Digitally Signed By:DEVANSHU JOSHI
Signing Date:20.12.2021 18:47:12

$~22

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

Date of Decision: 16th December, 2021

\+ **EX.F.A. 18/2021 & CM APPLs. 45555-56/2021**

ANKUR DALMIA ..... Appellant
Through: Mr. Ajay Kumar Gupta, Advocate

versus

M/S. S.P.P. FOOD PRODUCTS PVT. LTD. ..... Respondent
Through: Mr. Bharat Arora, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. The present appeal has been filed challenging the order dated 12th November, 2021 passed by the Ld. ADJ-01 (West), Tis Hazari Courts, Delhi (*hereinafter "Executing Court"*) in ***Execution Petition No. 633/2019*** titled ***M/s S.P.P. Foods Products Pvt. Ltd. v. Mr. Ankur Dalmia***. By the impugned order, the objections filed by the Judgment Debtor therein, have been rejected by the Executing Court.

3. The brief background of this case is that a suit was instituted by the Decree Holder/Plaintiff/Respondent (*hereinafter "Decree Holder"*) being ***Civil Suit No.35/2016*** titled ***M/s. S.P.P. Foods Products Private Limited v. M/s Vidhi Packaging Industries***, seeking recovery of a sum of Rs.12,60,509/- along with interest and costs. Vide judgment and decree

Digitally Signed By:DEVANSHU JOSHI
Signing Date:20.12.2021 18:47:12

dated 28th February, 2019, the said suit was decreed by the Trial Court in the following terms:

> *"xxx xxx xxx*
>
> *(i) The suit of the plaintiff is decreed in favour of the plaintiff and against the defendant for a sum of Rs.l2,60,509/- along with simple rate of interest @ 9% p.a. from 20.6.2013 till the filing of the case and pendent-elite simple rate of interest @ 6% per annum and future rate of interest @ 9% per annum till its realization on the said amount.*
>
> *(ii) The cost of suit of the Plaintiff is also awarded in favour of the plaintiff and against defendant."*

4. The said judgment and decree dated 28th February, 2019, was not assailed by the Defendant/Judgment Debtor. The Decree Holder then sought execution of the said judgment and decree, in ***Execution Petition No. 633/2019***. Pertinently, the execution petition was preferred by the Decree Holder against the Appellant herein- Mr. Ankur Dalmia, who is the sole proprietor of the Defendant/Judgment Debtor Company- M/s. Vidhi Packaging Industries.

5. The Appellant, who was named as the Judgment Debtor in the Execution Petition, filed objections under Order XXI Rule 58 CPC before the Executing Court. In the objections filed by the Judgment Debtor, the primary plea is that the judgment and decree dated 28th February, 2019 is in favour of the sole proprietorship concern - M/s. Vidhi Packaging Industries, and not against Mr. Ankur Dalmia. Thus, the execution of the decree could not have been sought against Mr. Ankur Dalmia.

6. Ld. Counsel for the Appellant relies upon the judgment of the Supreme Court in ***Topanmal Chhotamal v. Kundomal Gangaram & Ors.***

Digitally Signed By:DEVANSHU JOSHI
Signing Date:20.12.2021 18:47:12

[AIR 1960 SC 388] to argue that the Executing Court cannot go beyond the decree and ought to take the decree as it stands.

7. On the other hand, ld. Counsel for the Decree Holder, submits that the Defendant in the suit i.e., M/s. Vidhi Packaging Industries, is nothing but the sole proprietary concern of Mr. Ankur Dalmia. Reliance is placed upon the written statement filed in the suit to submit that no objections had been taken by the Defendant that the sole proprietor has not been impleaded. The only objections taken were with respect to the territorial jurisdiction, defective quality of goods and the rate of interest claimed being on the higher side. He further relies upon the evidence by way of affidavit filed by Mr. Ankur Dalmia which confirms that he understood himself to be the Defendant in the suit, and he confirmed that he is the sole proprietor of the Defendant Company. He further submits that the execution petition was filed in 2016 and till date, the matter is continuing to remain pending before the Executing Court.

8. A perusal of the impugned order dated 28th February, 2019 shows that the objections raised by the Appellant herein is that the sole proprietor was not impleaded as a party in the suit. The Executing Court, relying upon the judgment in ***Miraj Packaging v. Vishakha Engineering, 115 (2204) DLT 471***, held that the sole proprietorship firm and the sole proprietor are one and the same, and are not distinguished from each other. The Executing Court further observed that the fact situation in ***Miraj Packaging (supra)*** is different from the present case, inasmuch as in the said case, the suit was filed by the Authorized Representative, and not by the sole proprietor himself. Whereas, in the present case, the sole proprietor had defended the

Digitally Signed By:DEVANSHU JOSHI
Signing Date:20.12.2021 18:47:12

suit himself, by filing the written statement, and thus, he cannot escape the liability of the proprietorship firm.

