

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.586 of 2018****Order reserved on :10.12.2018****Order delivered on: 03.01.2019**

CG State Electricity Board Now through Chhattisgarh State Power Transmission Co. Ltd. (Incorporated as per Electricity Act, 2003 and now responsible for Power Transmission) Represented by Suresh Kumar Choudhary, aged 60 Yrs., S/o Chiroji Lal Choudhary, Executive Engineer (Civil), Civil Transmission Division CSPTCL, Bhilai – 3, District Durg

---- Petitioner/Decree Holder**Versus**

M/s. Joharimal Agrawal Contractor now represented through LR Mr. Gopal Das Agrawal, aged 74 Yrs., S/o Late Joharimal Agrawal, Shantinagar, Raipur

---- Respondent/Judgment Debtor

For Petitioner	:	Mr.Raja Sharma, Advocate
For Respondent	:	Mr.G.D.Vaswani, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. Arbitral award passed by the Arbitral Tribunal resolving the arbitral dispute between the parties was made rule of the Court by the 6th Additional District Judge, Jabalpur in Civil Suit No.86A/92 in the matter of M/s. Jahuri Mal Agrawal Contractor v. Madhya Pradesh Electricity Board, Jabalpur, which has a force of decree. That decree was transferred to the Executing Court at Raipur for execution in accordance with law. Partner of respondent partnership firm Mr. Joharimal Agrawal died during pendency of execution and therefore, the petitioner/decreed-holder filed an application that Mr.Gopaldas

Agrawal, son of late Mr.Joharimal Agrawal/deceased partner who has filed an affidavit before the Arbitration Tribunal on behalf of firm, therefore, he is partner in said partnership firm and therefore, he is liable to make payment of decretal amount and attachment warrant be issued against him for recovery of payment of decretal amount, in which Mr. Gopaldas Agrawal filed an objection under Order XXI, Rule 50 of the CPC stating that none of the conditions specified in Order XXI, Rule 50 of the CPC are satisfied and therefore, the decree cannot be executed against him. The Executing Court by its impugned order rejected the application for execution of the decree against the present respondent finding inter-alia that the provisions contained in Order XXI, Rule 50 of the CPC are not satisfied and therefore, the decree cannot be executed against Mr.Gopaldas Agrawal. Questioning that order, this writ petition has been filed by the petitioner herein.

2. Mr.Raja Sharma, learned counsel for the petitioner, would submit that the Executing Court has failed to appreciate the true scope and ambit of Order XXI, Rule 50 of the CPC as after death of Mr. Joharimal Agrawal partnership firm stood dissolved by operation of law and share held by Mr.Joharimal Agrawal devolved upon his son Mr.Gopaldas Agrawal, as such, the decree against partnership firm is liable to be executed against Mr.Gopaldas Agrawal in the capacity of legal representative of original judgment debtor Joharimal Agrawal, as such, the impugned order is liable to be set aside.
3. On the other hand, Mr.G.D.Vaswani, learned counsel for the

respondent, would submit that Mr.Gopaldas Agrawal has not been adjudged to be a partner for the purpose of clause (b) and clause (c) of Rule 50 of Order XXI of the CPC, therefore, personal property of the respondent cannot be executed, as such, the Executing Court is absolutely justified in rejecting the application for execution proceedings against the respondent.

4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the record with utmost circumspection.
5. It is not in dispute that the award was passed in favour of the Madhya Pradesh Electricity Board and that has been made rule of the Court and that has a force of decree and was executable against M/s. Joharimal Agrawal, Contractor, a partnership firm. Mr.Joharimal Agrawal has already died and partnership firm stood dissolved by the provisions contained in Section 42 (c) of the Indian Partnership Act, 1932.
6. In the matter of **Mohammad Laiquiddin and another v. Kamala Devi Misra (Dead) by Lrs. and others**¹ the Supreme Court has held that where there are only two partners constituting partnership firm, on death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise.
7. The question for consideration would be whether the Executing Court is justified in holding that the decree against partnership firm cannot be executed against personal property of his son/legal representative of the deceased partner.

¹ (2010) 2 SCC 407

8. In the matter of Her Highness Maharani Mandalsa Devi and others v. M. Ramnarain Private Ltd. and others², the Supreme Court has held that a suit by or in the name of a firm is really a suit by or in the name of all its partners. The firm's name is used for a convenient method of denoting those persons who compose the firm and the suit in truth is actually against the individuals. The decree passed though in form against the firm is in effect a decree against all the partners. A suit may be filed and a decree may be obtained against a firm and such decree may be executed against the properties of the partnership firm and against all the partners by following the procedure under Order XXI, Rule 50 CPC.

9. At this stage, it would be appropriate to notice Order XXI, Rule 50 CPC which states as under:-

“50. Execution of decree against firm.-(1) Where a decree has been passed against a firm, execution may be granted-

- (a) against any property of the partnership;
- (b) against any person who has appeared in his own name under Rule 6 or Rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;
- (c) against any person who has been individually served as a partner with a summons and has failed to appear;

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of Section 30 of the Indian Partnership Act, 1932 (9 of 1932)”.

(2) 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 in sub-rule (1), clauses (b) and (c), as being a partner in the firm, 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, or,

² AIR 1965 SC 1718

where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

- (3) xxx xxx xxx
- (4) xxx xxx xxx.”

10. Reverting to the facts of the present case in the light of the provisions contained in Order XXI, Rule 50 sub-rule (1) and (2) of the CPC, it is quite vivid that where the decree has been passed against a firm, execution may be granted firstly against any property of the partnership and secondly against any person who has appeared in his own name under Rule 6 or Rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner.

11. In the instant case, specific finding has been recorded by learned Executing Court that Mr.Gopaldas Agrawal has not appeared in his own name under Rule 6 or Rule 7 of Order XXX or has not been admitted on the pleadings and he has not been adjudged to be a partner of partnership firm M/s. Joharimal Agrawal, Contractor. Even he has not shown that he has served as a partner with a summons and has failed to appear. No such permission under Order XXI, Rule 50 sub-rule (1) and (2) of the CPC has been granted by the Executing Court to execute the decree against the respondent. In my considered opinion, the Executing Court is absolutely justified in holding that the award which has been as a rule of Court and has a force of decree cannot be executed against Mr.Gopaldas Agrawal who happens to be son of deceased Mr.

Joharimal Agrawal, a partner of partnership firm against his individual property. The Executing Court is absolutely justified in rejecting the application filed by the petitioner, in which I do not find any illegality or perversity warranting interference by this Court under Article 227 of the Constitution of India.

12. Accordingly, the writ petition is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-