A M/S. CENTURY TEXTILES INDUSTRIES LTD.

V.

DEEPAK JAIN & ANR.

Civil Appeal No. 1743 of 2009

MARCH 20, 2009

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[D.K. JAIN AND R.M. LODHA, JJ.]

Code of Civil Procedure, 1908 – ss. 47 and 152 – Scope of – Identity of the proprietor of judgment-debtor Company disputed – High Court in revision directing the execution court C *to determine the question of identity – Execution court accordingly determining the identity – Order questioned in revision – High court holding that execution court, in exercise of jurisdiction u/s. 47 could not have gone into the question of identity, without seeking amendment of decree u/s. 152 – On* D *appeal, held: The question of identity having being adjudicated on the direction of High Court, cannot be said to be without jurisdiction – On facts, the issue could have been adjudicated u/s. 47 – Scope of s. 152 being limited only to clerical and to arithmetical errors, rectification thereunder could not have* E *been taken recourse to – s. 152 is based on the principles of the maxim actus curiae neminem gravabit – The proprietor of the judgment-debtor company took the frivolous plea of identification at execution stage to obstruct judicial process – Single Judge by re-examining the question decided by the other Single Judge of High Court and by not referring the matter* F *to larger Bench, departed from the norms of judicial decorum – Maxim – actus curiae neminem gravabit – Judicial Propriety – Administration of Justice – Misuse of judicial process by litigant.*

G **A decree was passed against respondent No. 2 (decree-holder) in a recovery suit filed by the appellant. At the stage of execution proceedings, when summons were issued to respondent No. 1, he filed objection stating that he was not the proprietor of respondent No. 2 and**

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hence not liable to honour the decree. Executing court allowed the objection and held that decree could not be executed against respondent No.1. In the revision against the order, High Court directed the execution court to hold an enquiry regarding the identity of the proprietor of respondent No.2 and then decide the matter. The order was not challenged.

Execution court, as per direction of the High Court, after leading evidence, concluded that respondent No. 1 was the proprietor of respondent No.2. When the order was challenged in Revision, High Court held that executing court could not have decided the issue regarding identity of the proprietor, in exercise of its jurisdiction u/s. 47 CPC, by going behind the pleadings and judgment in suit and that the decree could not have been executed against respondent No. 1 without seeking amendment u/s.152 CPC. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1 When a specific issue regarding the identity of the judgment-debtor had been raised and entertained by the High Court in the first Civil Revision Petition, and the court having remitted the matter to the executing court, the enquiry conducted by the execution court in furtherance of the said direction, its order could not be said to be without jurisdiction. In the instant case, the execution court had no option but to determine the question of identity of the judgment-debtor because of the direction of the High Court and the issues raised before it. Indeed, no objection to the jurisdiction of the Execution court to determine the issue could or was raised. It is also manifest that the said direction by the High Court was keeping in view the provisions of Section 47 CPC. [Paras 13 and 14] [759-A-C]

1.2 Section 47 CPC contemplates that all questions arising between the parties to the suit in which the decree

A was passed, or their representatives, and relating to the execution, discharge or satisfaction of decree, have got to be determined by the court executing the decree and not by a separate suit. In the instant case, the controversy before the High Court, in the first instance, was whether B the decree against respondent No. 2 could be executed against respondent No. 1, who according to the decree-holder, was no one else but the proprietor of respondent No. 2. It is true that respondent No. 1 as such, was not a party to the suit but the fact remains that proprietor of C respondent No. 2 was respondent No. 1 himself and, therefore, the question referred to the Execution court by the High Court for determination was whether proprietor of respondent No. 2 and respondent No. 1 were two different entities. In the peculiar situation, arising in the case, the said issue could be adjudicated u/s. 47 CPC, D notwithstanding the fact that respondent No. 1 was not a party in the suit, wherein the decree in question was passed. It is also evident from the order of the Execution Court that no plea regarding the applicability of Section 47 CPC was raised on behalf of the judgment-debtor E before that Court. [Paras 15 and 16] [759-D-H; 760-A]

Topanmal Chhotamal vs. M/s. Kundomal Gangaram and Ors. AIR 1960 SC 388; Jai Narain Ram Lundia vs. Kedar Nath Khetan and Ors. AIR 1956 SC 359; Ravinder Kaur vs. Ashok F *Kumar and Anr.* 2003 (8) SCC 289 – referred to.