9. This Court has perused the written statement filed by the Defendant in the suit wherein the following objections are taken:

> *"1. That The Honble court has no territorial jurisdiction to entertain and try the suit. As per terms and condition no.3 of the tax invoice says. "All matters subject to Rudrapur jurisdiction". When the dispute regarding the claim made by the plaintiff himself against the defendant the matter is triable by the competent court at Rudrapur. As such the plaint is liable to be returned to the plaintiff for filling at the appropriate court.*
> *2. That plaintiff had claimed interest at the rate of 18% p.a. from the defendant whereas there is no agreement for payment of interest by the defendant. The plaintiff has claimed in para no 12 total outstanding amount along with interest @ 18% p.a. w.e.f. 20/6/2013. It means that the amount of Rs.12,60,509/- as claimed is inclusive of interest but the statement of account filed with the plaint nowhere mention claim of interest. As such the statement of account is wrong. The suit is based upon the basis of statement of account which is apparently wrong as such the plaint is liable to be rejected.*
> *3. That the plaintiff has no cause of action to file the suit against the defendant.*
> *4. That the quality of the fabric supplied by the plaintiff to the defendant was not good. As it did not have the requisite strength on account of which there was weight shortage in supply. Due to defect in the material, the plaintiff is not entitled to the suit amount or any other amount from the defendant."*

10. Thereafter, at the time of evidence, the sole proprietor - Mr. Ankur Dalmia stated in evidence by way of affidavit as under:

Digitally Signed By:DEVANSHU JOSHI
Signing Date:20.12.2021 18:47:12

> *"**EVIDENCE BY WAY OF AFFIDAVIT OF SHRI ANKUR DALMIYA DWI***
> *I, Ankur Dalmiya S/o Shri Anand Kumar Dalmiya Aged 40 Years R/o Road no 60, House no27 West Punjabi Bagh, , New Delhi 10058, do hereby solemnly affirm and state as under:*
> *I* ***That I am the defendant in the above case and conversant with the facts of the case and as such able to depose****.*
> *2.****That the deponent is the prop*** *(sic proprietor)* ***of the defendant firm****. The defendant deals in the manufacturing of bags and supply to various parties mostly to exporters. The defendant had been purchasing material from the plaintiff since the year 2012."*

11. A perusal of the written statement and the evidence would show that the understanding of the sole proprietor Mr. Ankur Dalmia, was always that he was the Defendant in the suit. He never raised the issue as to the proprietor not being impleaded as a party in the matter. The judgment and decree dated 28th February, 2019 passed by the Trial Court is against the Defendant. Admittedly, as per Mr. Ankur Dalmia, he is himself the Defendant.

12. The suit was filed on 26th February, 2016, and was finally decreed on 28th February, 2019, after a period of three years. The Plaintiff and the Defendant were given adequate opportunity to present their respective stands. Pleadings were filed. Evidence was led and then the final judgement/decree was passed. In the opinion of this Court, the judgment and decree which has been passed by the Trial Court has to be given meaning and the same cannot be rendered a `*paper decree*'. The sole proprietor was always aware and understood the suit as being against himself and never

Digitally Signed By:DEVANSHU JOSHI
Signing Date:20.12.2021 18:47:12

took the objection that he was not impleaded as the Defendant in the suit. Even in the present execution proceedings, the petition was filed in 2016 and till date, the objections itself are being decided and the assets disclosure has been directed by the Executing Court.

13. In the judgment in ***Topanmal (supra),*** the fact situation was completely different inasmuch the decree was held to be binding and conclusive between the parties and personal liability was excluded, in which situation the Executing Court could not have imposed the same personally on the individuals.

14. In the present case, the sole proprietary concern is nothing but an *avatar* of the sole proprietor himself. Thus, it is nothing but another name for the sole proprietor himself. When the understanding of the sole proprietor was that he was himself the Defendant in the suit, the execution proceeding cannot be rendered infructuous in the manner as has been sought to be contended by the Appellant.

15. Recently, the Supreme Court in ***Rahul S. Shah v. Jinendra Kumar Gandhi, [2021 SCC Online SC 341]*** has held that execution petitions ought to be adjudicated upon expeditiously, and technical objections ought not to come in the way of expeditious execution of decrees. The Supreme Court in the said judgment has laid down mandatory directions to be followed by all Executing Courts.

16. This Court has noticed the trend that decrees in suits are challenged, once the execution petition is filed, on completely untenable and baseless grounds, merely with an intention to stall the execution of the decree. This trend ought to be changed and decrees ought to be given effect to by the Courts.

Digitally Signed By:DEVANSHU JOSHI
Signing Date:20.12.2021 18:47:12

17. In view of the above, this Court has no doubt that the impugned order dated 12th November, 2021 passed by the Executing Court warrants no interference.

18. Accordingly, the present appeal, along with all pending applications, is dismissed. The Executing Court shall proceed in the matter.

PRATHIBA M. SINGH
JUDGE

DECEMBER 16, 2021
Rahul/AD

HIGH COURT OF DELHI
सत्यमेव जयते