* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on : 27 May 2024
Judgment pronounced on : 13 August 2024

\+ C.R.P. 152/2018, CM APPL. 30099/2018, CM APPL. 30312/2018

M/S VIDHI INDUSTRIES ..... Petitioner
Through: Ms. Nidhi Nagpal, Ms. Manish T. Karia, Ms. Swapnil Baudh, Mr. Deepin Sahni, Mr. Rohan Trivedi & Ms. Ananya Arora, Advs.

versus

M/S MAHINDRA MGF CO (REGD) & ANR. .... Respondents
Through: Mr. Satyam Thareja & Mr. Pratyaksh Sikodia, Advs. for R2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

1. The petitioner, who is the decree holder, has preferred the present civil revision petition under Section 115 of the Code of Civil Procedure Code, 1908[1] assailing the Impugned Order dated 14.03.2018 passed by the Learned Additional District Judge, Karkardooma Courts, Delhi[2], allowing the objections filed under Section 47 CPC filed by the Respondent No.2 herein, who is the judgment debtor no.2, in Execution Petition bearing No. 503/2016 titled as "*M/s Vidhi Enterprises v. M/s Mahindra Pal & Anr.*"

[1] CPC
[2] Learned Executing Court

FACTUAL BACKGROUND:

2. Briefly stated, the petitioner/decree-holder had instituted a summary suit bearing No. 04/2012 before the Learned Civil Judge, Senior Division, Panvel, Mumbai, Maharashtra, under Order XXXVII of the CPC against the Respondent No.1 herein, being a proprietorship concern, through its proprietor, and against Respondent No.2 herein who is the husband of the proprietor of Respondent No.1, seeking recovery of a sum of Rs. 33,22,709/- that was payable to the petitioner/ decree-holder towards supply of consignment goods sold by the petitioner/decree-holder to the respondents/judgment debtor from time to time between 15.10.2010 and 10.02.2011, *along with* interest @18% per annum. Since the respondents herein failed to enter appearance before the learned Civil Judge, Mumbai in the summary proceedings, on 15.10.2012, the said suit was decreed with costs under Order XXXVII Rule 2(3) of the CPC in favour of the petitioner herein for a sum of Rs. 43,19,521/- with interest @18% per annum on the principal amount i.e. Rs. 33,22,709/- from the date of the suit i.e. 09.08.2012 till the date of realisation of the entire amount.

3. Upon perusal of the pleadings and documents placed on record, the following facts and circumstances have come up for consideration before this Court:

a) Since the respondents/defendants/judgment debtors were residing/carrying on business at Delhi, upon the request of the petitioner/plaintiff/decree holder, the decree was transferred to Delhi.
b) Subsequently, the petitioner herein filed an execution proceeding against the judgment debtors i.e., Respondent No.1 herein through its proprietor, and Respondent No.2 herein who is the husband of

the proprietor of Respondent No.1 herein, before the learned executing court in Delhi.

c) The said execution proceeding was initially adjourned *sine die* since the matter stood settled between the parties *vide* settlement dated 07.07.2014. However, since, the respondents/judgment debtors failed to comply with the said settlement, an application for revival of the execution was filed by the petitioner herein and the execution proceedings were revived *vide* order dated 30.11.2015.

d) Upon notice of the revival of the said proceedings, the respondents herein/judgment debtors appeared before the executing court on 10.02.2016 and tendered six post-dated cheques for a sum of Rs. 1 Lakh each to the petitioner/decree holder and undertook to pay the remaining amount payable to the petitioner/decree holder as per the terms of the settlement arrived at between them.

e) However, the respondents/judgment debtors failed to honour the terms of the settlement and accordingly, warrants of attachment were issued by the executing court against the respondents/judgment debtors.

f) In the meanwhile, the respondent no.2/judgment debtor no.2 filed objections in the execution proceedings, *firstly* on the ground that the decree is a nullity since the suit was filed by a proprietorship firm which is not a legal entity, and *secondly* on the ground that the respondent no.2 herein who is actually the husband of the proprietor of Respondent No.1 has been described as a Manager of Respondent No.1in the plaint itself, hence being only an agent of the Respondent No.1/judgment debtor, as such, he is not bound by the contract as per Section 230 of the Indian Contract Act 1872 which provides that an agent is not liable for the acts of the principal unless there is a contract to the contrary.

