

CASE NO.:
Appeal (civil) 2078 of 2007

PETITIONER:
MOHIT BHARGAVA

RESPONDENT:
BHARAT BHUSHAN BHARGAVA & ORS

DATE OF JUDGMENT: 20/04/2007

BENCH:
S.B. SINHA & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2078 OF 2007
(Arising out of SLP(C) No.3756 of 2006)
WITH
CIVIL APPEAL NO. 2079 OF 2007
(Arising out of SLP(C) No.7742 of 2006)

P.K. BALASUBRAMANYAN, J.

Leave granted.

1. While the judgment debtor challenges the order of the High Court in a petition filed by him under Article 227 of the Constitution of India to the extent it rejects his prayers, the decree holder has also challenged the same order to the extent it upheld an objection of the judgment debtor. The decree holder and the grand father of the judgment debtor among others, were partners in a firm. A notice of dissolution was issued by some of the partners to the grand father of the judgment debtor. Ultimately, the decree holder filed a suit in the District Court of Gwalior for dissolution of the partnership and for rendition of accounts. On 27.4.1981 the court passed a preliminary decree declaring that the partnership firm stood dissolved with effect from 20.6.1978 and directing that accounts be taken to settle mutual rights and liabilities. A receiver who had been appointed pending the suit was directed to continue.

2. The father of the judgment debtor pre-deceased the grand father of the judgment debtor. It is said that on 26.3.1985, the grand father executed a will bequeathing the properties to his grand son, the judgment debtor. At the relevant time, the judgment debtor, the legatee, was a minor. Provisions were made regarding the management of the properties during the minority of the judgment debtor. On 19.11.1985, the grand father of the judgment debtor died. The final decree proceedings continued and the Commissioner submitted his report after scrutinising the accounts on 27.8.2002. On 29.11.2002, the District Court Gwalior, passed a final decree in the suit for dissolution. Under the final decree, the judgment debtor was liable to pay to the plaintiff a sum of Rs.6,66,292.50 and a total sum of Rs.10,83,757/- to other partners and a sum of Rs.5,000/- as his share of fees to the Commissioner. According to the judgment debtor, he has filed an appeal against this final decree, but due to objections raised by the Registry of the High Court regarding the court

fee payable, further orders are awaited in the appeal on that question.

3. On 2.1.2003, the decree holder, the plaintiff in the suit, filed an execution petition in the District Court of Gwalior for execution of the decree. In other words, the execution petition was filed in the court which passed the decree. Meanwhile, it is said that the will executed by the grand father designating the judgment debtor as the legatee was probated. On 19.3.2003, the decree holder moved the executing court for an injunction restraining the person holding the building said to have been bequeathed to the judgment debtor by his grand father, from handing over possession of the same to the judgment debtor and from handing over the documents of title to him. He also sought a direction restraining the bank holding an account of the estate from permitting the judgment debtor to operate the accounts. The executing court passed an order on 19.3.2003 directing the occupant of the building as well as the bank not to transfer to the judgment-debtor the properties enumerated in the list submitted by the decree holder. The person holding the building moved the executing court praying that he be relieved from the responsibility of managing the property. He also produced certain documents in the executing court with a prayer that he be relieved of his obligations. On 7.7.2003, the executing court, after taking notice of the documents produced by the occupant of the building concerned, directed that the documents be kept in safe custody of the court. On 26.7.2003, an application was moved by the decree holder submitting that he had received an offer for the purchase of the building in question, which was situate at 14, Bakshi Colony, Indore, and praying that the said property may be sold by way of auction and the amount received be apportioned among the decree holder and other partners. Though the judgment debtor had not then and there challenged the orders dated 19.3.2003 and 7.7.2003, he now raised an objection in the executing court that the executing court lacked territorial jurisdiction to order the sale of the property situate in Indore lying outside its territorial jurisdiction. The application was made under Section 39 read with Order XXI Rule 3 of the Code of Civil Procedure (for short 'the Code'). The judgment debtor also filed an independent objection to the prayer of the decree holder for sale of the property at 14 Bakshi Colony, Indore. On 6.4.2004 the executing court rejected the objections from the judgment debtor. It held that it had territorial jurisdiction to proceed with the execution. It also passed an order directing that the house at No.14, Bakshi Colony, Indore be sold by public auction after due publicity. Feeling aggrieved by the last order and belatedly feeling aggrieved by the earlier orders dated 19.3.2003 and 7.7.2003, the judgment debtor approached the High Court originally by way of a revision under Section 115 of the Code, but on its being held that a revision is not maintainable, later by way of a motion under Article 227 of the Constitution of India challenging all the orders. The High Court held that the executing court, the District Court at Gwalior, lacked territorial jurisdiction to continue the execution especially in respect of properties outside its jurisdiction or to order sale of building No. 14 Bakshi Colony, Indore and consequently set aside the order dated 6.4.2004 and transferred the execution to the concerned court at Indore for proceeding with the execution. But the High Court repelled the challenge to the earlier orders of restraint dated 19.3.2003 and 7.7.2003 passed by the executing court at Gwalior. Feeling aggrieved by the non-interference with the orders dated 19.3.2003 and 7.7.2003, the judgment debtor has

