BOMBAY HIGH COURT

Maharani Mandalsa Kumari Devi

Vs.

V.M. Ramnarain Private Ltd

Appeal No. 31 of 1958 . from Suit No. 162 of 1957

(S.T. Desai and K.T. Desai, JJ.)

21.11.1958

JUDGMENT

S.T. Desai, J.

1. This is an appeal from a judgment of Mr. Justice Shelat on a chamber summons under Order 21, Rule 50(2) and the order appealed against is one granting leave to the decree-holder to proceed in execution against certain persons as partners in the firm of Messrs. Jagatsons International Corporation. In that firm there were several partners including the Maharaja of Sirmoor, a principality in Himachal Pradesh. There is no dispute that the Government of India had recognized the Maharaja of Sirmoor as a ruler entitled to the privileges under Section 86 of the Civil Procedure Code. The plaintiffs, who are respondent No. 1 before us, fifed a suit against that firm to recover a sum of Rs. 1,96,831.58 nP. The suit was filed as a summary suit and the plaintiffs took oat a summons for judgment. The writ of the summons was served only upon the Manager of the firm and upon one of the partners, Shib Chunder Kumar, who is respondent No. 5 to the appeal. At the hearing of the summons for judgment, the firm was represented by attorneys and counsel and submitted to a decree as prayed and applied for liberty to pay the decretal amount in certain installments, which application was granted. The firm failed to pay the installments and the plaintiffs took out a chamber summons, out of which arises this appeal for liberty to execute the decree against the 7 individual partners (other than the Maharaja of Sirmoor) mentioned in the summons. Those 7 persons were admittedly partners in the defendant firm at all material times. Various contentions were raised before Mr. Justice Shelat, who negatived them. We shall only examine those contentions which are pressed before us by Mr. Singh, learned counsel for the appellants. The learned Judge, as we have already mentioned, made the summons absolute and four of the partners have now come to this Court in appeal.

2. It has been argued firstly that the decree passed on the summons for Judgment and which was a consent decree was a nullity and if it was a nullity, it was competent to the executing Court to

go into that contention and decline to grant any execution against the partners against whom execution of the decree was sought to be enforced by the chamber summons. The argument is that one of the partners in the firm of the judgment-debtors being a ruling prince, no valid decree could be passed against the firm of which he was a partner without the consent of the Central Government certified in writing as required by Section 86 of the Civil Procedure Code. Section 86 of the Civil Procedure Code has to be read with Section 87B which applies the principle of immunity to foreign Rulers to the Rulers of former Indian States. Now, the argument here is that no suit can be filed against a firm if one of the partners in that firm is a Ruler of a former Indian State and if a suit is filed against a firm in which one of the partners is a ruler of a former Indian State, the suit is not maintainable and if a decree were to be passed in that suit that decree would be a nullity. Another step of the argument is that a decree against a Ruler of a former Indian State without the requisite consent of the Central Government before the institution of the suit is a nullity. We agree with Mr. Singh when he says that a decree passed against a Ruler of a former Indian State without the requisite consent of the Central Government would be a nullity. Section 9 and 86 of the Civil Procedure Code have in this context to be read together and by doing so it must follow that a Court has no inherent jurisdiction to entertain a suit against a person to whom Section 86 applies. It can only do so if the requisite consent of the Central Government is obtained before the institution of the suit. The provisions contained in Section 86, it is well established are imperative and a decree passed by a Court without the requisite certificate would be by a Court which has no jurisdiction at all to entertain the suit. It would be a case of the total absence of competence and the decree would be a. nullity. But that is not the real difficulty of Mr. Singh in this case. The real difficulty of Mr. Singh is when he asks us to accept the proposition that a decree passed against a firm in which one of the partners is a Ruler of a former Indian State would be a nullity if the consent of the Central Government was not obtained to the filing of the suit against him. The suggestion is that a suit against a firm in the name of the firm is as much a suit against every partner of the firm, including the partner who is a Ruler of a former Indian State. So far, we are in agreement with Mr. Singh. A suit against a firm is a suit against all the partners of the firm and a fortiori it is a suit against one of those partners who is a Ruler of a former Indian State. But it is not possible for us to accede to the argument that a decree against a firm in which one of the partners happens to be a Ruler of a former Indian State is a nullity if the suit was filed without the requisite certificate.

