

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7270 of 2017 (O&M)
Date of decision: 30.09.2022

Prem Kumar

..Petitioner

Versus

Surjit Singh and others

..Respondents

CR-7604 of 2017 (O&M)

Ramesh Kumar

..Petitioner

Versus

Surjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.K.Bhatia, Advocate,
for the petitioner.

Mr. Binderjit Singh, Advocate
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

The petitioners herein are Judgement Debtors no.5 and 6. A suit for recovery of Rs.31,10,800/- was decreed on 22.01.2010 along with the interest @ 6% per annum on the principal amount of Rs.17,60,000/- from the date of filing of the suit till the date of actual payment. In the suit, the following defendants were impleaded as party:-

“1. Bhagwant Rai & Sons, Commission Agents and Merchants, Bhucho Mandi through its partner Hari Bhajan son of Bhagwant Rai r/o Bhucho Mandi.

2. Hari Bhajan	}	
3. Amrit Lal	}	sons of Bhagwant Rai and all
4. Krishan Kumar	}	partners of M/s Bhagwant Rai &
5. Prem Kumar	}	Sons, Commission Agents &
6. Ramesh Kumar	}	Merchants, Bhucho Mandi

7. M/s Bhagwant Rai Amrit Lal, Cotton Merchants, Bhucho Mandi, through its partner Hari Bhajan s/o

Bhagwant Rai, r/o Bhucho Mandi.”

The decree was passed against the defendants and the plaintiff was held entitled to the amount. In execution of the decree passed on 22.01.2010, the petitioners filed the separate objections claiming that their share in yet another firm namely M/s Rubicon Steels could not be ordered to be attached which was dismissed by the Executing Court. Challenging the aforesaid order, these two revision petitions have been separately filed by Judgement Debtors no.5 and 6, respectively.

The learned counsel representing the petitioner contends that the petitioners' share in another firm namely M/s Rubicon Steels could not be attached and sold in order to recover the amount. He submits that as per Order XX1 Rule 50 CPC, the procedure for execution of a decree against the firm has been laid down and it is nowhere provided that the share of partner in another firm can be utilized for the execution of a decree.

On the other hand, the learned counsel representing the decree holder submits that the partnership firm is an association of two or more persons and the property of the firm, in fact, belongs to the respective partners in accordance with their shares in the firm. He further submits that there is a decree not only against two firms but also against as many as 5 individuals who are responsible to implement the decree.

This court has considered the submissions made by the learned counsels and examined the paper book.

The Order XXI Rule 50 CPC makes a provision for the execution of a decree passed against a firm. There are three modes which have been provided for execution of the decree.

Any of those provisions do not relate to the share of the partner

in another firm who is not the judgment debtor. As already noticed, there is a decree against the petitioners who are the judgment debtors. The partnership firm is not a juristic person or a corporate body. It is basically an association of two or more individuals who have come together to jointly carry out the work. The shares of the partners are well defined. Thus, the property of other partner is identifiable. Moreover, the Order XXI Rule 50 CPC does not debar the Executing Court from proceeding against the share of a partner in another firm who is not the Judgment Debtor. Basically to implement the decree, the Court is required to proceed against the property of the Judgement Debtor. The property in a legal parlance is the share of a partner in a firm as his property. The partnership deed can be dissolved in accordance with the terms of the partnership deed or even on a notice.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

September 30, 2022
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*