approached this Court. Feeling aggrieved by the upholding of the objection of the judgment debtor to jurisdiction, the decree holder has come up to this Court.

4. We shall first deal with the objection of the decree holder to the transfer of the execution to the court at Indore having jurisdiction over the property sought to be brought to sale. The decree holder who appeared in person as also the counsel who was appearing on his behalf in Petition for Special Leave to Appeal (Civil) No. 7742 of 2006 argued that Section 39(4) of the Code as amended in 2002, was not attracted since this was not a case to which Section 39(1) was applicable. It was contended that the court which passed the decree had the jurisdiction to execute the decree and the decree holder had approached that court for execution of the decree. There was no defect in jurisdiction in seeking to enforce the decree through the court which passed the decree. It was submitted that the decree was being executed by the present court at Gwalior only because of the abolition of the court before which the execution petition was originally filed and the High Court misunderstood the factual position while coming to the conclusion that Section 39(4) was attracted. On behalf of the judgment debtor it was pointed out that though normally it is correct to say that the court which passed the decree has the jurisdiction to execute the decree, the moment the decree holder sought to execute such a decree against property lying outside the jurisdiction of that court, Section 39(4) of the Code was attracted and the court was obliged to transfer the decree for execution to the proper court. Section 42 of the Code was referred to. Counsel further contended that earlier, in terms of Section 39(1) of the Code, a discretion was vested in the court, either to proceed with the execution of the decree or to transfer the same to another court as understood by some of the decisions. There was a conflict of judicial opinion. The legislature had therefore stepped in with an amendment in the year 2002 curtailing that discretion and introducing sub-section (4) in Section 39 of the Code making it clear that any attempt of the court to proceed with the execution against a property outside the jurisdiction of that court, would be one without authority and this legislative intent had been properly understood by the High Court when it transferred to the decree to another court. Both sides brought to our notice Salem Advocate Bar Association, T.N. Vs. Union of India [2005 (6) S.C.C. 344] with particular reference to paragraphs 22 to 24 dealing with Section 39 of the code.

5. In that decision, clarifying the fields of operation of Order XXI Rule 3, Order XXI Rule 48 and Section 39 of the Code, this Court stated:

"Section 39 does not authorise the court to execute the decree outside its jurisdiction but it does not dilute the other provisions giving such power on compliance with the conditions stipulated in those provisions. Thus, the provisions, such as, Order 21 Rule 3 or Order 21 Rule 48 which provide differently, would not be affected by Section 39(4) of the Code."

6. There cannot be any dispute over the proposition that the court which passed the decree is entitled to execute the decree. This is clear from Section 38 of the Code which provides that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Section 42 of the Code indicates that the transferee

court to which the decree is transferred for execution will have the same powers in executing that decree as if it had been passed by itself. A decree could be executed by the court which passed the decree so long as it is confined to the assets within its own jurisdiction or as authorised by Order XXI Rule 3 or Order XXI Rule 48 of the Code or the judgment debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment debtor. But when the property sought to be proceeded against, is outside the jurisdiction of the court which passed the decree acting as the executing court, there was a conflict of views earlier, some courts taking the view that the court which passed the decree and which is approached for execution cannot proceed with execution but could only transmit the decree to the court having jurisdiction over the property and some other courts taking the view that it is a matter of discretion for the executing court and it could either proceed with the execution or send the decree for execution to another court. But this conflict was set at rest by Amendment Act 22 of 2002 with effect from 1.7.2002, by adopting the position that if the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing court, nothing in Section 39 of the Code shall be deemed to authorise the court to proceed with the execution. In the light of this, it may not be possible to accept the contention that it is a matter of discretion for the court either to proceed with the execution of the decree or to transfer it for execution to the court within the jurisdiction of which the property is situate.

