiar, 1996 AIR (SC) 2160*** the Hon'ble Apex Court while interpreting Section 25 of the Partnership Act held that every partner is liable jointly with all the other partners and also severally for all acts of the firm done while he is a partner. The liability of the partners of the firm is joint and several and it is open to the creditor of the firm to proceed to recover the debt of the firm from anyone or more of the partners.

[23]. In view of aforesaid legal position, I am of the view that there is no escape for any of the partner to deny the liability of the firm. The creditor can chose anyone of them to make good the decretal amount. The proceedings resorted against Inderjit

Singh could have been brought to the logical end by way of putting the property to auction and in that eventuality the claim of the decree-holder could have been satisfied leaving the other partners to settle *inter se* between them. However the property so earmarked was not ultimately put to auction because of some legal impediment and any encumbrance over the property. Still the executing Court would be obligated to look at the veracity of the statements made before the Court in the context of satisfying the decretal amount along with interest. However such a devise may not be construed to be an opinion on merits of the case that the liability of the firm cannot be recovered from the petitioner or any other person, if the creditor wishes to opt for the same.

[24]. In view of legal position, I am of the view that there is no ambiguity in the impugned order passed by the executing Court, resultantly this revision petition is dismissed.

December 24, 2015 **(RAJ MOHAN SINGH)**
Atik **JUDGE**