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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9321 OF 2022

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Harneet Kaur wd/o. Bhupinder Singh
Matharoo & Anr.

... Petitioners

V/s.

Balwant Kaur wd/o. Sardool Singh
Matharoo & Ors.

... Respondents

Mr. G.L. Bajaj with Mr. Raunak Bajaj and Mr. A.A. Khan
for the petitioners.

Mr. Bipin J. Joshi with Ms. Vedanshi Shah for the
respondents.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 17, 2023

RC.:

1. The writ petition arises out of rejection of an application filed by the **widowed daughter-in-law of respondent no.1 and sister-in-law of respondent nos.2 & 3** for appointment of Court Receiver. The liability to pay maintenance arises out of order dated 28th January 2020 passed by the learned Family Court No.3, Mumbai below Exhibit 15 in Petition No.C-69 of 2018. It is not in dispute that the application was filed against Sardool Singh, son of Sucha Singh Matharoo. He died in the year 2021. The application for appointment of Court Receiver has been filed against the heirs and legal representatives of Sardool Singh

Matharoo.

2. According to the petitioner, the application to bring heirs and legal representatives of Sardool Singh Matharoo on record has been allowed by the Family Court. As of today, there is no challenge to the order of bringing present respondents as heirs and legal representatives of Sardool Singh Matharoo.

3. The Family Court rejected the application for appointment of Court Receiver on the ground that the petitioner failed to show that the property in relation to which the Court Receiver is sought to be appointed is not being wasted or damaged.

4. To adjudicate the said issue, it is necessary to consider the provisions of the Family Courts Act, 1984 and Code of Civil Procedure, 1908. Section 18 of the Family Courts Act, 1984 reads thus:

“18. Execution of decrees and orders.—(1) A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution.”

5. Sections 50, 51 and 52 of the Code of Civil Procedure, 1908 reads thus:

“50. Legal representative.—(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

51. Powers of Court to enforce execution.—Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by the sale without attachment of any property;
- (c) by arrest and detention in prison ³[for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section];
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require :

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—
 - (i) is likely to abscond or leave the local limits

of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.— In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

52. Enforcement of decree against legal representative.—(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.”

6. Order XL Rule 1 of the Code of Civil Procedure, 1908 reads thus:

“1. Appointment of receivers.—(1) Where it appears to

the Court to be just and convenient, the Court may by order

—

- (a) appoint a receiver of any property, whether before or after decree;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver; and
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.”

7. A conjoint reading of the aforesaid provisions indicates that where a decree is sought to be executed against the legal representatives after the death of the judgment debtor, the legal representatives are liable for satisfaction of decree only to the extent of property of deceased which has come to their hands. Reading of section 51 makes it clear that the Executing Court is expressly conferred with the power of appointment of Court Receiver for execution of a decree. Section 18 of the Family Courts Act, 1984 reads any order or judgment delivered by the Family Court to be a decree. Therefore, the Family Court No.3 ought to have held inquiry under section 50 of the Code of Civil Procedure, 1908 to ascertain liability of legal representatives and after holding

such inquiry if it is found that the legal representatives have inherited the property of judgment debtor, the Court shall consider appointment of Court Receiver. The parameters for appointment of Court Receiver are laid down in Order XL Rule 1 of the Code of Civil Procedure, 1908.

8. Sub-rule (1) of Order XL empowers the Court to appoint Court Receiver of any property before or after decree. Sub-clauses (a), (b) and (c) of sub-rule (1) of Order XL confers wide power on the Court whenever it appears to the Court to be just and proper. Such power is in addition to clause (b) of sub-rule (1) of Order XL. Therefore, the Court was not justified in rejecting the application holding petitioner failed to prove such property being wasted or damaged.

9. According to the petitioner, liability to pay maintenance arises out of provisions of the Hindu Adoption and Maintenance Act. Therefore, the liability to pay maintenance has been regulated by the provisions of the Act. The Court while considering liability of legal representatives shall take into consideration all relevant provisions of the Act including sections **19, 20, 21, 27, 28 and 29.**

10. For the reasons stated above, following order is passed:

- a) The impugned order dated 16th April 2022 passed by the Judge, Family Court No.3, Mumbai is quashed and set aside;
- b) Proceedings are remanded back to the Family Court No.3, Mumbai for decision afresh;

- c) The Court shall initially decide liability of legal representatives based on observations made above. If the legal representatives are found to be liable to pay the amount of maintenance, the Court shall consider application for appointment of Court Receiver based on observations made above.
- d) The said exercise shall be carried out as expeditiously as possible.

11. The writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 2nd March 2023. The corrections in paragraphs 1 and 9 are shown in bold and italicize.