

## APPELLATE CIVIL

*Before D. Falshaw and I. D. Dua, JJ.*

THE PUNJAB NATIONAL BANK, LTD., AMRITSAR,—  
*Appellant.*

*versus*

M/S RAJ MAL PAHAR CHAND AND OTHERS,—*Respondents.*

**Execution First Appeal No. 203 of 1953.**

*Code of Civil Procedure (V of 1908)—Order XXI Rule 50 and Order XXX Rule 1—Decree against joint Hindu family firm—Whether can be executed against its partners.*

1958

Oct., 13th

*Held*, that by the explanation which has been added to rule 1 of Order XXX by the Punjab High Court the provisions of Order XXX have been made applicable to joint Hindu family firms. Reading together the provisions of Order XXX, rule 1, as amended and the provisions of Order XXI, rule 50(2), there can hardly be any doubt that a decree passed against a joint Hindu family firm can legally be executed in accordance with the provisions of Order XXI, rule 50(2) of the Code of Civil Procedure in precisely the same way in which decrees against contractual partnership firm can be executed against its partners.

*Case referred by Hon'ble Mr. Justice Gurnam Singh on the 22nd March, 1957 to a Larger Bench for decision on the point involved in the case and later on decided by a Division Bench consisting of Hon'ble Mr. Justice D. Falshaw, and Hon'ble Mr. Justice I. D. Dua, on 13th October, 1958.*

*Execution First Appeal from the order of Shri Ram Lal, Sub-Judge, 1st Class, Amritsar, dated 10th August, 1953; holding that Order 21, rule 50, is not applicable in the case, and that Chaman-Lal and Piara Lal cannot be held personally liable under the provisions of the said rule.*

S. L. PURI, for Appellant.

K. S. THAPAR, for Respondents.

## JUDGMENT

Dua, J.

Dua, J.—This appeal on behalf of the decree-holder appellant is against the order dated the 10th August 1953 passed by a learned Subordinate Judge, Ist Class, Amritsar, holding that Order XXI rule 50 of the Code of Civil Procedure was not applicable in this case. This appeal was initially heard by a learned Single Judge of this Court on the 22nd of March, 1957. The facts are fully set out in the referring order in which it has been stated by the learned Single Judge that there was a conflict of views at least between two High Courts on the question whether or not the provisions of Order XXI rule 50(2) of the Code of Civil Procedure apply to joint Hindu family firms carrying on business in the firm's name. The learned Single Judge has in his referring order referred to *Alekh Chandra and others v. Krishna Chandra Gajapati Narain Deo* (1), *Maturi Mall and another v. Bhagaban Das Purna Mall and another* (2), and *Motilal Chajjulal v. Giridharilal-Rameshwarlal* (3). The decision of the Patna High Court holds in favour of Order XXI rule 50 read with Order XXX of the Code of Civil Procedure being applicable to joint Hindu family trading firms whereas the Orissa and Calcutta cases hold to the contrary. In all the three cases, however, the provisions of Order XXX of the Code of Civil Procedure have been interpreted without there being any explanation like the one added by this Court to rule 1 of the said Order. The conflict between the Patna case on the one hand and the Calcutta and Orissa cases on the other centres round the construction of rule

---

(1) A.I.R. 1941 Pat. 596.  
(2) A.I.R. 1950 Orissa 189.  
(3) A.I.R. 1942 Cal. 613.

10 of Order XXX. In Alek Chandra's case (1), Fazl Ali, J., as he then was, construed the word "person" occurring in rule 10 of Order XXX so as to include a joint Hindu family. By thus construing rule 10 of Order XXX, the Division Bench of the Patna High Court in the reported case held that the provisions of Order XXX were applicable to joint Hindu family firms and, therefore, a decree against such a firm could be executed against individual partners under the provisions of Order XXI rule 50 of the Code of Civil Procedure if the conditions laid down in the various sub-rules of rule 50 were complied with. In holding this the learned Judges followed an earlier decision of their own Court in *Srikant Lal v. Sidheswari Prasad* (1). It would not be out of place at this stage to mention that Fazl Ali, J., while dealing with this question expressly observed as follows at page 598 column 1 :—

The Punjab  
National Bank,  
Ltd., Amritsar  
v.

M/s. Raj Mal-  
Pahar Chand  
and others

—  
Dua, J.

“Now, it appears that in the Lahore High Court a provision has been inserted in Order XXX rule 1 to the effect that the rule applies to a joint Hindu family trading partnership also. Therefore, in cases decided in that High Court, no difficulty has ever arisen in the case of a joint Hindu family, because the Courts have assumed that members of a joint Hindu family which carries on trading business form a partnership and the procedure laid down in Order XXI rule 50, clause (2) is applicable to a decree obtained against them.”