3. Greatest reliance has been placed by Mr. Singh on a decision of Chagla C.J. in a Civil Revision Application decided by His Lordship sitting alone reported in *Dulerai and Co. v. Pokerdas Mengraj*[1], We would like to preface our observations on that case by drawing attention to the, very peculiar nature of the application which the learned Chief Justice had to consider. In the firm of Dulerai and Co. there were four partners, one of whom was the Maharaja of Orchha, a ruler of the former Indian State of Orchha. The respondents to the Revision Application were Messrs. Pokerdas Meghraj and they tiled a suit in the City Civil Court, Bombay, against the firm of Dulerai and Co. in the name of that firm to recover a sum of Rs. 5000/-. The defendants filed their appearance under protest and informed the plaintiffs that as the Maharaja of Orchha was

one of the partners and as the requisite consent of the Central Government under Section 87B read with See. 86 to file the suit against the Maharaja had not been obtained, the suit was not maintainable. The plaintiffs thereupon took out a chamber summons asking that the appearance under protest be removed. The chamber summons was heard by the Principal Judge of the City Civil Court, who held that as the suit was filed against the firm in the firm name and not against the partners in their individual names, Sections 86 and 87B had no application. He made the summons absolute and the Civil Revision Application was against that order.

[1] ILR 1953 Bom 237

What the learned Chief Justice had to decide and in fact decided, was that the learned Principal Judge of the City Civil Court was in error in dismissing the chamber summons. The effect of the judgment was that the appearance under protest was to remain on the record of the suit and the City Civil Court was directed to try the issue as to whether the Maharaja of Orchha was a partner in the defendant firm. It is in that context that certain observations seem to have been made in the judgment in that case. Read out of congest, those observations may lend support in the argument pressed before us by Mr. Singh. But we are not prepared to read those observations as laying down the proposition which Mr. Singh has contended for before us. But as we have already observed, those observations are to be read in their proper context bearing in mind the real point which had to be decided and what we are concerned with is the ratio of that decision. We do not think that the correct ratio of that decision is that a suit can in no circumstances be filed against a firm in which a ruler of a former Indian State is a partner. Of course, if the question arises as to whether a ruler of a former Indian State is a partner in a firm, then it would be necessary for the Court to determine that point and that is what seems to us to have been decided in that case. But we do cot think we should read that decision as laying down the wide general proposition pressed for our acceptance by Mr. Singh.

4. A suit can be filed against a firm under Order 30, Rule 1 of the Civil Procedure Code if the requirements of that rule are satisfied. When a suit is filed against a firm under Order 30, Rule 1, the effect of that is, as was pointed out by Lindley, L.J. in the oft-quoted passage in the decision in *Western National Bank of City of New York v. Perez Triana and Co*[2]. at page 314 :-

> "Where a firm's name is used, it is only a convenient method for denoting those persons who compose the firm at the time when that name is used and a plaintiff who sues partners in the name of their firm in truth sues them individually just as much as if he had set out all their names."

Therefore, when a suit is filed in the name of a firm, the true position is that for all purposes, barring certain exceptions which are in the present context not material the suit must be treated as operating as a suit and effective as a suit filed against all the partners in their individual names. A firm is not a legal entity or a person. A firm name is merely a label given for convenience to describe and refer to persons who have agreed to carry on business in partnership. Although in mercantile usage a firm is deemed to be clothed with sufficient personality, in the eye of law a

firm has no legal existence as sued. It is not a juristic person and when reference in made to a firm, it is really to the individual partners who constitute that firm. This principle is so firmly established that its application permits of no doubt or debase. Therefore, in the present case when the summary suit was filed against the firm of Jagatsons International Corporation, it was for all relevant purposes a suit against all the partners in that firm and when a decree was passed in that suit on the summons for judgment, it was for all relevant purposes a decree against all the partners in that firm. If one of the partners was a person against whom a decree could not have been passed because the requisite consent of the Central Government to the filing of the suit against him had not been obtained, that want of consent can be availed of only by that person and not by the other partners in the him. The other partners could not possibly claim any immunity under Section 86 or Section 87B of the Code of Civil Procedure. In

[2]1891-1 Q.B. 304

substance and in effect, the argument of learned counsel for the appellants asks us to extend that immunity to those other partners of the firm.

