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

+ **EX.F.A. 36/2024 and CM APPL. 63607/2024**

Date of Decision: 14.11.2024

ANIL KUMAR JAIN

THROUGH LR_s MS. TANIA VAISH

D/o LATE SHRI ANIL KUMAR JAIN

R/o H.NO. S/ 19, PANCHSHEEL ENCLAVE

NEW DELHI

.....APPELLANT

(Through: Mr. Akash Kumar, Adv.)

Versus

MS. SUDHA RANI

THROUGH LR_s

1. ANKIT

S/o LATE SHRI SANJEEV SHARMA

2. NIKHIL

S/o LATE SHRI SANJEEV SHARMA

3.AANYA

D/o LATE SHRI SANJEEV SHARMA

4. SHRI DEV KARAN

S/o SHRI GOVERDHAN DASS

(FATHER OF DECEASED LATE SHRI SANJEEV SHARMA)

5. SMT. RAJWATI

W/o SHRI DEV KARAN

(MOTHER OF DECEASED LATE SHRI SANJEEV SHARMA)

ALL R/o 3444, QUATAB ROAD,

GALI LALU BISAR, CHOWK SINGHARA,

SADAR BAZAR, DELHI

.....RESPONDENTS

Signature Not Verified

Digitally Signed
By:MAANAS JAJORIA
Signing Date:20.11.2024
17:05:51

Signature Not Verified

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By:PURUSHAINDRA
KUMAR KAURAV

(Through: None.)

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The instant Execution First Appeal has been preferred by the legal representatives of the judgment debtor, challenging the impugned order dated 29.07.2024, rendered in Execution Petition No. 153/2020 [previously Ex. No. 3/2008] by the learned Presiding Officer, Motor Accidents Claims Tribunal [MACT], Patiala House Courts, New Delhi. By the said order, the objections filed by the appellant under Section 47 of the Code of Civil Procedure, 1908 [CPC] were dismissed.
2. The facts of the instant case would indicate that the appellant herein is the daughter of late *Mr. Anil Kumar Jain* and *Mrs. Bala Jain*. *Late Mr. Anil Kumar Jain* was involved in an accident, where one of the family members of the respondents herein succumbed to his injuries.
3. Learned counsel for the appellant contends that the Tribunal below has fundamentally erred by dismissing the objections raised by the appellant-judgment debtor. He submits that the property of the appellant cannot be subject to the award, as there is no conclusive evidence that the same was purchased with funds derived from the sale of assets originally owned by the deceased judgment debtor, *Mr. Anil Kumar Jain*. Learned counsel for the appellant asserts that material placed on record clearly indicates that the property in question is inherited solely from *Mrs. Bala Jain*, mother of the appellant and thus, falls beyond the estate

of the deceased. He further argued that unless the respondent decree holder unequivocally establishes that the property of the appellant was acquired using the funds of the decreed judgment debtor, the Tribunal, acting within the ambit of execution proceedings, lacks the jurisdiction to attach or proceed against the same. To substantiate his contention, learned counsel places reliance on the decision of the Supreme Court in the case of *Mangathai Ammal v. Rajeswari*¹ and another decision of the Allahabad High Court in the case of *Lal Behari Prasad Pandey v. Bindesari Misra*².

4. I have considered the submissions and perused the record.

5. It is gleaned from the record that on 17.05.2001, *Mr. Sanjeev Sharma* succumbed to his injuries in a road accident. Subsequently, on 05.07.2007, an award came to be passed against *Mr. Anil Kumar Jain* [since deceased through appellant being the legal heir]. Deceased *Mr. Anil Kumar Jain* was the driver of the offending vehicle. The MACT awarded a compensation of Rs. 14,80,400/-, along with interest at the rate of 7% per annum, against both *Mr. Anil Kumar Jain* [deceased] and the owner of the offending vehicle.

