IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision-21.07.2017

1. CR No.5887 of 2015

Paramjeet Singh Bhalla ... Petitioner
Versus
Baljit Kaur and others ... Respondents

2. CR No.5888 of 2015

Paramjeet Singh Bhalla ... Petitioner
Versus
Gurdeep Kaur and others ... Respondents

3. CR No.5889 of 2015

Paramjeet Singh Bhalla ... Petitioner
Versus
Baljit Kaur and others ... Respondents

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

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Govind Chauhan, Advocate for the petitioner.

Mr. B.S. Jaswal, Advocate for the respondents.

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RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.5887 of 2015 titled Paramjeet Singh Bhalla Vs. Baljit Kaur and others, CR No.5888 of 2015 titled Paramjeet Singh Bhalla Vs. Gurdeep Kaur and others and CR No.5889 of 2015 titled Paramjeet Singh Bhalla Vs. Baljit Kaur and others are being disposed of. Facts are taken from CR No.5887 of 2015.

[2] Petitioner has assailed the order dated 04.07.2015 passed by Additional District Judge, Amritsar in execution vide

which the objections filed by the petitioner against the execution of award dated 03.04.2007 passed by Motor Accident Claims Tribunal, Amritsar (for short 'the Tribunal') were dismissed and warrants of attachment against the property of the petitioner were issued.

[3]. Brief facts of the case are that respondents No.1 and 2 filed a claim petition under Section 166 of the Motor Vehicles Act for grant of compensation on account of death of their son Amandeep Singh in a vehicular accident which took place on 18.10.2004. The claim petition was filed by impleading owner of the offending vehicle i.e Neeraj Kansal as partner of M/s Param Ply Palace, Sawinderjit Singh @ Sarinderjit Singh as driver of the offending vehicle and the Insurance Company. The petitioner was not impleaded as party respondent in any capacity. Respondents were proceeded against ex parte in the claim petition and accordingly, an award was passed by the Tribunal on 03.04.2007, awarding an amount of Rs.2,25,000/- along with interest @ 6% per annum w.e.f 07.04.2005 against the owner and the driver of the offending vehicle.

[4]. Though petitioner was not impleaded as party before the Tribunal, but he was impleaded in execution for the first time alleging him to be a partner in M/s Param Ply Palace i.e. the alleged owner of the three-wheeler. No notice of claim petition was ever served upon the petitioner. The award was passed ex parte against the respondents who were impleaded in the claim petition. No award was passed against the petitioner. No opportunity was

afforded to the petitioner. The partnership firm which was constituted between Neeraj Kansal and the petitioner was dissolved even before accident in the year 2003. The partnership had ceased to exist from the year 2003 onwards. The said firm was assessed in terms of income tax upto the year 2003 only and thereafter, the same was dissolved. In the execution, respondents No.1 and 2 also filed list of properties of the judgment debtors. The private properties of the petitioner were included in the said list, which were never charged with any liability of the firm. On receipt of notice from the executing Court, petitioner filed his objections. The objections have been dismissed without affording any opportunity to the petitioner to lead evidence and even to prove his case. Even the execution filed against Neeraj Kansal was dismissed as withdrawn on 19.02.2011 and thereafter, the second execution was filed.

[5]. Learned Senior Counsel for the petitioner submitted that firstly the petitioner was never party to the claim petition. The partnership firm had ceased to exist w.e.f the year 2003 onwards and on the date of accident, the said firm was not in existence. Neeraj Kansal was the exclusive owner of the offending vehicle, but in the execution, the petitioner has been illegally impleaded and his personal properties have been subjected in execution without ascertaining the facts that the same were never charged with the liability of the firm. Even the execution has been withdrawn qua Neeraj Kansal on 19.02.2011. Learned counsel further submitted that even if, it is presumed for the sake of arguments (facts denied

altogether) that the partnership is in existence, then the first liability to enforce the debt has to be from the property of the firm. The personal properties of the partner cannot be made subject matter of recoveries in view of Section 49 of the Partnership Act. Learned Senior Counsel submitted that the alleged partnership firm was unregistered firm, therefore, in view of Section 69 of the Partnership Act, the petitioner cannot be held liable. The petitioner was never a party before the Tribunal.

[6]. Learned Senior Counsel further submitted that the private properties of the petitioner were never charge with the liability of the firm, therefore, procedure prescribed under Order 21 Rule 50(2) CPC was required to be followed by the executing Court inasmuch as that the leave of the Court was required to be obtained where execution is sought against any person, who has appeared in his own name under Rule 6 or 7 of Order 30 CPC and against any person, who has been individually served as a partner. The properties of the petitioner were never impressed with lien of any liability of the firm. Firstly, the partnership firm had ceased to exist w.e.f the year 2003 onwards. Even the properties of the original partner in a running partnership were required to be given a shape of percept/inventory to be made for satisfying the decree in question at first point of time. Thereafter, the properties of the alleged partner i.e the petitioner could have been made subject matter of execution that too with leave of the Court in terms of Order 21 Rule 50(2)

CPC. The properties of the petitioner were never charged with the liability of the firm, nor impressed with lien of the firm in any manner.