2. High Court was not right in holding that the only course available to the decree-holder was to seek amendment of the decree u/s. 152 CPC. A bare reading of Section 152 CPC makes it clear that the power of the court G under the said provision is limited to rectification of clerical and arithmetical errors arising from any accidental slip or omission. There cannot be re-consideration of the merits of the matter and the sole object of the provision is based on the maxim actus curiae neminem gravabit i.e., an act H of court shall prejudice no man. The issue requiring

adjudication by the execution court did not call for and was clearly beyond the scope of Section 152 CPC. [Para 16] [760-B-D] A

3. Present case is a classic example of how a judicial process can be misused by unscrupulous litigants, more so, when the person concerned himself happens to be an advocate. In the first instance, neither the proprietor of respondent No. 2 nor respondent No. 1 challenged the ex-parte decree and it was only when execution proceedings were initiated against respondent No. 1, that to obstruct execution, he raised a frivolous plea of the identification of the judgment-debtor, with the result that although over a decade has gone by yet the decree-holder has not been able to enjoy the fruits of the money decree so far. [Para 18] [760-G-H; 762-A-B] B C

4. While dealing with the second Revision Petition, the High Court failed to take into consideration the earlier order passed by Single Judge of High Court, whereby the execution court was directed to conduct inquiry in regard to the status of the objector to the execution proceedings. Judicial propriety and decorum requires that if a Single Judge, hearing a matter, feels that earlier decision of a Single Judge needs re-consideration, he should not embark upon that enquiry, sitting as a Single Judge, but should refer the matter to a larger Bench. In the present case, the Single Judge departed from the said healthy principle and chose to re-examine the same question himself. [Para 17] [760-E-G] D E F

Case Law Reference

AIR 1960 SC 388	Referred to.	Para 10
AIR 1956 SC 359	Referred to.	Para 10
2003 (8) SCC 289	Referred to.	Para 10

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1743 of 2009

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A From the Judgement and Order dated 18.11.2004 of the Hon'ble High Court of Madhya Pradesh at Jabalpur, in Civil Revision No. 364 of 2004.

Sunil Gupta Sanjay Grover, Rajesh Kumar, for the Appellants.

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Shiv Sagar Tiwari, for the Respondents.

The Judgement of the Court was delivered by

D.K. JAIN, J.

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Leave granted.

2. Challenge in this appeal is to the judgment and order dated 18th November, 2004 rendered by a learned Single Judge of the High Court of Madhya Pradesh at Jabalpur, in Civil D Revision No. 364 of 2004 filed under Section 115 of the Code of Civil Procedure, 1908 (for short 'the CPC'). By the impugned judgment, the learned Judge allowing the Revision Petition has set aside the order passed by the Second Additional District Judge, Jabalpur in Execution Case No. 2 of 2004, whereby and E whereunder he had held that the objector Deepak Jain and D.K. Jain are the same person and proprietor of M/s Surya Trading Company—the judgment debtor.

3. Shorn of unnecessary details, the case of the appellant, in brief, is that it is engaged in the business of manufacture of F cement. It required the services of Clearing and Forwarding Agents. Respondent No.1, namely, Deepak Jain applied for the said agency in the name of a proprietary concern 'M/s. Deepak Jain' at 743, Sarafa Bazaar. In the application, he gave the reference of his father Shri S.C. Jain, Advocate, 744, Sarafa G Bazaar. Both the properties, namely, 743 and 744 at Sarafa Bazaar are stated to be ancestral properties of Deepak Jain/ D.K. Jain. The said respondent operated a Bank Account No. 454 with Punjab & Sind Bank for his dealings. He also had another account No. 453 with the same branch of the bank

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operated under the name and style of "M/s Surya Trading Company, Proprietor, D.K. Jain", respondent No.2 in this appeal. A

4. According to the appellant, though the agency was in the name of a proprietary concern, styled as M/s. Deepak Jain, but after sometime, Deepak Jain started dealing with them as "M/s. Surya Trading Company, Proprietor, D.K. Jain" as well. B He corresponded from both the addresses, namely, 743 and 744, Sarafa Bazaar. In discharge of his liability towards the appellant, the first respondent issued a Cheque in the sum of Rs.10,68,335/- dated 2nd August, 1992 from Account No. 453 of "Surya Trading Company" as D.K. Jain. However, the Cheque C was returned unpaid. The appellant filed a Civil Suit for recovery of the said amount against "M/s Surya Trading Company, Proprietor D.K. Jain". The Suit was decreed ex-parte on 10th March, 1997. On summons being issued by the Executing Court, Deepak Jain appeared before the Court and filed objections, D pleading that he was neither D.K. Jain nor proprietor of M/s. Surya Trading Company and not even a resident of 744, Sarafa Bazaar. Accepting the objections preferred by Deepak Jain, by order dated 14th August, 2001, the Executing Court held that the decree could be executed only against D.K. Jain and not E against Deepak Jain. Aggrieved by the order passed by the executing Court, the appellant filed a Civil Revision before the High Court. Vide order dated 21st August, 2002, the High Court disposed of the Revision Petition with the following direction:

