REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4313-4314 OF 2017
(ARISING OUT OF S.L.P (C) NOS.20745-20746 OF 2016)

M/S. BRAKEWEL AUTOMOTIVE COMPONENTS (INDIA) PVT. LTD. ....APPELLANT

VERSUS

P.R. SELVAM ALAGAPPAN ....RESPONDENT

J U D G M E N T

AMITAVA ROY,J.

Leave granted.

2. The subject matter of impeachment is the order dated 3.6.2016 rendered in CRP (NPD) 1499 of 2016 and CMP No. 8225 of 2016 by the High Court of Judicature at Madras, thereby rejecting the prayer of the appellant/plaintiff/decree-holder (for short, hereinafter to be referred to as "the appellant") to eschew evidence of the respondent/defendant/judgment-debtor (for short,

hereinafter to be referred to as "the respondent") in a proceeding under Section 47 of the Code of Civil Procedure, 1908 (as amended) (hereinafter to be referred to as "CPC/Code"), as well as to dismiss such application as not maintainable. By the order impugned, the High Court has affirmed the determination made to the same effect by the Executing Court.

3. We have heard Mr. J.S. Bakshi, learned counsel for the appellant and Mr. M.P. Parthiban, learned counsel for the respondent.

4. The genesis of the present lis is traceable to Civil Suit (OS) No. 1690 of 2010 instituted before the High Court of Delhi at New Delhi by the appellant against the respondent arrayed as the proprietor of M/s. Kargaappa Auto Products and M/s Paans Auto Products for recovery of Rs. 20,94,953/- arising from business transactions between the parties. While the appellant described itself to be a company registered under the Companies Act, 1956 and engaged in the business of manufacture and sale of auto components/parts, the respondent was introduced as the proprietor of the afore-named proprietorship firms. According to the appellant, the respondent approached it in the month of

November, 2002 for a business deal and on the basis of the bargain entered into, it supplied auto components and parts to the respondent, as per the specifications mentioned and raised bills in connection therewith.

5. As per the books of account maintained in the regular course of business, at the relevant time i.e. 15.10.2007, Rs. 8,01,708/- was due and outstanding against the respondent in the accounts of M/s. Kargaappa Auto Products and Rs. 4,93,952/- as on 6.6.2008, in the account of M/s. Paans Auto Products, thus totalling Rs. 12,95,660/-. As this amount was not paid inspite of repeated demands, and the ultimate notice dated 28.12.2009, addressed by the appellant to the respondent, the suit was filed for realisation of the aforementioned amount together with interest @ 24% p.a. for an aggregate sum of Rs. 20, 94,953/-.

6. Though on the receipt of the summons in the suit, the respondent arranged for his representation, he eventually failed to submit his written statement and accordingly, his defence was struck off vide order dated 20.10.2011, in view of his persistent default to that effect. Subsequent thereto, the appellant filed the affidavit of one of its directors in endorsement of its pleaded case,

who proved, amongst others, the copies of various invoices authenticating the supply of goods to the respondent and also the statement of accounts pertaining thereto. This witness too was not cross-examined on behalf of the respondent, though opportunity was granted and eventually the Trial Court, on a consideration of materials on record, decreed the suit for Rs. 18,95,077/- by allowing the interest @ 18% p.a. in lieu of 24%, as claimed.

7. As the records would reveal, a defective appeal was filed on behalf of the respondent thereafter only to be withdrawn in due course. The appellant launched the execution and the application in connection thereto was registered as E.P. No. 11787 of 2014 to execute the decree as aforementioned. It was thereafter that an application for review was filed by the respondent before the High Court seeking to recall the judgment and order dated 16.12.2011. It was pleaded by the respondent that the suit was not maintainable on account of non-joinder/mis-joinder of proper and necessary parties. Though he had admitted that he was the proprietor of Paans Auto products, he asserted that he was not so of M/s. Kargaappa Auto Products and that instead his wife Mrs. A. Kamalla being so was the proper and necessary party and that in view of

this defect, the suit was liable to be dismissed. He also pointed out that the name of this firm is M/s. Karpaga Auto Products and not M/s. Kargaappa Auto Products, as recited in the plaint. The respondent alleged fraud as well and contended that the appellant was guilty of suppression of material facts of rejection of its goods. Further, he also alleged collusion and connivance between his counsel and the appellant for which the former deliberately abstained from taking necessary steps to ensure his effective representation in the suit, thus resulting in the ex-parte decree.