5. The same argument has been presented by Mr. Singh in a slightly different form. It is stated that the decree passed by the Court was against Messrs. Jagatsons International Corporation and not against the individual partners. Says Mr. Singh the decree could have been passed against the individual partners other than the Maharaja of Sirmoor. The next premise is that decree is not divisible and on these premises it is urged that the conclusion must of necessity be that the decree against the firm was a nudity. The premises, of this svllogism are open to serious doubt. To say that the decree against Messrs. Jagatsons International Corporation was not a decree against the individual partners is in the present context a fallacy. We have already referred to the legal position on the subject and we may say it once again that a decree passed against a firm is a decree against the individual partners. There are certain exceptions to this proposition, but they do not in any manner disturb the correctness of this proposition. Those exceptions refer to certain safeguards in the matter of execution and those safeguards are to be found in Order 21 Rule 50 of the Civil Procedure Code. But in dealing with the present point we are not concerned with them. The argument is stressed in the form of a question : How can a decree passed against a firm in which one partner is a ruler of a former Indian State be said to be a decree not against him ? We do not suggest, that the decree was not against the Maharaja of Sirmoor. The view we take is that it was a decree not only against the Maharaja of Sirmoor, but a decree against him as also every individual partner in the firm. The partners in the firm being jointly and severally liable to the judgment-creditor, the decree cannot be said to be a nullity against any of the appellants before us. For all these reasons, the present contention of the appellants must be negatived.

6. It is next argued before us by learned Counsel for the appellants that the learned trial Judge was in error in interpreting Order 21 Rule 50 as prohibiting any inquiry into the right of the individual partners to dispute on merits their liability to the plaintiffs to the suit. The relevant part of Order 21 Rule 50 is as under :-

"50(1) Where a decree has been passed against a firm, execution may be granted -
(a) against any property of the partnership;
(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;
(c) against any person who has been individually served as a partner with a summons and has failed to appear :
Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of Section 247 of the Indian Contact Act, 1872.
(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c) as being a partner in the firm, he may apply to the Court which passed the decree for leave and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined."

Mr. Singh has very strongly relied upon a decision of a Division Bench of this Court *Bhagwan Manaji v. Hiraji Premaji*[3], where a Division Bench of this Court expressed the view that the issue as to the liability of the persons not served is not limited to the question as to whether they were partners and that such persons may raise a general issue as to liability. It does emerge from that decision that the Court took the view that in an application for execution under Order 21 Rule 50, it would be open to the alleged partner to raise contentions on the merits of the plaintiffs claim and the inquiry would not be confined merely to the factum of his being or not being a partner in the firm. In an earlier judgment reported in the same volume Mr. Justice Mirza sitting alone had taken the view that in such a case if is not competent to the partner who had not been personally served to raise a plea on the merits of the suit that the plaintiff was not entitled to obtain any decree against the firm. The question is of considerable importance and arises quite often in execution proceedings. We would have examined the question in some detail, but it is not necessary for us to do so in view of a very recent decision of this Court where, the case of 34 Bom LR 1112 was dissented from by a Division Bench consisting of Mr. Justice Gajendragadkar, as he then was and Mr. Justice *Gokhale Rana Harkrishandas Lallubhai v. Gulabdas Kalyandas*[4], In 34 Bom LR 1112 the point does not appear to have been argued at any length and there is very little discussion of the construction of Order 21, Rule 50 in that judgment. The matter, if we may respectfully say so, has been fully discussed by Gajendragadkar, J. in the judgment in the case reported in 58 Bom LR 167 : AIR 1956 Bombay 513. After examining the scheme of O. 30 and Order 21 Rule 50, His Lordship observes at page 170 :

"I have already indicated that under Rule 50, Sub-Rule (1), a decree passed against a firm can be executed against the property of the firm and against the persons mentioned in Clauses (b) and (c) of Sub-Rule (1) without any difficulty. In case it is found that the appellants were partners of the firm at the material time, their share in the property of the partnership would be liable under execution process even if the other points that they seek

to raise in the present proceedings are uphold. The words used in R. 50, Sub-Rule (1) are clear and unambiguous. It is impossible to hold that the decision recorded in the present proceedings in favour of the appellants can affect the decree-holder's right to proceed in execution of the decree against the partnership property including the appellants' shares in it. In other words, it is clear that whatever may happen in the enquiry in the present proceedings, the validity of the decree qua the partnership property and qua the persons mentioned in R. 50 Sub-Rule (1) Clauses (b) and (c), can never be affected or impaired and the shares of the appellants in the partnership property would be available to the decree-holder in execution proceedings. If this be the true position it inevitably imposes certain obvious limitations on the enquiry contemplated by Sub-Rule (2) of R. 50. It would be fu*****-ile to hold an enquiry under Sub-Rule (2) of R. 50 concerning points which, if found in favour of the opponent, may Send to impair the validity of the decree itself. If the property of the partnership would always remain liable for execution, there would be no point in allowing a point to be raised in these proceedings which, if found in favour of the opponents, may tend to make the decree itself invalid and thus affect its executability. Prima facie, therefore, the pleas which can be taken in the present

