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

Date of decision: 4th September, 2019.

+ **CM(M) 1315/2019**

SHYAMJI MEHROTRA

..... Petitioner

Through: Ms. Geeta Mehrotra, Advocate.
(M:9999199640)

versus

SHIPRA MEHROTRA

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

CM APPL. 39814/2019(for exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 1315/2019 & CM APPL. 39813/2019

2. The present petition challenges the order dated 7th August, 2019 by which the objections on behalf of the Petitioner filed under Section 47 CPC have been rejected with the following observations:

“Today matter is listed for disposal of objections filed under Section 47 CPC filed on behalf of JD. However, perusal of objections shows that same has neither been signed by JD nor his affidavit has been filed with the objections. The objections has been signed by his advocate only who has also filed her own affidavit, claiming herself to be sister of JD.

The objections under Section 47 CPC has not been filed by the JD, therefore same are not maintainable on the technical ground itself. The objections are thus dismissed.

JD is directed to make payment of entire amount due and recoverable against him before next date of hearing, failing which, necessary action shall be taken against him.”

3. Smt. Shipra Mehrotra – Respondent herein, had filed a petition against her husband Shri Shyamji Mehrotra i.e. Petitioner herein under Section 13/27 of the Hindu Marriage Act, 1955 (*hereinafter ‘HMA’*). The prayer in the said petition was for dissolution of the marriage under Section 13 of the HMA and for return of the articles and money mentioned in the list attached to the said petition. The said petition was filed before the Additional Family Judge, Allahabad, who vide final order judgment/decreed dated 18th March, 2006 passed a decree of divorce/dissolution of marriage. Furthermore, the Petitioner herein was directed to return all the demanded *stridhan* within one month from the said date. The said decree was transferred for execution to the Family Court in Delhi. Notice was issued to the husband - Petitioner herein. Objections were filed under Section 47 CPC. The said objections were signed by his sister, Ms. Geeta Mehrotra, Id. Counsel, as an advocate for her brother. The affidavit supporting the objections was also filed by Ms. Geeta Mehrotra, Id. Counsel. The Id. Trial Court considered the objections and passed the above impugned order dismissing the same on the ground that the Petitioner had neither signed the objections nor filed an affidavit in support thereof.

4. The Id. counsel appearing for the Petitioner, Ms. Mehrotra submits that she had a *vakalatnama* in her favour from her brother and hence she was entitled to file the objections under her own signatures, with her own affidavit, without the affidavit of the client. A perusal of the objections shows clearly that the objections have been signed only by the advocate, Ms.

Geeta Mehrotra, Id. Counsel, with her own affidavit. The client has neither deposed to the averments in the objections, nor has he filed the affidavit in support.

5. Section 47 CPC deals with questions arising in execution proceedings to be determined by the Court executing the decree. The said provision has undergone changes since the time it was first introduced as part of Code of Civil Procedure, 1908. The objections under Section 47 CPC were, as held in ***Jugalkishore Saraf vs. M/s Raw Cotton Co. Ltd., 1955 AIR (SC) 376***, to be treated at par with the suits. The relevant portion of the judgment is set out hereinbelow:

“There could be no -objection to decide questions involving investigation of complicated facts or difficult questions of law in execution proceedings, as section 47 of the Code of Civil Procedure authorises the Court executing the decree to decide all questions arising therein and relating to execution of the decree and subs-s- (2) further authorises the executing Court to treat a proceeding under the section as a suit thus obviating the necessity of filing a separate suit for the determination of the same.”

6. However, subsequently, further amendments were brought in, to amend Section 47 CPC. Sub-section 2 of Section 47 CPC was deleted by the Amendment Act with effect from 1st February, 1977. Simultaneously, Section 2(2) CPC, which defines decree, was also amended by deleting the words “*Section 47 or*”. Post-amendment, the clear view has been that objections under Section 47 CPC are summary in nature and the Court, which is executing a decree, cannot go behind the decree in a detailed manner. This view has been re-iterated recently by the Hon’ble Supreme Court in ***Brakewel Automotive Components (India) (P) Ltd. v. P.R.***

Selvam Alagappan, (2017) 5 SCC 371. The same is extracted hereinbelow:

“20. It is no longer res integra that an executing court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardising the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus unexecutable. An erroneous decree cannot be equalled with one which is a nullity. There are no intervening developments as well to render the decree unexecutable.

21. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.

