

RD No.4/2018
Ganesh -VS- Dilip

ORDER BELOW EXH.18
(Passed on 26/04/2024)

The objectors by name Bharti and Piyush have filed the present objection under section 47 of the Civil Procedure Code, 1908.

2] The objectors have submitted that they are widow and son respectively of the original JD. The DH had filed suit bearing number RCS No.92/2013 for recovery of money against the original JD and the said suit came to be decreed on 11/01/2018. Wherein it was directed to the original JD to pay amount of Rs.3,00,000/- along with interest @ 10 % p.a. from 26/09/2010 till realization of whole amount. The DH has filed the present execution proceeding against the original JD and during pendency of execution petition the original JD expired on 02/04/2022. The DH thereafter added present objector in array of the JD being legal representatives of the original JD. The original JD was having licence of Kerosene and he was engaged in the said business. Due to ill health the original JD was not doing any business even he failed to renew the licence of Kerosene. The objector No.1 out of her earing was bearing medical expenses of original JD. The objector No.2 is engaged in the business of grocery along with objector No.1 and she has not transferred or

renewed the said licence. Hence, objector No.2 gets no profit from the business of original JD. The DH has not mentioned in the entire application as to how the objectors are liable to pay decretal amount. The application is also silent about the property to be attached or sale out for execution of decree. The DH has not provided list of movable or immovable property to be attached. There is documentary evidence on record that which properties belongs to the JD. The DH has not made any inquiry as to the nature of the property, whether ancestral or self acquired and how the same are came to the hands of legal representatives. As per section 50(2) of the Civil Procedure Code the legal representative shall be liable only to the extent of the property of the deceased, which has come to their hands. Objectors further submitted that objector No.1 is business woman and out of her earning purchase house hold articles which is her own property. Objectors have not received any property of the original JD. Hence, the present execution proceeding is not maintainable. Therefore, the execution proceeding be dismissed.

3] The DH filed reply at Exh.20 and denied contents made in the application. In specific reply the DH submitted that objectors have filed the present application by suppressing factual position and only to harass and prolong the matter. The original JD was running business of grocery shop in the name of style "Dilip Kirana Stores" situated at Surana Layout, Anant Nagar,

Nagpur. This fact was admitted by the JD in written statement which was filed in RCS No.92/2013. Objectors have run the said business and earned income therefrom. Thus, the plea taken by the objector is not tenable. The objectors are legal heirs of the deceased Dilip, therefore, they are liable to pay due amount in execution proceeding. Finally prayed for rejection of objection.

4] Perused the objection application, say and record.
Heard.

5] At the outset for sake of convince I reproduce Section 50 of Civil Procedure Code for ready reference -
Section - 50

6] It is admitted fact that the DH had filed RCS No.92/2013 against the deceased Dilip, who was the original JD in the present execution proceeding, for recovery of money and the said suit decreed on 11/01/2018. Further it is admitted fact that during pendency of execution proceeding the JD i.e. Dilip expired on 02/04/2022 and his legal representatives who are the present objector in array of JD. Now, objectors have filed objection on the ground that they have their separate source of business and they have not inherited property from deceased Dilip and therefore, they are not liable to pay to decretal

amount. As against this the DH contended that objector are legal representative of deceased Dilip and they have inherited Kirana Shop of deceased Dilip. Therefore, the plea taken by objectors is not tenable.

7] As per Sub section (2) of section 50 of the Civil Procedure Code the decree can be executed against legal representative of deceased JD only to the extend of the property of the deceased which has come to his hands and the court may compel such legal representative to produce such documents. The DH has filed property card of City Survey No.1297 area admeasuring 198.53 sq. meter situated at Zingabai Takali, Tah. & Dist. Nagpur, which is in the name deceased Dilip and certainly being legal representative of deceased Dilip this property would come at the hands of objector. Objectors ought to have filed this document, but they failed to file the same. Therefore, under such circumstances I do not find forceful substance in the objection filed by the objectors and the decree can be executed against them. With this I pass following order :

ORDER

Application (Exh.18) is rejected.

Kamptee

Date : 26/04/2024.

(Amit A.Kulkarni)

Civil Judge, Junior Division,
Kamptee.