IMPUGNED ORDER DATED 14.03.2018:

4. The learned Executing Court decided the abovesaid objections filed by the Respondent No.2/judgment debtor No.2 in the following manner:

a) With regard to the first objection *qua* filing of the suit in the name of the proprietorship concern and not through its proprietor, the same was dismissed by the learned executing court on the ground that a decree cannot be termed as a nullity merely because of a technical objection or irregularity that in the title of the plaint, instead of the proprietor, the name of the firm has been mentioned as 'plaintiff', though it has been mentioned that it was being filed through its proprietor.

b) As regards the second objection qua liability of the Respondent No.2 herein, the learned executing court observed that admittedly, the status of the Respondent No.2 herein/judgment debtor No.2 in the plaint itself has been described as that of a "manager" of Respondent No.1/judgment debtor no.1, who is always an "employee" or "agent" of the firm/company, and hence, he cannot be held liable for the payment of the decretal amount on behalf of the Respondent No.1 herein/judgment debtor No.1 in terms of Section 230 of the Indian Contract Act 1872. Accordingly, the learned executing court vide impugned order dated 14.03.2018 allowed the said objection as against Respondent no.2 herein and directed his name to be deleted from the execution proceedings. The relevant portion of the impugned order dated 14.03.2018 is reproduced hereinbelow:

> "11. The other objection raised on behalf of the judgment debtor no. 2 in the application had been that the said judgment debtor has been described as a Manager of defendant/judgment debtor no. 1 in the plaint itself. Ld. Counsel submitted that Manager is only an employee and since the goods were supplied to judgment debtor no. 1 therefore, he only becomes an agent of judgment debtor no.l, as such, is not bound by the contract in view of the provisions of Section 230 of the Indian Contract Act. Ld. Counsel has relied upon the judgment in Marine Container Services South India Pvt. Limited Vs. Go Go Garments (1998) 3 SCC 247 which was followed in Vivek Automobiles Limited Vs. Indian Inc. (2009) 17 SCC 657.
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> 12. It is an admitted fact that judgment debtor no. 2/objector is the husband of the proprietor of judgment debtor no. 1, however, his status in the plaint has been described as the Manager of the defendant no.l/firm. Hence, irrespective of the relationship, judgment debtor no. 2 would remain the Manager/employee of judgment debtor no. 1 or its proprietor for legal purposes. Section 230 of the Indian Contract Act reads as under:-
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> > *"in the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal nor is he personally bound by them"*
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> 13. The above provision are subject to the presumptions following the section. Admittedly, the case in hand is not covered under the said presumptions. In Vivek Automobiles Limited (supra), the Hon'ble Apex Court while relying upon the judgment in Marine Containers (supra) held "*that Section 230 of the Indian Contract Act categorically makes it dear that an agent is not liable for the acts of a disclosed principal subject to a contract to the contrary*".
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> 14. Section 182 of the Indian Contract Act defines agent and principal as under:-
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> > *"An agent is a person employed to do any act for another or to represent another in dealings with third*

person. The person for whom such act is done or who is so represented, is called the principal".

15. It is needless to say, that a Manager is always an employee of the company or a firm who is employed to act on behalf of the firm or the company who becomes the principal. Hence, in view of the said definition and the provisions of Section 230 of the Indian Contract Act and also in the light of the above judgments, judgment debtor no. 2 /objector cannot be held liable for the payment of the decretal amount on behalf of judgment debtor no. 1 or along with it, even though he happens to be the husband of the defendant/judgment debtor no. 1. Hence, so far as the objection regarding the execution as against judgment debtor no. 2 is concerned, the same are allowed and the name of judgment debtor no. 2 is directed to be deleted from the present execution proceedings. Objections disposed of accordingly."

