

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 2718/2019 (O&M).

Reserved on: 16.10.2023
Pronounced on: 04.12.2023

M/s Oikos India Pvt. Ltd.,
Through its Director,
Dev Pramod Gupta,
S/o Sh. Pramod Kumar Gupta,
1st Floor, Warden House, Sir P.M. Road, Fort,
Mumbai

...Petitioner(s)

Through :- Mr. C. M. Koul, Sr. Advocate
Mr. A. R. Bhat, Advocate

v.

1. M/s K.C. Hotels Pvt. Ltd.,
Through Its Managing Director
Sh. Chander Sheikher,
Residency Road, Jammu

2. M. Deepika Singh,
Business Head, M/s Oikos India Pvt. Ltd.,
29, Unit-3, Tribhuvan Complex, Ishwar
Nagar,
Mathura Road, New Delhi

.....Respondent (s)

Through :- Mr. S. K. Anand, Adv.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Petitioner has invoked writ jurisdiction of this court for quashment of order dated 09.02.2018 passed by learned Principal District Judge, Jammu [“Executing Court”], vide which objection of the petitioner/judgment debtor regarding jurisdiction of the Executing Court came to be rejected and warrants of attachment dated 16.04.2019 for attachment of bank account of the petitioner was issued and subsequently the executing court issued a reminder on 03.07.2019 to the concerned

bank for remittal of decretal amount from the bank account of the petitioner to the Executing Court.

2. Before grounds of challenge urged in the memo of appeal are adverted to, it shall be expedient to have an overview of the background facts.

3. A civil Suit titled 'M/s K.C. Hotels V. M/s Oikos India Pvt. Ltd. and anr.' for recovery of Rs.25.00 lacs came to be instituted by the respondent no.1/plaintiff against the petitioner/defendant. The case set out by the plaintiff is that it is running hotels under the name and style of "M/s K.C. Hotel Pvt. Ltd" at Jammu and Katra. It started raising construction of one of its hotels at Katra. The defendant who was dealing in the supply and application of "Oikos Duratuff Smooth with Veldecor Coating Paints" approached the plaintiff for application of Oikos paints in their hotel at Katra with the assurance of its durability and warranty. According to the plaintiff, it was on the assurance of the defendants that it placed an order for the supply and application of the aforesaid paints in their hotel at Katra. Allegation against the defendant/petitioner was that exterior paints supplied and applied by it started fading off within two years of its application. It was averred in the plaint that entire deal was struck in the head office of the plaintiff situate at Residency Road Jammu and defendant also submitted their quotation and as per the terms and conditions, the work was to be carried out by the authorized agent of the petitioner/defendant i.e. M/s Mayur Interiors, Green Belt Park, Gandhi Nagar, Jammu [defendant No. 2 in the suit] and work was entrusted by the defendant to the said authorized agent.

4. The defendant entered appearance in the suit, filed written statement and at the outset questioned territorial jurisdiction of the trial court on the ground that since the subject hotel, on which the paint in question was applied was situated at Katra and the meeting to discuss relevant issues was held at Katra, therefore, said

court lacked territorial jurisdiction and it was court of learned Principal District Judge, Reasi which was vested with territorial jurisdiction to entertain such a Suit. However, after framing of issues, the petitioner/defendant disappeared and learned trial court, after recording *ex parte* evidence adduced by the plaintiff/respondent No.1, decreed the Suit in favour of plaintiff and against the petitioner/defendant on 12.05.2015. An application moved by the petitioner/defendant for setting aside *ex parte* judgement and decree alongside an application for condonation of delay did not find favour with the trial court and came to be dismissed on 12.03.2016. Consequently, execution proceedings came to be initiated by the plaintiff/respondent No.1 and petitioner, in the execution proceedings, raised objection regarding maintainability of the execution petition on the ground that judgment sought to be executed is nullity having been passed by a court without jurisdiction. Learned trial court vide impugned order dated 09.02.2018 overruled this objection raised by the defendant/petitioner regarding maintainability and executability of the impugned decree and issued warrant of attachment of the account of the petitioner vide impugned order dated 16.04.2019, vide which, concerned Manager of the Bank was directed to debit the decretal amount from the account of the petitioner and remit the same to the account of the Executing Court. Vide another order dated 03.07.2019, also impugned in the present petition, a reminder was sent to the concerned bank for remittal of the decretal amount.