> "After hearing the learned counsel for the petitioner, this F Revision is disposed of with the direction that in case petitioner files an appropriate application disclosing and specifying the identity of the proprietor, an enquiry thereon shall be held by the Executing Court and the same shall be decided in accordance with law." G

5. None of the parties questioned the said order and thus it attained finality. On 2nd December, 2002, the appellant moved an application before the Executing Court disclosing and specifying the identity of the judgment debtor. The first H

A respondent—Deepak Jain contested the said application by stating that he was not the proprietor of M/s. Surya Trading Company and that he had no connection with 744 Sarafa Bazaar as well. The Executing Court framed the following issues:

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1. Whether the objector Deepak Jain, Advocate S/O Late Shri Sumer Chandra, Advocate, R/O 744, Saraffa Bazar, Kamaina Road, Jabalpur is the proprietor of M/s. Surya Trading Company?

2. Relief and expenses.

C **6.** Parties led evidence on the first issue. The Executing Court, upon analysis of the evidence so led, came to the conclusion that Deepak Jain was the proprietor of M/s. Surya Trading Company and Deepak Jain and D.K. Jain are the same person. For the sake of ready reference, the relevant portion of D the order passed by the Executing Court is extracted below:

> "It appears from the perusal of the letter, Exh. P-4 that above letter has been written on the Letter Head in the name of Deepak Jain, 743, Saraffa Bazar, Kamania Gate. The letter has been addressed to M/s. Manikgarh Cement, E Nagpur. The contents of the letter was related to sending cement and in place of account, M/s. Surya Trading Company has been written. It has not been clarified by the Objector that when he has no concern with M/s. Surya Trading Company, then on what basis name of M/s. Surya F Trading Company has been mentioned on the letter, Exh. P-4 dated 2.11.1990? Thus, it is evident from the letter verified by the Objector himself that business of M/s. Surya Trading Company is being managed by Deepak Jain himself. Because as per statement of Objector as per G letter, Exh. P-4, it is his Firm and writer of this letter on the Letter Head, is no one other than Deepak Jain himself. In this letter, demand has been given for M/s. Surya Trading Company. Thus it is evident from the letter, Exh. P-4 that owner of M/s. Deepak Jain and proprietor of M/s. Surya H Trading Company Shri D.K. Jain are the same person."

7. Obviously, being aggrieved by the said order, Deepak Jain filed Civil Revision No. 364 of 2004. The main ground of challenge was that the Executing Court had wrongly placed the onus on him to prove that he was not D.K. Jain. However, there was no challenge to the jurisdiction or power of the Executing Court to decide the issues framed.

8. As noted earlier, by the impugned order, the High Court has come to the conclusion that the Executing Court could not decide issue No.1 in exercise of its jurisdiction under Section 47 of the CPC. It has been held that the Executing Court could not go behind the pleadings and the judgment in the Civil Suit, wherein the case of the appellant related to the transaction with "M/s. Surya Trading Company proprietor D.K. Jain" and there was no reference of objector Deepak Jain, S/o late Sumer Chandra Jain, Advocate, 743 Sarafa Bazaar, Jabalpur in the judgment of the Civil Court. It has been observed that without seeking amendment under Section 152 of the CPC of the judgment-decree, the appellant was erroneously endeavouring to execute the money decree against Deepak Jain.

9. Being aggrieved by the decision of the learned Single Judge, the appellant is before us in this appeal, by special leave.

10. Mr. Sunil Gupta, learned senior counsel appearing on behalf of the appellant, strenuously urged before us that by the impugned order, the High Court has in effect overturned its earlier order dated 21st August, 2002 in Civil Revision No. 379 of 2002 (extracted above), whereby the Executing Court had been directed to hold an inquiry into the question of identity of the proprietor of M/s. Surya Trading Company. It was submitted that the High Court failed to appreciate that its own earlier order mandated the Executing Court to determine the identity of the proprietor of the judgment debtor and, therefore, the Executing Court was certainly competent and entitled to go into the said question in terms of Section 47, CPC. It was also contended that adjudication on the question of identity being a pure question

A of fact, it could not be interfered by the High Court in exercise of its jurisdiction under Section 115, CPC. In support of the proposition that the High Court should have taken into consideration the decision of the Co-ordinate Bench of the same High Court, dated 21st August, 2002, which had attained finality, B learned counsel placed reliance on the decisions of this Court in *Topanmal Chhotamal Vs. M/s. Kundomal Gangaram & Ors.*[1]; *Jai Narain Ram Lundia Vs. Kedar Nath Khetan & Ors.*[2] *and Ravinder Kaur Vs. Ashok Kumar & Anr.*[3].

