**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**ESA-21-2025(O&M)
Reserved on : 24.03.2025
Date of decision: 28.03.2025**

Smt. Rita Anand and another ..Appellants

Versus

Himachal Pradesh Financial Corporation and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Deepender Singh, Advocate for the appellants

ANIL KSHETARPAL, J.

1.Brief facts:-

1.1 The objectors to the execution of a money decree assail the correctness of the concurrent orders passed by the courts below while dismissing their objection petition.

1.2 In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

1.3 M/s Khukhrain Foods Products Private Limited borrowed a loan of Rs.45,00,000/- from the Himachal Pradesh Financial Corporation (hereinafter referred to as 'HPFC') in the year 1998. Sh. Rakesh Anand and Sh.Rajesh Anand executed two deeds of guarantee on 02.04.1998 and 05.01.2002 undertaking that if they commit default, their property of Khukhrain Printing Press namely Shed no.466, HSIIDC, Industrial Estate, Phase I, Panchkula shall be sold to recover the defaulted amount. The third partner of the Khukhrain Printing Press Smt. Veeran Anand also executed a deed of guarantee on 28.03.2002 in favour of HPFC.

1.4 Consequent upon default, HPFC exercising its powers under Section 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as 'SFC Act, 1951') sold the mortgaged assets on 07.10.2003 for an amount of Rs.44,00,000/-. Thereafter, HPFC filed a petition under Section 31 of SFC Act, 1951 against M/s Khukhrain Food Products Pvt. Ltd. and Sh.Rajesh Anand, Sh.Rakesh Anand and Veeran Anand, which was allowed on 08.09.2010. HPFC filed the execution petition, which was later on transferred to the civil court at Panchkula. At the relevant time, when the loan was taken and when the petition under Section 31 of the 'SFC Act, 1951' was filed and on 08.09.2010 when District Judge, Solan passed order of recovery, there were three partners of M/s Khukhrain Printing Press, namely Sh.Rajesh Anand, Sh.Rakesh Anand and Veeran Anand. The appellants were inducted as partners on 01.04.2012 i.e much after the order of recovery was passed on 08.09.2010. Thus, the objections filed by the appellants to the attachment of the property of the partnership Firm have been dismissed.

2. Arguments addressed:-

2.1 Learned counsel representing the appellant, while referring to Order XXI Rule 49 of the Code of Civil Procedure, 1908 submits that attachment of property of the partnership Firm is not permissible unless the decree is against the Firm as such. He relies upon the judgments passed by the Kerala High Court in **T.S. Ramaswamy vs. T Baburaj (Died) Thomas**

Babu and others [OP(C) No. 2420 of 2019 decided on 23.08.2022] and **City Jewellers vs. State of Kerala 1993 (91) STC 225.**

3. Analysis and Discussion:-

3.1 This Court has considered the submissions made by the learned counsel representing the appellant.

3.2 It is evident that Sh.Rajesh and Sh.Rakesh Anand resigned from the partnership on 01.04.2012, which was after the order of recovery was passed by the District Judge on 08.09.2010. The appellants herein are wives of the aforesaid Sh.Rakesh Anand and Sh.Rajesh Anand, who are judgment debtors. Obviously the transfer was made to defeat the rights of the creditors. Hence, such induction of the appellants would be hit by Section 53 of the Transfer of Property Act, 1882.

3.3 Moreover, it is admitted fact that originally the partnership Firm consisted of partners Sh.Rajesh Anand, Sh.Rakesh Anand and Veeran Anand. All the three were also the Directors in the Company. They specifically created a charge on the property of the partnership Firm by executing the separate deeds of guarantee. Hence, the Executing Court has ordered attachment.

3.4 The judgments passed in **T.S.Ramaswamy's case (supra) and City Jewellers's case (supra)** are not applicable. Relationship between the judgment debtors and newly inducted partners, namely the appellants, is sufficient to conclude that the appellants were inducted as partners only to frustrate the decree.

5. Decision:-

5.1 Keeping in view the aforesaid facts and discussion, the appeal is dismissed.

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

(ANIL KSHETARPAL)
JUDGE

28.03.2025
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No