5. Petitioner has questioned the aforesaid orders on the solitary ground that since a preliminary issue regarding territorial jurisdiction was struck by the trial court, therefore, trial court, regardless of the absence of the defendant, was obliged to return a finding on the said issue in terms of Order XIV Rule 2(ii) of the Code of Civil Procedure, 1908 (for short CPC). According to the petitioner, since issue regarding territorial jurisdiction of the trial court remained unaddressed, therefore,

impugned order dated 09.02.2018 passed by the Executing Court declining the objection regarding maintainability and executability of the impugned decree is bad in the eyes of law and is liable to be struck down.

6. Heard learned counsels for the parties and perused the record.

7. Mr. C.M. Koul, learned Sr. Advocate appearing for the petitioner has relied upon **Sarwan Kumar and anr. v. Madan Lal Aggarwal** reported as **2003 (4) SCC 147**, and **Bharvad Chhota Bhaga v. Bharvad Jaga Dhaya** reported as **1999 AIR (Guj) 17** to reiterate the grounds urged in the memo of appeal. Learned senior counsel has also relied upon **Kishore Kumar Khaitan and anr. v. Parveen Kumar Singh [Appeal (civil) No. 1101 of 2006 dated 13.02.2006]** to submit that High Court in exercise of its jurisdiction under Article 227 of the Constitution of India is obliged to interfere with the findings of fact recorded by the subordinate Courts to ensure that subordinate Courts function within the limits of their authority and in order to keep them within the bounds of their power.

8. *Ex adverso*, Mr. S. K. Anand, learned counsel for respondent No. 1/plaintiff, has urged that executability of a decree can be questioned in execution proceedings only, when trial court lacks inherent jurisdiction. He has relied upon **Hira Lal Patni v. Kali Nath** reported as **AIR 1962 SC 199**.

9. It is trite that High Court in exercise of its power of superintendence and control conferred by Article 227 of Constitution of India cannot interfere with the findings of fact recorded by the subordinate Courts or tribunals as its function is confined and circumscribed to see that the Courts or the tribunals subordinate under its superintendence function within the bounds of their authority. Therefore, power of judicial interference envisaged under Article 227 of Constitution of India is to be exercised with due care and circumspection. This is exactly what has been observed by the Apex Court in **Kishore Kumer Khaitan** (supra).

10. True it is, that a plea of lack of jurisdiction can be raised at any subsequent stage; before the 1st appellate Court, second appellate Court and in execution proceedings. However, distinction between jurisdiction with respect to subject matter of suit and that of territorial and pecuniary jurisdiction must be understood. Maintainability and executability of a decree can be questioned in subsequent proceedings and in execution proceedings only, if the Court which passed the decree was lacking inherent jurisdiction, because competency of a court to decide a case goes to the very root of the jurisdiction and where competency of a trial court is lacking, it is a case of inherent lack of jurisdiction. Decree passed by a court without jurisdiction is *coram non iudice*. However, objection regarding territorial or pecuniary jurisdiction, if not raised at the proper time, cannot be allowed to be raised in subsequent proceedings and decree passed in such a case, will not be nullity, because objection regarding territorial or pecuniary jurisdiction of a Court does not go to the root of jurisdiction. Be that as it may, objection regarding local jurisdiction of a Court can also be waived in view of statutory recognition provided by Section 21 CPC.

11. Section 21 CPC provides that no objection as to the place of suing or as to the competence of a court with reference to the pecuniary limits of its jurisdiction should be allowed by any appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity, and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice. The underlying principal is that when a case has been tried by a Court on merits and a judgment is rendered, it should not be reversed purely on technical grounds unless it occasions a failure of justice. It is, therefore, manifest that legislature, in its wisdom, has treated the objections regarding territorial and pecuniary jurisdictions as technical and, therefore, such

objections cannot be raised and considered in subsequent proceedings before the appellate courts or the executing court, unless prejudice is shown to have been caused on merits.