[7]. Learned Senior Counsel placed reliance upon ***M/s Ganga Ram Dhanpat Rai Vs. Mahesh Agarwal, 1984 AIR (Delhi) 233, Ravindra Finance Vs. Yaanai Tobacco Co. and others, AIR 1079 Madras 25, Vijaychandra Prabhatilal Sharma and another Vs. Manek Metal Syndicate, Bombay, AIR 1990 Gujarat 190, Hardatt Sharma Vs. M/s Jaikishen Shamlal and Sons and others, AIR 1983 Jammu and Kashmir 29, Bhagvan Manaji Marwadi Vs. Hiraji Premaji Marwadi, 1932 AIR (Bombay) 516, Topanmal Chhotamal Vs. M/s Kundomal Gangaram and others, AIR 1960 Supreme Court 388, Cooverji Varjang Vs. Cooverbai Nagsey Champsey, 1940(42) BomLR 564*** and submitted that Order 21 Rule 50 CPC is applicable where a decree has been passed against a firm, than the decree granted against any property of the partner and against any person who has appeared in his own name under Rule 6 or 7 of Order 30 CPC or who has admitted in the pleadings that he is or has been adjudged to be a partner. The award may be executed against any person who has been individually served as a partner with summons and has failed to appear. Where the decree holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to above, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave. In case liability is disputed, then the Court

may pass an order that the liability of such person be tried and determined in prescribed manner. A decree against a firm can be executed against any partner only if, he has appeared in his own name under Rule 6 or 7 of Order 30 CPC, or has admitted on the pleadings that he is or has been adjudged to be a partner and also against any person who has been individually served as a partner with summons and has failed to appear. A decree against the firm as such will not affect a partner who has not been served with summons to appear and answer so far as his property, other than the property of the partnership is concerned. Therefore, partners in the judgment debtors firm can be proceeded against individually, if the conditions laid down under Order 21 Rule 50(2) CPC are satisfied. Petitioner never appeared in his own name under Rule 6 or 7 of Order 30 CPC, nor the properties of the petitioner were ever charged with the liability of the firm. Even the petitioner was not impleaded as respondent in the claim petition. Petitioner was never adjudged to be a partner in the firm at the time before passing of the award and no summons were issued to him individually, nor the award was passed against him.

[8]. Learned Senior Counsel submitted that there is a mark distinction between the partners being personally parties to the award and being not party to the award. Clauses (b) and (c) of Sub Rule 1 of Rule 50 of Order 21 CPC would show that the petitioner should have appeared in his own name under Rule 6 or 7 of Order 30 CPC or should have admitted on the pleadings that he is or has

been adjudged to be a partner or summons should have been individually served upon him and he must have failed to appear therein. Only in such circumstances, award can be executed against the petitioner. The award is against the firm. The award is sought to be executed against the petitioner by alleging him to be a partner. The very partnership has been denied by the petitioner that the same had ceased to exist only in the year 2003 itself. The petitioner was never adjudged to be a partner in compliance to Order 21 Rule 50(2) CPC. The liability of the petitioner was never determined by the Court even after filing of his objection. No summons were served upon the petitioner. The properties of the petitioner were never impressed with the lien of the firm in any manner, nor were charged with the liability of the firm. On the strength of aforesaid precedents, learned Senior Counsel submitted that the impugned order passed by the executing Court is totally against the mandatory provisions of Order 21 Rule 50 (2) CPC.

[9]. Learned counsel for the respondents however could not deny the aforesaid legal position, but submitted that the executing Court may be directed to decide the execution at the earliest and he would apply necessary leave before the Court in compliance to the aforesaid provisions.

[10]. Having heard learned counsel for the parties, I am of the considered opinion that the impugned order dated 04.07.2015 passed by Additional District Judge, Amritsar does not stand to the

mandatory requirement of Order 21 Rule 50(2) CPC and therefore, the same is set aside. The case is remanded to the executing Court/Additional District Judge, Amritsar to decide the objections in the light of Order 21 Rule 50(2) CPC and to pass a fresh order in accordance with law. In case, application for leave of the Court before the executing Court is moved, the same shall be decided without being influenced by any observations, but in accordance with law.

[11]. Disposed of.

[12]. A photocopy of this order be placed on the files of connected cases.

(RAJ MOHAN SINGH)
JUDGE

21.07.2017
Prince

Whether reasoned/speaking Yes/No

Whether Reportable Yes/No