$~12

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

\+ EFA(OS) 7/2016, C.M. APPL.8189-8191/2016

M/S MACHINERY PARTS CORPORATION ..... Appellant
Through : Sh. Hitender Kapur, Advocate.

versus

M/S TRG INDUSTRIES P LTD ..... Respondent
Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R
% 04.03.2016

1. This is a Judgement Debtor's appeal impugning an order of the learned Single Judge dated 09.12.2015.

2. The brief facts are that this Court had decreed the suit of M/s. TRG Industries Pvt. Ltd. [hereafter "TRG"] – which describes itself as one of the constituent partners of M/s. BRA-TRG-BHARAT [hereafter "Bharat"]. The suit – filed on 02.03.2002 claimed ₹42,08,469/- with 15% interest per annum. The suit had claimed ₹59,98,866/- which included principal and interest, till the date of institution. By judgment and decree dated 28.09.2007, learned Single Judge held in favour of the plaintiff/decree holder TRG. The Judgment Debtor/defendant preferred appeal RFA(OS) 1/2008. The Division Bench which considered the appeal initially directed deposit of 50% of decretal amount as condition for issuance of notice. That condition, however, was not complied with. Eventually, the appeal

was disposed of as withdrawn and the decree attained finality. The Decree Holder/original plaintiff approached the executing Court by filing Exec. Pet. No. 72/2010, claiming that ₹50,50,162.80/- was due and outstanding and that the Judgment Debtor had stopped making any payments in terms of the final order of the Court as well as the directions of Division Bench. During the pendency of the execution proceedings, the appellant Judgment Debtor filed EA 455/2012 under Section 47. It was contended by the Judgment Debtor that the execution proceedings were not maintainable in as much as they were preferred by one of the joint venture partners - TRG. This petition was resisted by the Decree Holder which filed its reply. By the impugned order, the executing Court, i.e. learned Single Judge turned down the petition. Sh. Hitender Kapur, learned counsel contends that the impugned order is in error of law. He relies upon Order XXI Rule 15 CPC, to contend that if and when a suit or claim is based upon joint interest of several parties, the form in which they choose to appear determines the procedure adopted at all stages. In other words, TRG, having described it as a constituent partner of Bharat, the question of only TRG approaching the Court as Decree Holder could not have arisen. It is submitted that the learned Single Judge in fact exceeded the findings in the decree in holding as he did that TRG itself was decree holder. Order XXI Rule 15 CPC reads as follows:

> ***"15. Application for execution by joint decree-holders.-*** *(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the*

benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application."

3. As is apparent from a textual and plain reading, the provision itself records that, "*where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree...".* In the present case, it would be important to notice two salient aspects – firstly, the plaintiff Decree Holder always was and continues to be TRG. Undoubtedly, that entity described it as joint entity partner. Consequently, the form of the decree was also such that the benefit thereof inured in favour of the said Decree Holder. Most importantly, nothing was shown in the Decree or in the findings which amounts to imposition of "any condition to the contrary", constituting limitation upon the rights of Decree Holder to seek remedies against the present appellant/Judgment Debtor. The appellant may be correct in stating and relying upon *Bhavan Vaja and Ors. v. Solanki Hanuji Khodaji Mansang* AIR 1972 SC 1371 inasmuch as an executing Court cannot go behind the decree. However, that is not the situation here. There is a complete identity between the plaintiff and the Decree Holder. What is a matter of record is that the appellant/Judgement Debtor did not

even urge this aspect in the original proceedings – nor does this Court discern any limitation of the kind which is sought to be agitated here. This Court also notices that plea in para 22 of the impugned judgment was urged but was withdrawn subsequently.

4. This Court is of the opinion that the present appeal – as indeed the objections preferred by the Judgment Debtor were not only meritless but amount to attempts to defeat the execution proceedings themselves. The appeal is consequently dismissed with costs quantified at ₹75000/- to be paid by the appellant in the course of execution proceedings.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 04, 2016
ájk