GROUNDS OF REVISION:

5. The impugned order has been assailed by the petitioner/decree holder *firstly* on the ground that the learned Executing Court in entertaining the objection to the decree, went behind the decree under execution which is not permissible in law. Relying upon the decision of the Supreme Court in **Dhurandhar Prasad Singh vs. Jai Prakash University and Others**[3], it has been iterated that the learned executing court could have done so only under two circumstances; *firstly* if the decree is void ab initio, and *secondly* if the decree is not capable of execution under law, either on account of ignorance of any provision of any existing law or a new law promulgated after the passing of the decree. It is contended by the petitioner that since neither ground is made out in the present matter, hence the impugned order is bad in law.

6. *Secondly*, it is contended that the learned executing court did not appreciate that the objections raised under Section 47 CPC in an execution proceedings are subject to the principles of constructive res judicata and hence, if the judgment debtor ought to have raised a

[3] AIR 2001 SC 2552

defence at an appropriate stage, i.e. suit proceedings, and failed to do so, then he would be precluded from admitting it any subsequent stage of the proceeding i.e. execution proceedings. It is contended that after staying silent for 6 years while the execution proceedings were pending, the respondent no.2/judgment debtor no.2 cannot be allowed to suddenly rise up and be absolved of all liability.

7. It is further contended that the learned executing court erred in declaring the respondent No.2 as "manager" of the respondent no.1 firm merely on one part of the plaint without considering the bigger context and the conduct of the respondent no.2 in the execution proceedings. It is stated that learned executing court erred in relying upon Section 230 of the Indian Contract Act 1872 simpliciter as the issue as regards whether or not the Respondent No.2 was acting merely as a manager/agent of the Respondent No.1 is a question of fact requiring re-appreciation of evidence, which the executing court is barred from doing under Section 47 of the CPC. It is further stated that the learned executing court failed to consider that an objection in the nature of misjoinder of parties taken after 6 years into the execution proceedings is barred in light of Order 13 Rule 1 of the CPC which lays down that all objections on the ground of mis-joinder shall be taken at the earliest possible opportunity.

8. Lastly, it is contended that the Respondent No.2/ judgment debtor no.2 has deliberately created an identity confusion in the mind of the Court to avoid his liability towards the petitioner/decree holder and the present case is a fit case for the application of Section 233 of

the Indian Contract Act, 1872 which provides that even an agent can be sued when he holds himself liable to a third party.

ANALYSIS & DECISION:

9. I have bestowed my anxious consideration to the submissions advanced by the learned counsels for the rival parties at the Bar and I have also gone through the relevant material on the record of the case including the case law cited.

10. At the outset, the impugned order passed by the learned Executing Court is completely flawed and unsustainable in law. Unhesitatingly, learned Executing Court committed grave irregularity and illegality in enlarging its scope of jurisdiction by going behind the decree and altering it after a period of six years.

11. First things first, the respondents/Judgment Debtors being husband and wife never challenged the main judgment dated 15.10.2012 passed by the learned Civil Judge, Panvel, which attained finality. Secondly, the learned Executing Court completely overlooked the fact that the respondent No.2/Judgment Debtor no.2 had signed the settlement order on 07.07.2014 in his individual capacity and not as Manager of respondent No.1/proprietorship concern/ Judgment Debtor No.1. There is merit in the plea by the learned counsel for the petitioner that although business was being carried out in the name of the proprietorship concern with wife of respondent No.1 being the Proprietor, the respondent No.2/husband/judgment debtor no.2 was the real face of the business, whose role in the entire length and breadth of the business relationship between the parties was quite prominent and who has been actively

dealing with the affairs of respondent No.1/Judgment Debtor No.1 as if it was his own concern. In other words, he was the real face of the proprietorship concern, placing orders for supply of consignments, signing invoices, receipts and also making payment with impunity. The facts and circumstances of the case clearly bring out that respondent No.2/Judgment Debtor can also be held liable jointly and severally in terms of Section 233[4] of the Indian Contract Act, 1872.

