

Rajender Prashad and Others

Vs

M/S Devi Dayal Ravinder Kumar and Others

Civil Appeal No. 4241 of 1991

(B. C. Ray, Dr. T. K. Thommen JJ)

10.10.1991

ORDER

1. Leave granted. Arguments heard.
2. The instant appeal on special leave has been filed against the judgment and order of the Punjab and Haryana High Court whereby the High Court upheld the findings of the courts below dismissing the objections raised on behalf of the judgment debtors Rajender Prashad and others against the validity of the ex-parte decree.
3. Undoubtedly, there was an award made by an arbitrator in respect of certain matters referred to the arbitrator relating to the sale of goods to the defendant partners, wherein one of the partners was present and that award was filed in the Court of the Subordinate Judge, Ist Class, from making the award a rule of the Court. In that proceeding Sukhdeb Singh and Jai Dayal were made parties out of the six partners of the partnership firm, respondent 3. The award was made a rule of the court. The decree was transferred to the Court of Sub-Judge, Ist Class, Gurgaon for execution. Appellants filed objections to the effect that the transferee court cannot execute the decree inasmuch as the decree was an ex-parte one and secondly, the appellant Rajender Prashad was not a party to the decree and no summons of the said proceedings was served on him and, as such, he was completely shut out from raising his objections against the decree. It was contended in this connection by drawing our attention to the provisions of Section 47 of the Code of Civil Procedure as well as to Order 21 Rule 50(1)(b) that this decree could not be executed against the personal property of Rajender Prashad and others. Undoubtedly, in clause (b) of Order 21 of Rule 50 there is a provision that decree can only be executed if he is adjudged as one of the partners. In all these proceedings, particularly, in the order passed by Shri R. C. Bansal, Sub-judge, First Class, Gurgaon, he has elaborately considered the matter and has come to a finding to the following effect :

"The above provisions would not hold the objectors, because they have not produced any evidence, to support that they were not partners. Rather, as has been seen above that even the learned Sub-Judge, Ist Class Delhi, had dismissed similar objection of the objectors and they are bound by that order. The learned counsel for the objectors have also argued that the attachment was statedly effected on June 9, 1979 but the concerned Kanungo signed that documents on June 9, 1973. It seems that O.W. 1 Om Prakash, attorney of the objectors, has made a very vague statement. During cross-examination,, he could not tell whether the objectors, Ishwar Dass and Rajender were partners or not. He admitted that Guru Parasad used to sit on the shop, but he could not tell whether they were sharing profits or losses of the partnership firm. The objectors are partners and the decree could be legally executed against them. The

objectors have also contended that the decree was nullity and unexecutable, but no convincing evidence has been produced. Rather, we had already discussed above that even a civil suit filed for setting aside the decree was without any result. Therefore, the award upon the basis of which the decree was passed, cannot be stated to be without jurisdiction. The authority referred to (Ravindra Finance v. Yahai Tobacco Co. [AIR 1979 Mad 25 : (1978) 2 MLJ 183]) would not help the objectors in any way. Not only this Om Parkash also filed independent objections, but with no result. It seems that the objectors are unnecessarily creating hindrances in the execution of the decree validly passed by the Court. There is no force in the objections of the objectors that their agricultural land was not liable to be attached and sold in execution. There is no evidence that the arbitration award was without any jurisdiction. Both the issues are decided against the objectors."

4. The other objection was that no proclamation regarding auction was made in the village and no legal notice under Order 21 Rule 66 of the Code of Civil Procedure was served. That objection was also elaborately considered and learned Subordinate Judge had come to a finding that the sale is not liable to be set aside. All these steps provided under the Act has been complied with in putting the property to sale. It is also an established fact that these Rajender Prashad and others had filed some suits challenging the validity of the decree which challenges became unsuccessful up to the appellate court and the decree was held to be good and unassailable. All the suits were dismissed and the decree was affirmed. This position has been frankly admitted by the learned counsel appearing on behalf of the appellants before us that after the order of the courts regarding the validity of the decree, he could not challenge the decree.

5. Mr. Ashoke Sen, learned counsel drew our attention to the findings arrived at by the High Court, particularly, with regard to the specific point that the notice of settlement of the sale proclamation under Order 21 Rule 66 of Code of Civil Procedure was duly served and it was settled and then it was published and no stage the judgment-debtor Rajender Prashad has come forward to contest the settlement of the sale proclamation. Even on the date when the auction was going to be held he did not appear and file any objections and, moreover, under Order 21 of Rule 90 of the Code of Civil Procedure, he should have disputed the sale price and prayed for appropriate order for setting aside the same. He did not take any steps even knowing fully well that the property in question has been put to auction sale and has been ultimately sold and even no application has been made under Order 21 Rule 89 of Civil Procedure Code to set aside the impugned sale by depositing sale price for payment to the auction-purchaser etc.

6. Considering all these aspects of the matter and also the legal position we are unable to hold that there has been any material irregularity or fraud in publishing and conducting the sale. However, considering fairness and equity, we of our own, suggested to the learned counsel Mr. Ashoke Sen to pay something more to the appellants and Mr. Sen in his fairness immediately agreed to the proposal on instructions from his client that the auction-purchaser, the respondents, are willing to pay a sum of Rs 2 lakh 25 thousand to the other side within a period of four weeks as suggested by this Court including the sale amount already deposited. In view of this statement made by Mr. Ashoke Sen, learned counsel for the respondents, we accept the same and we grant four weeks time for payment of the amount as aforesaid in full and final settlement of the matter. The said amount shall be deposited in the executing court and the appellant judgment-debtors will be free to withdraw the same unconditionally. The appeal is thus disposed of. There will be no order as to cost.

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