**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.417 of 2019(O&M)
Date of Decision: 13.05.2019**

Ramesh Kumar .....Petitioner

Versus

Tarsem Lal Rajinder Kumar and others .....Respondents

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

Present: Mr. Harmanpreet Sehgal, Advocate
for the petitioner.

Mr. S.C. Arora, Advocate
for respondent No.1.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 13.11.2018 passed by the executing Court whereby objections filed by the petitioner were dismissed.

[2]. Tarsem Lal Rajinder Kumar, Commission Agents through Tarsem Lal as sole proprietor filed a suit bearing No.742-1 on 25.11.1995 for recovery of Rs.3,22,646/- along with interest against partnership firm M/s Girdhar Rice Mills and its partners on account of purchase of paddy by the partnership firm.

[3]. The suit was decreed by the trial Court vide judgment and decree dated 15.12.1997. Respondents No.5 to 7 were proceeded against *ex parte*.

[4]. Thereafter, the decree holder Tarsem Lal filed execution petition on 17.07.1998 for execution of said decree. The mode of execution was by way of attachment and sale of moveable and immoveable properties of the judgment debtor.

[5]. Defendant No.6 Subhash Chander filed an application under Order 9 Rule 13 CPC for setting aside the *ex parte* decree. On 11.09.1999, he made a statement before Additional Civil Judge (Senior Division), Muktsar that during pendency of the application, he shall not sell the land and machinery of M/s Girdhar Rice Mills. Order was passed on the application filed by Subhash Chander for staying the execution till the decision of the application under Order 9 Rule 13 CPC filed by him. During course of arguments on 11.09.1999 before Additional Civil Judge (Senior Division), Muktsar, learned counsel for the decree holder stated that if judgment debtor No.6 is ready to give bank guarantee or surety to the tune of the suit amount, the decree holder has no objection in staying the execution. Learned counsel for judgment debtor No.6 stated that they are ready to give undertaking in the Court that they will not sell any land or machinery of M/s Girdhar Rice Mills against whom the decree

was passed till decision of the application under Order 9 Rule 13 CPC. In view of aforesaid, order dated 11.09.1999 was passed and file of Subhash Chander (JD No.6) and execution thereof was stayed with an observation that judgment debtor No.6 remained bound by the undertaking and statement given in the Court in all respects.

[6]. The application under Order 9 Rule 13 CPC was ultimately dismissed by the trial Court on 11.01.2007. The appeal filed against the said order before the Additional District Judge, Muktsar was dismissed on 22.12.2007. Revision petition was filed in the High Court and the same was also dismissed on 31.03.2009. In this way, *ex parte* proceedings against judgment debtor No.6 became final. After dismissal of the application under Order 9 Rule 13 CPC, execution petition filed by the decree holder was dismissed in default.

[7]. The present execution was filed by Rajinder Kumar on 21.05.2017 alleging himself to have succeeded in the business of the proprietary concern i.e. Tarsem Lal and Rajinder Kumar, Commissions Agents. The objections filed by judgment debtors No.5 and 6 have already been dismissed by the executing Court vide order dated 24.07.2018. The operative part of the said order reads as under:-

"After going through the case file and hearing the

learned counsel for the parties, the Court is of the view that objections are without any merit and they are filed only to delay the proceeding of the present matter. The objector has nothing brought on record on which false and frivolous ground the DH has filed the execution. The perusal of the file shows that decree was passed on 15.12.1997 and an application under Order 9 Rule 13 was filed by the defendant and at this Ld. Civil Judge (Sr. Divn.) vide order dated 11.09.1999 stayed the execution. Regarding this undertaking was given by the JD. The proceeding under Order 9 Rule 13 were contested between the parties up to the Hon'ble High Court and the matter was decided in the Hon'ble High Court on 31.03.2009. At this stage parties have stated at bar that no appeal or revision pending against the said order in any Hon'ble Court, so the Court is of the view that as per law settled by the Hon'ble Courts the limitation in the present matter starts from 31.03.2009, when the last appeal was decided. So the Court is of the view that execution is well within time and the objections are without any merit. Accordingly, the objections are ordered to be dismissed."

[8]. Learned counsel for the petitioner submitted that partnership firm differs from a proprietary concern owned by an individual. A partnership firm is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order 30 Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A

proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business.

[9]. The issue of limitation can be noticed only to answer that the application under Order 9 Rule 13 CPC was finally decided when revision petition was dismissed by the High Court on 31.03.2009. The time for filing the execution starts when the application under Order 9 Rule 13 CPC was finally decided by the High Court, therefore, the execution cannot be held to be beyond limitation. The firm is existing. The liability of the firm cannot be done away with as no objections have been raised regarding the existence of partnership firm. The objections filed by judgment debtors No.5 and 6 have already been dismissed by Additional Civil Judge (Senior Division), Muktsar vide order dated 24.07.2018 and the same has attained finality. The proceedings arising out of application under Order 9 Rule 13 CPC have already attained finality with the dismissal of the revision petition on 31.03.2009.

[10]. In view of peculiar facts and circumstances of the case,

the question sought to be argued by learned counsel for the petitioner on the nomenclature of the partnership firm viz-a-viz the proprietary concern cannot be appreciated. Firstly, the decree holder cannot be deprived of the fruits of the decree, particularly when the decree has already attained finality. Secondly, the effort by judgment debtor No.6 to get the decree set aside by means of filing application under Order 9 Rule 13 CPC has already culminated in dismissal of the revision petition by the High Court on 31.03.2009 and the said order has also attained finality and thirdly, the dismissal of similar objections at the instance of judgment debtor Nos.5 and 6 by the trial Court/executing Court on 24.07.2018. The executing Court cannot go beyond the decree which has already attained finality.

[11]. In view of aforesaid facts and circumstances of the case, I do not see any ground to interfere in this revision petition. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

13.05.2019 **(RAJ MOHAN SINGH)**

Prince **JUDGE**

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**