12. There is no gain saying that respondent No.1/Judgment Debtor no.1 is not a legal entity as such, and it has never been the case of the respondent No.2 at any point of time except after five years of filing of the execution application that he was acting merely as an agent or Manager of the proprietor.

13. At this juncture, it would be appropriate to refer to the decision of the Supreme Court in the case of **Brakewel Automotive Components (India) Private Limtied v. P.R. Selvam**[5], wherein it was enunciated that only a decree which is a nullity can be subject matter of objections under Section 47[6] of the CPC and not one which

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[4] **233.Right of person dealing with agent personally liable**.—In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

[5] (2017) 5 SCC 371

[6] **47. Questions to be determined by the Court executing decree**— (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

[29]* * * *

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[30] [Explanation I.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit. Explanation II.—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

is erroneous either on law or on facts. In the said case, it was observed as under:

> **"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.
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> **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.
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> **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)
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> > "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.
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> > 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,

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(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.] Limit of time for execution

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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.

14. It would be further pertinent to refer to the decision in the case of **Meenakshi Saxena v. ECGC Limited**[7], wherein it has been held as under:

"The whole purpose of execution proceedings is to enforce the verdict of the court. Executing court while executing the decree is only concerned with the execution part of it but nothing else. The court has to take the judgment in its face value. It is settled law that executing court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the

[7] (2018) 7 SCC 479

> material aspects. Then it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree. At that juncture the executing court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree. The executing court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree."

15. Avoiding a long academic discussion, in another case titled **Sanwarlal Agrawal v. Ashok Kumar Kothari**[8], it was categorically held that an Executing Court can construe a decree if it is ambiguous. However, this cannot result in additions or altering the terms of the decree.

16. In view of the aforesaid proposition of law, without further ado, it stares large on the face of the record that the respondent No.2/judgment debtor No.2 has been successful in abusing the process of law and thereby causing miscarriage of justice and denying the fruits of decree to the petitioner/Decree Holder by adopting all sorts of unscrupulous methods. This could not have been without the connivance of proprietor-wife and it is a fit case where they should be burdened with exemplary costs. Both the respondents are jointly and severally liable to satisfy the decree passed in favour of the petitioner/Decree Holder. Evidently, the six Post Dated Cheques which were handed over on 10.02.2016 were not even honoured and a demand draft for a sum of Rs. Six Lacs was handed over only on 25.10.2016. The bottom line is that the respondents, despite agreeing to settle the account, failed to do so and even during the course of

[8] (2023) 7 SCC 307

execution proceedings, an attempt has been made by them to withhold relevant information with regard to respondent No.1/firm.

17. In view of the foregoing discussion, the present revision petition is allowed, and the impugned order dated 14.03.2018 passed by the learned Executing Court insofar as respondent No.2/ Judgment Debtor no.2 has been directed to be deleted from the execution proceedings is hereby set aside, thereby holding that the respondent No.2/judgment debtor no.2 is jointly and severally liable to satisfy the decree in favour of the petitioner/Decree Holder.

18. Learned Trial Court is directed to ensure that appropriate measures are taken against the respondents for realization of the decreetal amount.

19. The pending application under Section 340 of the Code of Criminal Procedure, 1973 may be decided in accordance with law.

20. The present revision petition is disposed of, thereby imposing a cost of Rs. 5 Lacs on respondent No.2/judgment debtor No.2, which be added to the decreetal amount and be realized in accordance with law.

21. All pending application(s) also stand disposed of.

DHARMESH SHARMA, J.

AUGUST 13, 2024

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