22. Judicial precedents to the effect that the purview of scrutiny under Section 47 of the Code qua a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness are plethoric. This Court, amongst others in Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman [Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, (1970) 1 SCC 670 : AIR 1970 SC 1475 : (1971) 1 SCR 66] in essence enunciated that only a decree which is a nullity can be the subject-matter of objection under Section 47 of the Code and not one which is erroneous either in law or on facts. The following extract from this decision seems apt: (SCC pp. 672-73, paras 6-7)

“6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according

to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.”

23. Though this view has echoed time out of number in similar pronouncements of this Court, in Dhurandhar Prasad Singh v. Jai Prakash University [Dhurandhar Prasad Singh v. Jai Prakash University, (2001) 6 SCC 534 : AIR 2001 SC 2552] , while dwelling on the scope of Section 47 of the Code, it was ruled that the powers of the court thereunder are quite different and much narrower than those in appeal/revision or review. It was reiterated that the exercise of power under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart

from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree unexecutable after its passing. None of the above eventualities as recognised in law for rendering a decree unexecutable, exists in the case in hand. For obvious reasons, we do not wish to burden this adjudication by multiplying the decisions favouring the same view.”

7. The above legal position is well settled. However, the question here is whether objections under Section 47 CPC can be filed simply by counsel and not by the client. A perusal of the objections filed on behalf of the Petitioner herein reveals that the following grounds have been taken:

- a) That the petition under Section 27 of HMA in respect of *stridhan* is without jurisdiction, therefore, a nullity and hence not executable.
- b) That the decree sheet, which has been prepared on 15th September, 2009 is contrary to the judgment dated 18th March, 2006. Since no amount is mentioned in the judgment, the decree could not have mentioned the amount.

8. It is submitted by Id. counsel that both these objections are legal in nature and could have been taken by the counsel herself without the affidavit by the client.

9. The nature of the proceedings under Section 47 CPC may no longer be in the nature of a suit - however, objections under section 47 CPC would still constitute pleadings. Under the provisions of CPC and under the Delhi High Court Rules, pleadings ought to be signed by the client and cannot be signed merely by the counsel. Further, the objections ought to be either

verified or be accompanied with the affidavit of the client. Even in the rules applicable to the Executing Court and the Family Court, the pleadings have to be signed and verified by the client and not just by the counsel. This is clear from a reading of Order VI Rule 14, Order VI Rule 15, CPC and Rule 4, Part C, Chapter 1, Practice in the Trial of Civil Suits, Instructions to Civil Courts in Delhi (Vol. I of High Court Rules and Orders), all of which are extracted herein below:

“Order VI, Rule 14, CPC

Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

Order VI, Rule 15, CPC

(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

Rule 4, Part C, Chapter 1, Practice in the Trial of Civil Suits, Instructions to Civil Courts in Delhi (Vol. I of High Court Rules and Orders)

4. Signing and verification—The plaint must be signed by the plaintiff, or, if by reason of absence or other good cause the plaintiff is unable to sign it, by his duly authorised agent. It must also be signed by the plaintiff's pleader (if any) and be verified by the plaintiff, or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. The personal attendance of the plaintiff in Court of the purpose of verification is unnecessary. The verification must, however, be signed by the person making it."

From the above, it is clear that pleadings have to be verified by parties. Pleaders are entitled to sign the same but not in substitution of the clients. The signatures of the Pleader would be only in addition to that of the client.

10. It is also a settled position in law that advocates, who act on behalf of their clients, cannot verify the pleadings on behalf of their clients. This is clear from a perusal of the Bar Council of India Rules, which prohibit an advocate from accepting a brief in which he has reason to believe that he will be a witness. Under certain circumstances, giving of evidence could be directed in proceedings under Section 47 CPC. As held in ***E.P.K. Mani vs. Nagasamy and Ors. (23.01.2009 - MADHC), Civil Revision Petition (NPD) No. 2447 of 2007 and M.P. No. 1 of 2007***, the Madras High Court has held that if required, evidence can also be adduced in objections under Section 47 CPC. Accordingly, if an advocate signs the affidavit in support of the objections, then the advocate may be called for cross-examination as a witness, and such a situation would be in clear violation of the Bar Council of India Rules.

11. Under these circumstances, it is clear that the impugned order does not suffer from any illegality or perversity. However, it is clarified that the

rejection of the present Objections on this ground, would not bar the Petitioner from filing fresh Objections, if so advised, under Section 47 CPC under his own signatures, supported by his own affidavit and object to the execution petition, as permissible in law. Insofar as the other direction for payment of the entire amount is concerned, the same shall be complied with by the Petitioner within a period of 4 weeks from today. The Petitioner is further permitted to approach the Id. Trial Court if he wishes to seek any further modification of the said directions.

12. With the above observations, the petition is dismissed and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 04, 2019/dj/dk

Corrected and released on 16th September, 2019