C **11.** Per contra, Mr. Shiv Sagar Tiwari, learned counsel appearing on behalf of the respondents, supported the impugned judgment and submitted that the Executing Court had misread the evidence while coming to the conclusion that Deepak Jain and D.K. Jain are one and the same person and D proprietor of M/s. Surya Trading Company. Learned counsel submitted that the High Court was justified in holding that the Executing Court could not go behind the decree and that the only remedy available to the appellant herein was to seek rectification of the decree by moving proper application under Section 152 of the CPC.

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12. Having bestowed our anxious consideration to the background facts obtaining in the present case, in particular, the order passed by the High Court on 21st August, 2002, in the first round of litigation in execution proceedings, subject matter F of Civil Revision No. 379 of 2002, in our opinion, the impugned judgment is unsustainable.

13. There is no quarrel with the general principle of law and indeed, it is unexceptionable that a court executing a decree cannot go behind the decree; it must take the decree according G to its tenor; has no jurisdiction to widen its scope and is required to execute the decree as made. However, the question which

[1] AIR 1960 SC 388
[2] AIR 1956 SC 359
H [3] (2003) 8 SCC 289

falls for consideration in the present case is that when a specific issue regarding the identity of the judgment-debtor had been raised and entertained by the High Court in the first Civil Revision Petition, decided on 21st August, 2002, and the Court having remitted the matter to the Executing Court, the enquiry conducted by the Executing Court in furtherance of the said direction, could its order be said to be without jurisdiction?

14. In our opinion, on facts in hand, the Executing Court had no option but to determine the question of identity of the judgment-debtor because of the direction of the High Court and the issues raised before it. Indeed, no objection to the jurisdiction of the Executing Court to determine the issue could or was raised. It is also manifest that the said direction by the High Court was keeping in view the provisions of Section 47 of the CPC.

15. Section 47 of the CPC contemplates that 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 decree, have got to be determined by the court executing the decree and not by a separate suit. In the instant case, the controversy before the High Court, in the first instance, was whether the decree against "M/s Surya Trading, Proprietor, D.K. Jain" could be executed against Deepak Jain, who according to the decree holder, was no one else but D.K. Jain. It is true that Deepak Jain, as such, was not a party to the suit but the fact remains that "M/s Surya Trading Company, Proprietor, D.K. Jain" was Deepak Jain himself and, therefore, the question referred to the Executing Court by the High Court for determination was whether "D.K. Jain" and "Deepak Jain" were two different entities. We have no hesitation in holding that in the peculiar situation arising in the case, the said issue could be adjudicated under Section 47 of the CPC, notwithstanding the fact that Deepak Jain was not a party in the suit, wherein the decree in question was passed.

A **16.** Moreover, it is evident from the order of the Executing Court that no plea regarding the applicability of Section 47 of the CPC was raised on behalf of the judgment-debtor before that Court. We are unable to persuade ourselves to agree with the High Court that the only course available to the decree holder B was to seek amendment of the decree under Section 152 of the CPC, as was canvassed before us by learned counsel for the respondents. A bare reading of Section 152 CPC makes it clear that the power of the Court under the said provision is limited to rectification of clerical and arithmetical errors arising C from any accidental slip or omission. There cannot be re-consideration of the merits of the matter and the sole object of the provision is based on the maxim *actus curiae neminem gravabit* i.e., an act of court shall prejudice no man. In our judgment, the issue requiring adjudication by the Executing Court D did not call for and was clearly beyond the scope of Section 152 CPC.

17. We are also constrained to observe that while dealing with the second Revision Petition, the High Court failed to take into consideration the order passed by a learned Single Judge E on 21st August, 2002, whereby the Executing Court was directed to conduct inquiry in regard to the status of the objector to the execution proceedings. Time and again it has been emphasised that judicial propriety and decorum requires that if a Single Judge, hearing a matter, feels that earlier decision of a F Single Judge needs re-consideration, he should not embark upon that enquiry, sitting as a Single Judge, but should refer the matter to a larger Bench. Regrettably, in the present case, the learned Single Judge departed from the said healthy principle and chose to re-examine the same question himself.

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18. Before parting, we note with some anguish that this case is a classic example of how a judicial process can be misused by unscrupulous litigants, more so, when the person concerned himself happens to be an advocate. In the first H instance, neither "D.K. Jain" nor "Deepak Jain", actually one

and the same person, challenged the ex-parte decree dated 10th March, 1997 and it was only when execution proceedings were initiated against "Deepak Jain", that to obstruct execution, he raised a frivolous plea of the identification of the judgment-debtor, with the result that although over a decade has gone by yet the decree holder has not been able to enjoy the fruits of the money decree so far.

19. In view of the foregoing discussion, the appeal is allowed and the impugned judgment of the High Court is set aside with costs, quantified at Rs.20,000/-.

K.K.T. Appeal allowed.