6. The primary objection raised by the appellant before the Executing Court was that the property bearing No. G-234, Second Floor, Palam Vihar, Gurgaon, was the self-acquired property of late *Mrs. Bala Jain*, purchased solely from her own funds and resources. The appellant further submitted that, pursuant to Section 50 of the CPC, the *legal representatives of a deceased Judgment Debtor can only be made liable*

¹ (2020) 17 SCC 498

² 1933 SCC OnLine All 300

to the extent of the estate inherited by them from the deceased Judgment Debtor. Consequently, it was argued that the aforementioned property, being self-acquired by late Mrs. Bala Jain, could not be subjected to attachment in the execution proceedings. The appellant also placed reliance on the provisions of Section 14 of the Hindu Succession Act, 1956 in support of this contention.

7. Upon examining the evidence presented in support of the objection raised, the Executing Court found no merit in the objections raised and also observed that the same was intended primarily to obstruct the execution of the award passed by the MACT.

8. In paragraphs 36 to 38 of the impugned order, the Executing Court made the following pertinent observations:-

" 36. Thus, from the date of passing of Award i.e. 05.07.2007 till vacation of stay Order in Appeal on 18.05.2011, JD had already rotated his money and properties to frustrate execution of the Award. From the evidence led in the present case, it has been proved that Smt. Bala Jain had no income or funds of her own to purchase the property No. G-234 Second Floor. As already discussed above, the objector has withheld the bank account statements of JD and Smt. Bala Jain. The Court has no hesitation in holding that the property No. G-234 (Second floor), Palam Vihar, Gurugram, Haryana was purchased in the name of Smt. Bala Jain out of the funds of JD Anil Kumar Jain during his life time.

37. I will now refer to the guidelines laid down in Jaydayal Poddar's case to determine question whether a particular sale is Benami or not which are as follows :-

- "1. The source from which the purchase money came;*
- 2. The nature and possession of the property, after purchase;*
- 3. Motive, if any for giving the transaction a benami colour;*
- 4 The position of the parties and the alleged benamidar;*
- 5. Custody of the title deeds after the sale and;*
- 6. The conduct of the parties concerned in dealing with the property after the sale. "*

38. It was further held by Hon'ble Supreme Court of India that these indicia were not exhaustive and their efficacy varied accordingly to the facts of each case. In the present case under consideration, the DH has

been able to show through the evidence led by the Objector herself that the purchase of property No. G-234, Second Floor in the name of Smt. Bala Jain was a Benami transaction which was entered into with the sole motive of frustrating the execution of Award dated 05.07.2007."

9. It is thus evident that the appellant failed to substantiate the claim that the property in question was the self-acquired asset of late *Mrs. Bala Jain*. On the contrary, the record indicates that neither the deceased judgment debtor nor late *Mrs. Bala Jain* raised any objection to various orders of the Tribunal concerning the said property. Furthermore, it has been established that the judgment debtor had previously manoeuvred his funds and assets with the apparent intent to obstruct the execution of the award.

10. On the aspect that the acquisition of the suit property on the name of the mother of the appellant to be a *benami* transaction, the learned counsel for the appellant has relied on the decision in *Mangathai Ammal* to argue that mere payment of part of the sale consideration is insufficient to classify a transaction as *benami*. This decision, however, does not aid the case of the appellant. The decision in *Mangathai Ammal* emphasizes that the determinative factor in a transaction is the intention of the individual contributing the purchase money, which must be assessed based on the surrounding circumstances, the relationship between parties, their motives, and their subsequent conduct. These considerations are inherently factual, and the Tribunal has duly evaluated these aspects, including the cheques and various other statements in arriving at its findings.

11. Similarly, the decision in *Lal Behari Prasad Pandey*, rendered by the Allahabad High Court, is based on facts and circumstances that are

altogether distinct from the present case. The decision in the said case involved the attachment of certain properties against the legal heirs of the judgment debtor, all of whom belonged to a joint family, but the properties in question were distinct from the estate of the joint family. In the instant case, the facts differ, as the Tribunal has made specific observations indicating that the transactions were in the nature of *benami*, allegedly executed to evade liabilities under the decree. Consequently, this decision does not support the appellant's position.

12. In light of the foregoing, this Court is of the considered opinion that no interference is warranted with the order passed by the MACT. Consequently, the appeal fails and is hereby dismissed alongwith pending applications.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 14, 2024/MJ/SP