12. Uncontroverted facts of the present case are that defendants disappeared after framing of issues by the trial Court. Record bears testimony to the fact that *ex parte* proceedings came to be initiated against the defendants and after they were set aside by the trial court, they again absented and were proceeded against *ex parte*. Defendants, never turned up thereafter before the trial court. Learned trial Court, after recording the evidence adduced by the plaintiff, decreed the suit on 12.05.2015. Significantly, an application filed by the defendants for condonation of delay in filing application for setting aside the judgment dated 12.05.2015 did not find favour with the trial Court and came to be dismissed on 12.03.2016. Pertinently, the said order was never questioned by the defendants/judgment debtors. Therefore, judgment and decree, sought to be executed by the plaintiff/respondent No.1, had attained finality. It is true that plea regarding territorial jurisdiction was raised by the defendants in their written statement and an issue in this respect was also framed by the trial Court. It is also true that learned trial Court was obliged to decide the issue regarding jurisdiction before rest of the issues in terms of Order XIV Rule 2(ii) CPC. However, said issue was raised on the plea of the defendant that trial court lacked territorial jurisdiction to entertain the suit and since defendant absented after framing of the issues, they failed to prove the issue by leading evidence. The issue with respect to territorial jurisdiction, it is trite, is a mixed question of law and fact and could not be treated and decided by the trial Court as a pure legal issue. Plaintiff/respondent No. 1, on the other hand, by leading cogent evidence succeeded to establish that contract between the parties was entered into at Jammu, which was, otherwise, evident from

the correspondence and the documents placed on record, those remained un rebutted by the defendants/judgment debtors as they failed to produce any evidence in this respect. Be that as it may, judgment rendered by the trial Court on merits cannot be reversed on technical ground of lack of territorial jurisdiction of the trial court at this juncture. It is well settled that objection regarding local jurisdiction of court is not akin to competence of the court to try a case because jurisdiction of court on subject matter of the case goes to the root of the jurisdiction. Reliance placed by learned counsel for the petitioner on **Sarwan Kumar**, in this respect, is misplaced as Section 50 of the Delhi Rent Control Act, 1958 specifically barred jurisdiction of the civil court to entertain a suit or proceeding regarding eviction of a tenant from the premises and in view of the operation of Section 14 of the said Act, it was only Rent Controller appointed under the Act, who was competent to pass a decree for ejection of the tenanted premises. Therefore, civil Court lacked inherent jurisdiction to take cognizance of the said cause and pass a decree. Challenge to such a decree on the ground of nullity could be raised at any later stage including execution proceedings. Said case has no application to the present case as it is not jurisdiction regarding subject matter of the case which has been called into question by the defendant/petitioner.

13. It is trite position of law that a decree passed by a competent court of jurisdiction, after adjudication on merits, binds the parties or the persons claiming right, title or interest and its validity can be assailed only in an appeal or revision, as the case may be. Validity of a decree validly passed by a competent court of law cannot be questioned in subsequent proceedings before the appellate or Executing Court.

14. For what has been observed and discussed above, what comes to the fore is that an objection that the Court which has been approached by a party, lacks

inherent jurisdiction to deal with the subject matter of the dispute is not similar and does not stand on the same footing as an objection regarding territorial or pecuniary jurisdiction of the Court. Whereas in the case falling within the former category the judgment would be a nullity in the later case it would not be. Objection with respect to territorial or pecuniary jurisdiction of a court cannot be entertained after settlement of issues, unless failure of justice is caused. However, objection with respect to subject matter of dispute can be raised at any stage of the proceedings wherever and whenever it is sought to be enforced, even at the stage of execution or collateral proceedings.

15. Having regard to what has been observed and discussed above, I do not find any illegality, much less, perversity in the impugned orders passed by the Executing court, hence, present petition being bereft of merit is dismissed.

(RAJESH SEKHRI)
JUDGE

Jammu
04.12.2023
Paramjeet

Whether the Judgment is speaking?	Yes
Whether the Judgment is reportable?	Yes