7. Pending a suit, the court approached with the suit, may have jurisdiction to order attachment of a property even outside its jurisdiction. In execution, under Order XXI Rule 54 of the Code, it may also have jurisdiction to order attachment of the property prohibiting the judgment debtor from transferring or charging the property in any way when it exercises its jurisdiction over the judgment debtor though not over the property itself. It could in such a case issue a percept in terms of Section 46 of the Code and thereupon, the court to which the percept is sent, has to actually attach the property in the manner prescribed. Section 136 of the Code provides for an order of attachment in respect of a property outside the jurisdiction of the court and sending the order of attachment to the district court within whose local limits the property sought to be attached, is situate as provided for therein. But Section 136 clearly excludes execution of decrees from within its purview. An execution against immovable property lying outside the jurisdiction of the executing court is possible in terms of order XXI Rule 3 of the Code which governs a case where the particular item of immovable property, forms one estate or tenure situate within the local limits of jurisdiction of two or more courts, and one of those courts is approached for execution of the decree against that property. In a case where Order XXI Rule 3 has no application, the position seems to be that if a decree holder wants to proceed against a property situate outside the jurisdiction of the court which passed the decree, he has to get the decree transferred to the appropriate court for execution on moving the executing court in that behalf. Whatever doubts there might have been earlier on this question, must be taken to have been resolved by the introduction of sub-section (4) of Section 39 of the Code which is a mandate to the executing court to desist from proceeding against a property situate outside its jurisdiction, unless it be a case coming under Order XXI Rule 3 of the Code.

8. In the case on hand, the property that is sought to

be sold in execution of the decree for dissolution is not a property of the partnership. It is not a partnership asset held by the court Gwalior or within the jurisdiction of the court at Gwalior. Order XXI Rule 50 of the Code is, therefore, not attracted. What is sought to be done by the decree holder is to seek the sale of a property belonging to the judgment debtor so as to realise the fruits of his decree. Since that property lies outside the jurisdiction of the court at Gwalior, the executing court was not correct in overruling the objection of the judgment debtor regarding the absence of jurisdiction in the Gwalior court to order sale of the property outside its jurisdiction. The High Court was, therefore, justified in interfering with that order and in transferring the decree to the court having jurisdiction over the property that is sought to be proceeded against by the decree holder. We, therefore, see no infirmity in that part of the order of the High Court sought to be challenged before us by the decree holder.

9. Now coming to the challenge of the judgment debtor to the refusal of the High Court to interfere with the orders dated 19.3.2003 and 7.7.2003, we find no merit in it. First of all, the judgment debtor had not challenged those orders at the appropriate time and had allowed them to operate until he chose to challenge them while challenging the rejection of his objection to jurisdiction raised later. Of course, his argument is that once it is found that the court has no jurisdiction to proceed, the orders passed by it earlier should also automatically fall to the ground. We cannot agree. By order dated 19.3.2003 what the executing court did was, to direct a third party, who had subsequently acceded to the jurisdiction of the executing court, not to handover possession of the building in question and the documents concerned, to the judgment debtor. It is seen that the third person submitted to the jurisdiction of the court and surrendered the documents in his possession to the executing court and prayed to that court that he be relieved from the responsibility of managing the property in the circumstances stated by him in his application. It was in that context that the executing court passed another order dated 7.7.2003 that the documents produced by the third party be kept in safe custody of the court. These two orders are certainly within the jurisdiction of the court which passed the decree since they are only orders of restraint being issued to a person from handing over a property in his possession to the judgment debtor along with the concerned documents and keeping the documents in safe custody. They are in the nature of a "freezing order" or a "Mareva injunction" and an order akin to an Anton Piller order, orders that can be issued even if the property or the person concerned is outside the jurisdiction of the court. In the circumstances, especially since the judgment debtor never bothered to question those orders as and when they were passed, we are of the view that the High Court was not in error in refusing to interfere with those orders. But since the High Court has quashed the order dated 6.4.2004 and directed the transfer of the decree to the court at Indore, the direction dated 11.5.2004 by the court at Gwalior for sale of the house at No.14, Bakshi Colony, Indore by public auction must necessarily fall to the ground. Only to that extent, if at all, a clarification is needed. It will be open to the decree holder, now that the decree has been transmitted to the court at Indore, to move an application in the executing court at Indore for sale of the property in question.

10. In the result, the challenge by both sides to the order of the High Court is rejected except to the extent of the

clarification as above regarding the order dated 17.12.2000.

11. The appeal is, therefore, dismissed subject to the above clarification. However, there will be no order as to costs.

JUDIS