8. He pleaded that on receiving the summons in the suit, necessary instructions were conveyed to his counsel at Delhi to appropriately contest the proceeding, but the latter refrained from either filing the written statement or from taking necessary steps resulting in his default for which ultimately, the suit was decreed. According to him, though he was in touch with his counsel at Delhi through his counterpart at Chennai, he was being given the impression that there was no progress in the suit and that he would be duly informed about any substantial development therein whenever the same would occur. The respondent contended that it was in February/March, 2014, when he and his

local counsel grew suspicious of the evasive replies given by his counsel at Delhi, that the records of the suit were consulted, which revealed that his defence had been struck off on 20.10.2011 and the suit had been decreed on 16.12.2011. The records of the suit also divulged that though an opportunity to him for cross-examination of the witnesses by appellant had been afforded, it was not availed of due to the sheer dereliction of the professional duties of his counsel.

9. Noticeably, the respondent in his review application disclosed that his said counsel however did prefer an appeal against the ex-parte decree, which eventually was returned in view of the attendant defects. The appeal was however not re-filed and that in the meanwhile, a complaint had been lodged against the counsel with the Bar Council of Tamil Nadu at Channai, was mentioned as well.

10. It is worthwhile to note that no interim order was passed on this review application, which eventually was dismissed on 15.4.2015 on account of unexplained delay of three years.

11. Meanwhile, however the respondent filed his counter-affidavit in the execution proceedings and also followed it

up with an application under Section 47 of CPC to resist the execution of the decree. Suffice it would be to state that the demurrals in these pleadings are in substance a replication of those narrated in the review application and, therefore are not being re-traversed.

12. In refutation, the appellant did file a common counter-affidavit asserting that the respondent had placed orders for automobile components, which were accordingly dispatched and as on the date of the institution of the suit, the payments in connection therewith were outstanding, a suit was filed to recover the same and eventually, it was decreed on 16.12.2011 for a sum of Rs. 18,95,077/- along with pendente lite and future interest @ 18% p.a. Apart from highlighting that the respondent had after the receipt of the summons/notices in the suit, continuously abstained himself from contesting the same by filing his written statement or taking further initiatives and that, therefore the decree passed was valid in law, the appellant maintained that the suit had been filed against the respondent, as he represented both the firms and had participated in the transactions in that capacity for which either the mistake in the name of M/s. Kargaappa Auto Products instead of

M/s Karpaga Auto Products or non-impleadment of his wife as the sole proprietress thereof was wholly inconsequential qua the aspect of executability of the decree. The allegation of suppression of any material fact, as alleged was denied. The accusation of collusion between the learned counsel for the respondent and the appellant was stoutly denied as well. It was pointed out that the fact of filing of appeal preferred by the same counsel against the decree belied the allegation of dereliction of duty as unfounded. Underlining the inexplicable delay and inaction of three years on the part of the respondent in filing the review petition, it was contended that the resistance to the executing proceedings was only with the objective of protracting the proceedings to his advantage on flimsy and frivolous grounds.

13. The respondent next filed an affidavit on the same lines as narrated in his counter and the application under Section 47 CPC and sought to supplement the same by producing documents to that effect by way of oral and documentary testimony of the pleaded facts. The appellant in its rejoinder did object to this initiative on the part of the respondent as impermissible, being beyond the purview of Section 47 CPC and prayed for obliteration of

such evidence. The appellant pleaded that after the counter-affidavit had been filed by the respondent in the execution proceedings, arguments on behalf of the decree-holder were heard and though the proceedings were deferred for the arguments on behalf of the respondent, an application by him under Section 47 CPC was filed, the maintainability whereof was questioned by the appellant and that it was at that belated stage that the respondent sought to introduce the documentary evidence.

14. The Executing Court however by its order dated 8.2.2016, dismissed the objection of the appellant by taking note principally of the fact that the respondent was not the proprietor of Karpaga Auto Products and that it was necessary to examine as to how he was related to the said proprietorship firm, a question to be decided in the proceedings under Section 47 CPC.

15. By the impugned order, the High Court has affirmed this determination of the Executing Court by observing that though the issue of maintainability of the application under Section 47 CPC had been raised by the appellant, it was within the right of the respondent to lead evidence, both oral and documentary pertaining to all questions arising between the parties to the suit. It was of

the view that the question of maintainability of the application under Section 47 CPC ought to be decided along with the objections raised with regard to the executability of the decree.

16. Learned counsel for the appellant, in the above backdrop, has argued that the impugned order is clearly unsustainable in law and on facts having regard to the established contours of scrutiny under Section 47 CPC and is thus indefensible. Not only the grounds urged in the counter-affidavit to the execution petition and the application under Section 47 CPC do have any factual foundation and are thus non-existent, these are liable to be rejected in limini and do not warrant any verification thereof. Not only are these objections frivolous on the face of record, these have been resorted to only for protracting the execution proceedings. He urged that the impugned order has the effect of going behind and reopening the decree, which is impermissible in law. According to him, neither the decree suffers from any jurisdictional error nor is a nullity and is thus executable in law.

