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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 16.05.2025

+ FAO (COMM) 144/2024

ASHOK BULCHAND MULCHANDANI HUFAppellant

Through: Mr. Gurvinder Pal Singh, Mr. Ritesh
Raj & Ms. Maryam Begh, Advocates.

versus

M/S MOONDROPS OVERSEAS SERVICES LLP
& ANR.

.....Respondents

Through:

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present appeal impugning an order dated 25.04.2024 [**impugned order**] passed by the learned Commercial Court in Ex. Comm. No.178/2023 captioned *Ashok Bulchand Mulchandani v. M/s Moondrops Overseas Services LLP & Another*. The aforesaid petition being Ex. Comm. No.178/2023 was filed by the appellant [**decree holder**] against respondent no.1, a limited liability partnership, and respondent no.2, the designated partner. The impugned order indicates that the warrants of attachment were issued against respondent no.2, who is also arrayed as judgement debtor no.2 in the execution petition. The warrants were returned unexecuted. In the aforesaid context, the learned counsel appearing for the decree holder requested that fresh warrants of attachment be issued against respondent no.2. However, the learned Commercial Court declined to do so for the reason that respondent no.1 was the sole defendant in the suit bearing



CS (Comm.) No.392/2021 captioned *Ashok Bulchand Mulchandani (HUF) v. M/s Moon Drops Overseas Services LLP*, pursuant to which the decree dated 23.12.2022, which is sought to be executed was passed. The learned Commercial Court found that respondent no.1 was a limited liability partnership. The decree as obtained by the appellant/ decree holder against the said entity could not be enforced against its partners. There is no cavil that in terms of the Limited Liability Partnership Act, 2008, a designated partner would not be liable for the liabilities of the said partnership firm.

2. However, the learned counsel appearing for the appellant contends that respondent no.2 was arrayed as judgment debtor no.2 only for the purposes of securing of enforcement of decree against respondent no.1. He submits that the same would be maintainable in view of Order XXI Rule 49(2) of the Code of Civil Procedure, 1908 [**CPC**]. It is relevant to refer to the said Rule 49(2) of Order XXI of the CPC and the same is set out below:

“(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property, and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree holder by such partner, or as the circumstances of the case may require.”

3. It is apparent from the above that the provisions of Rule 49(2) of Order XXI of the CPC are applicable only where an application is filed by the ‘holder of a decree against the partner’. In the present case, the decree sought to be executed in Ex. Comm. No.178/2023 is not against respondent no.2. The appellant does not hold any decree against respondent no.2.



Therefore, Rule 49(2) of Order XXI of CPC would have no application in this case.

4. The contention that the appellant had filed the execution petition only against respondent no.1, and arrayed respondent no.2 solely for the purpose of enforcing the decree against respondent no.1, is unmerited. The plain reading of the execution petition filed by the appellant [Ex. Comm. No.178/2023] clearly indicates that the execution has been sought ‘against the judgment debtor and its partner’.

5. In view of the above, we find no infirmity with the impugned order declining to issue warrants of attachments against respondent no.2. The appeal is unmerited and, accordingly, dismissed.

6. It is, however, clarified that the present order would not be read as limiting the appellant from pursuing its petition against respondent no.1 in any manner as permissible in law.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 16, 2025/ ‘A’

Click here to check corrigendum, if any