[3]34 Bom LR 1112

[4]58 Bom LR 167 : AIR 1956 Bom 513

proceedings should not louch the validity of the decree against the firm and would not be allowed to affect the decree-holder's right to take steps in execution as mentioned in R. 50 Sub-Rule (1)".

7. After these observations, it is stated :

"The material words used in R. 50 Sub-Rule (2) may now be examined. This sub-rule deals with cases were the decree-holder claims to execute a decree passed against the firm and wants to proceed against a person who has not been impleaded as a partner expressly during the course of the suit and the basis for proceeding against such a person set out by the decree-holder is that the said person was a partner in the firm. Proceedings under Sub-Rule (2) thus begin with the allegation made by the decree-holder that the person against whom he wants to proceed is liable for the decree passed against the firm because the said person was a partner in the firm. That is the basis and the foundation of his claim to proceed against him in execution. Such a person is sought to be made liable solely on the ground that he was a partner and the enquiry becomes necessary in such proceedings where, when the person is served with a summons of these proceedings, he disputes his liability. In our opinion, when Sub-Rule (2) refers to cases where such liability is disputed, the expression "such liability" in the context means liability as a partner .....As soon as it is found that the person was a partner of the firm, the decree would immediately be executed against him. He would then become a judgment-debtor and it would not be open to him to raise any further contention against the validity or the executability of the decree which may not be open to the persons mentioned in Sub-Rule (1)".

We are in respectful agreement with the view taken in this later decision of this Court. We would have considered whether it was necessary to suggest that the matter may be placed before a Full Bench of this Court, but in view of the decision, to which we have just made reference and the fact that both Calcutta and Madras High Courts have taken the same view, we do not think it necessary to make any such suggestion to the learned Chief Justice.

8. In *Shahani v. Havero Trading Co. Ltd*[5]. the Calcutta High Court dissented from an earlier decision of the same Court and reached the conclusion that Sub-Rule (2) of Rule 50 of Order 21 provides that the liability of a person as a partner may be put in issue, but once his liability is proved or admitted, he is not entitled to contest the validity of the decree or his own liability thereunder in an execution against him. It was an appeal from a Judgment of Mr. Justice Das as be then was and the Court of Appeal agreed with the conclusion reached by the learned Judge. The decision of this Court in 34 Bom LR 1112 was considered by the learned Judge (now Chief Justice of India) and he expressed his disagreement with the same.

9. In *T.P. Kuppuswami Mudaliar v. Polite Pictures*[6] Rajamannar C.J. and Rajagopala Aiyangar J. took the same view as wag taken by the Calcutta High Court in the decision to which we have just made reference. Mr. Justice Rajagopala Aiyangar in his judgment

[5]51 Cal WN 483

[6] AIR 1955 Mad 154

does appear to read the language of Sub-Rule (2) of R. 50 as being wide. With very great respect, we are unable to read the language of Sub-Rule (2) of Rule 50 of Order 21 as being wide. The way we read Order 21, Rule 50 is that it speaks only of execution of a decree being sought against a person as being a partner in the firm who had not been served with a summons and in the application the ground that can be raised won d be the ground affecting the factum of partnership. Sub-rule (2) has to be read in the context of the whole of R. 50 and in Sub-Rule (2) the words "as being a partner in the firm" followed by the words "where the liability is not disputed" and the words "where such liability is disputed" are with respect, not wide, but are rather words of specified connotation. Apart from that, we find ourselves respectfully in agreement with the decision of the Madras High Court. We need hardly add that the Maharaja of Sirmoor is not one of the appellants before us. The chamber summons was not directed against him and no question as to his liability has been raised by the plaintiffs in that summons or on this appeal. The present contention of the appellants must also be negatived.

10. In the result, the appeal fails and will be dismissed with costs.
Appeal dismissed.