17. In reply, the learned counsel for the respondent has insisted that in the teeth of incorrect name of one of the firms and non-representation thereof by its rightful proprietor, the decree which is composite in nature, has been rendered inexecutable. He further argued that as the decree is an yield of fraud and collusion between the learned counsel for the respondent and the appellant, it is non est in law and thus the impugned order which only permits an inquiry in these aspects, is well within the purview of Section 47 CPC and therefor no interference therewith is called for.

18. The materials on record and the arguments based thereon have received our due consideration. To recapitulate, the plaint discloses that the respondent had represented before the appellant to be authorised to act on behalf of both the firms and in that capacity had participated in the transactions that followed. In that perspective, even assuming that the name of one of the firms was wrongly mentioned and that in fact, it is the wife of the respondent, who is the proprietress thereof, with whom there is no conflict of interest, these in our comprehension per se, would not render the decree void or inexecutable. Such errors, even if exist, would not infest the decree with any jurisdictional infirmity or

reduce it to a nullity. Noticeably, there is no dispute with regard to the identity of the firms involved and their representation by the respondent in the suit transactions. The allegation of fraud and collusion between the learned counsel for the respondent and the appellant is visibly self-serving, omnibus, speculative and unauthentic and cannot therefore, after so many years, ipso facto render the decree invalid on account thereof. Visibly, the respondent had been the center figure in all the transactions between the parties on behalf of the firms, as stand proved in the suit and the resistance to the execution of the decree is neither on behalf of M/s. Kargaappa Auto Products/M/s. Karpaga Auto Products nor its proprietress, his wife contending that the decree is neither binding on the firm nor on her. For all practical purposes, the said firm is still being represented by the respondent in the subsisting proceedings. The sequence of events disclose that the suit had been instituted in the year 2010 and was decreed on 16.10.2011. The persistent default on the part of the respondent has been adverted to hereinabove. Though a defective appeal had been filed on his behalf in the year 2012, it was withdrawn and was not re-filed by removing the defects. The Execution Petition though

lodged in the year 2014 has not seen the fruit of the decree as on date. The Review Petition filed by the respondent has also been dismissed. Significantly, in all the proceedings initiated by the respondent to stall the execution of the decree, the same pleas have been reiterated.

19. It is no longer res integra that an Executing Court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardizing the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus inexecutable. An erroneous decree cannot be equaled with one which is a nullity. There are no intervening developments as well as to render the decree inexecutable.

20. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported

grounds having no bearing on the validity or the executability thereof.

21. Judicial precedents to the effect that the purview of scrutiny under Section 47 of the Code qua a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness are plethoric . This Court, amongst others in ***Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and others*** 1971 (1) SCR 66 in essence enunciated that only a decree which is a nullity can be the subject matter of objection under Section 47 of the Code and not one which is erroneous either in law or on facts. The following extract from this decision seems apt:

> "A Court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.
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> When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for

> execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction."

22. Though this view has echoed time out of number in similar pronouncements of this Court, in ***Dhurandhar Prasad Singh vs. Jai Prakash University and others,*** AIR 2001 SC 2552, while dwelling on the scope of Section 47 of the Code, it was ruled that the powers of the court thereunder are quite different and much narrower than those in appeal/revision or review. It was reiterated that the exercise of power under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executabilty of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree inexecutable

after its passing. None of the above eventualities as recognised in law for rendering a decree inexecutable, exists in the case in hand. For obvious reasons, we do not wish to burden this adjudication by multiplying the decisions favouring the same view.

23. Having regard to the contextual facts and the objections raised by the respondent, we are of the unhesitant opinion that no case has been made out to entertain the remonstrances against the decree or the application under Section 47 CPC. Both the Executing Court and the High Court, in our comprehension, have not only erred in construing the scope and ambit of scrutiny under Section 47 CPC, but have also overlooked the fact that the decree does not suffer either from any jurisdictional error or is otherwise invalid in law. The objections to the execution petition as well as to the application under Section 47 CPC filed by the respondent do not either disclose any substantial defence to the decree or testify the same to be suffering from any jurisdictional infirmity or invalidity. These are therefore rejected.

24. On a consideration of all relevant aspects in the entirety, we are thus disinclined to sustain the impugned orders and hereby set-aside the same. The appeals are allowed. The Executing Court

would proceed with the execution proceedings and take it to the logical end with utmost expedition. No costs.

.....J.
(ARUN MISHRA)

.....J.
(AMITAVA ROY)

NEW DELHI;
MARCH 21, 2017.