

## ORIGINAL CIVIL.

Before Panchbridge J.

TOLARAM NATHMULL

v.

MAHOMED VALLI PATEL.\*

1939  
May 9.

**Execution**—*Decree against firm—Execution against partner disputing liability—Grounds for disputing liability—Liability, Determination of—Code of Civil Procedure (Act V of 1908), O. XXI, r. 50(2).*

Where a decree has been passed against a firm, and, under O. XXI, r. 50(2), of the Code of Civil Procedure, leave to execute the decree is sought against a partner, he can dispute his liability not only on the ground that he is not a partner but on other grounds as well which affect his liability as a partner.

*Bhagvan Manaji Marwadi v. Hiraaji Premaji Marwadi* (1) followed.

APPLICATION under Order XXI, r. 50 (2), of the Code of Civil Procedure for leave to execute the award against certain partners of the respondents' firm.

The facts of the case appear sufficiently from the judgment.

*S. P. Chowdhury* for the applicants. Order XXI, r. 50 (2), relates to execution of a decree. The only question which this Rule contemplates is whether the party objecting is a partner or not. If he is a partner, he is precluded from disputing his liability on other grounds so long as the decree against the firm subsists. Otherwise, it would amount to reopening of the decree. A person objecting to execution on other grounds should take steps to set aside the decree against the firm.

Under O. XXI, r. 50 (1) (b), a person, admitting on the pleadings that he is a partner, cannot dispute his liability, or resist execution against his share of the partnership property. Why then

\*Arbitration Reference, No. 20 of 1936.

(1) [1932] A. I. R. (Bom.) 516.

should he be allowed to dispute his liability in the present case when his liability arises from his being a partner? *Weir & Co. v. McVicar & Co.* (1); *Dhanpatmal Diwanchand v. Dowlatram Mianchannu* (2).

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*Sambhu Nath Banerjee* for the opposite party. My client was not served with notice of the arbitration and should be given an opportunity of disputing his liability under the decree based on the award. His objections are not restricted to a denial of the partnership. He can resist the application on any appropriate grounds. *Bhagvan Manaji Marwadi v. Hiraji Premaji Marwadi* (3).

The contract for sale of jute was beyond the scope of the partnership. Further, the reference to arbitration was by an individual partner who had no authority to do so on behalf of the partnership. The award pursuant to such reference is not binding on the partnership and the decree on the award cannot be executed against him before his liability is tried and determined.

PANCKRIDGE J. This is an application under O. XXI, r. 50(2).

There is a firm of the name of Mahomed Valli Patel to which I shall refer as the buyers.

There is another firm of the name of Tolaram Nathmull, to which I shall refer as the sellers.

These two firms entered into a contract for the sale and purchase of jute on July 15, 1935. Eventually there were disputes and the sellers referred the matter to the Bengal Chamber of Commerce in terms of the arbitration clause contained in the contract. The Chamber made their award by which they directed that the buyers should pay the sellers Rs. 2,625 as compensation, and Rs. 270 as the costs of the arbitration.

(1) [1925] 2 K. B. 127.

(2) [1934] A. I. R. (Sind) 135.

(3) [1932] A. I. R. (Bom.) 516.

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The award has been filed in Court, and is, therefore, liable to be executed as if it were a decree.

The sellers have now taken out this summons against three persons, Mahomed Valli Patel, Amaji Valli Patel, and Abdul Rahman Habib Patel, asking for leave to execute the award against them as partners in the buyers' firm.

Mahomed Valli Patel and Amaji Valli Patel do not appear to show cause, and leave to execute the award as against them will be granted.

Abdul Rahman Habib Patel, however, has appeared to show cause. He admits that he was a partner of the firm of Mahomed Valli Patel at the date of the contract between the buyers and sellers.

Mr. Chowdhury for the sellers maintains that this admission concludes the matter.

Mr. S. N. Banerjee for Abdul Rahman contends that his client should be given an opportunity of disposing his liability by establishing that the contract of sale was beyond the scope of the partnership. He says that contracts for the sale or purchase of jute were not within the scope of the partnership, and he also says that the individual partners had no authority on behalf of the partnership to refer dispute between the firm and persons with whom the firm had dealings to arbitration.

That Mr. Banerjee is entitled to resist the application on these grounds is supported by the authority of *Bhagvan Manaji Marwadi v. Hiraji Premaji Marwadi* (1).

Having considered that case and the language of O. XXI, r. 50(2), I have come to the conclusion that Mr. Banerjee's submission must prevail.

The sub-rule says that the Court may grant leave to execute where the liability is not disputed, or, where such liability is disputed, may order the liability of such persons to be tried and determined.

The language is sufficiently wide to permit a person desiring to dispute his liability as a partner to do so not only on the ground that he is not a partner, but on other grounds as well.

I should be disinclined to hold that the sub-rule entitles a person to dispute liability on grounds such as denial of the contract or limitation, or accord and satisfaction, which go to the root of the suit, but as Mr. Banerjee does not propose to press his submission that the contract was a gaming and wagering contract, I need not decide that point.

I think, however, that Mr. Banerjee is entitled to raise all questions which affect his client's liability *qua* partner.

I, therefore, direct that the issue be tried whether Abdul Rahman has no liability under the award, on the ground that the contract was beyond the scope of the partnership because it was a contract for the sale and purchase of jute, and in so far as it contained an arbitration clause.

In his affidavit in reply Mr. Chowdhury has asserted that Abdul Rahman took an active part in the arbitration, and on that basis an issue will also be tried whether, if the contract was beyond the scope of the partnership in respect of the matters to which I have referred, Abdul Rahman subsequently ratified it, and is liable on the basis of such ratification.

Any documents that the parties desire to disclose will be disclosed by letter within the course of the next week.

I set down the matter for trial of these issues a fortnight hence.

G. K. D.

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