Then the learned Judge proceeded to deal with those cases where, unlike this High Court, there

(1) A.I.R. 1937 Pat. 455.

The Punjab  
National Bank,  
Ltd., Amritsar  
v.  
M/s. Raj Mal-  
Pahar Chand  
and others

Dua, J.

was no provision applying the procedure laid down in Order XXX to joint Hindu family firms. In *Maturi Mall's case* (1), a Division Bench of that Court; however; held that Order XXI rule 50(2) had no application to a case of a joint family concern carrying on business in an assumed name and its application must be limited to cases of contractual partnerships only. Their Lordship referred to *Alekh Chandra's case* (2), but for reasons, which at least I have not been able to appreciate, distinguished the Patna decision. It certainly lays down a rule of law contrary to that laid down in the Patna case. In *Motilal Chhajulal's case*, (3), a learned Single Judge of the Calcutta High Court adopted the same view as has been taken by the Orissa High Court.

All these three cases, as I have mentioned above, deal with the provisions of Order XXX without the amendment which this Court, as also the Lahore, Peshwar and the Sind High Courts, have incorporated in rule 1 of Order XXX. By means of this amendment an explanation has been added to rule 1 making the provisions of Order XXX applicable to joint Hindu family firms. Reading together the provisions of Order XXX rule 1 as amended and the provisions of Order XXI rule 50(2) there can hardly be any doubt that a decree passed against a joint Hindu family firm can legally be executed in accordance with the provisions of Order XXI, rule 50(2), of the Code of Civil Procedure in precisely the same way in which decrees against contractual partnership firm can be executed against its partners. To me

(1) A.I.R. 1950 Orissa 189.  
(2) A.I.R. 1941 Pat. 596.  
(3) A.I.R. 1942 Cal. 613.

the position seems to be so clear that it is hardly open to argument to contend to the contrary. Indeed when asked to refer to any authority of a High Court, which had added to Order XXX rule 1 an explanation like the one added by this Court, holding to the contrary, Mr. K. S. Thapar, learned counsel for the respondents, expressed his inability to do so. The learned counsel merely urged, and that too in a half-hearted manner, that the construction that we were placing on Order XXI rule 50 would mean that a member of a joint Hindu family firm can be personally held liable in execution of a decree against the joint Hindu family firm itself. I quite agree with the learned counsel that it would be so; but in my opinion such is the intention of the statute, and I do not see anything wrong if that is so. The moment the explanation mentioned above is added to the provisions of Order XXX rule 1 the position of the partners of a joint Hindu family firm becomes similar to that of the partners of a contractual firm and if the partners of the latter firm can be proceeded against under the provisions of Order XXI rule 50, then there is no logical reason why the partners of a joint Hindu family firm should also not be liable to be proceeded against under rule 50 of Order XXI of the Code of Civil Procedure.

In fact in another case (*M/s. Ghakki Mal etc. v. The Punjab National Bank, Ltd.* (1), which came up for decision before us a few days ago we have applied the provisions of Order XXX, rule 4, of the Code of Civil Procedure, to a joint Hindu family firm by reason of the explanation added by this Court to rule 1 of Order XXX; on the same reasoning I would be inclined to hold

The Punjab  
National Bank,  
Ltd., Amritsar  
v.

M/s. Raj Mal-  
Pahar Chand  
and others

—  
Dua, J.

---

(1) R.F.A. 36 of 1956.

The Punjab  
National Bank,  
Ltd., Amritsar  
v.

M/s. Raj Mal-  
Pahar Chand  
and others

\_\_\_\_\_  
Dua, J.

that rules 5 and 7 of this Order would also be applicable to joint Hindu family firms. And if that is so, then Order XXI rule 50(2) can properly be pressed into service by decree-holders while executing their decrees against the partners or members of the joint Hindu family firms.

For the reasons stated above, this appeal must be allowed and the order of the learned Subordinate Judge, 1st Class, dated the 10th of August, 1953 set aside. There will, however, be no order as to costs in this Court.

The parties are directed to appear before the executing Court on the 3rd of November, 1958 when the Court would give them another date for further proceedings in the matter.

Falshaw, J.—I agree.

B. R. T,

CIVIL WRIT

*Before Bishan Narain, J.*

MESSRS VRAJLAL MANILAL & CO.,—*Petitioner.*

*versus*

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Case No. 98-D of 1955.

1958  
\_\_\_\_\_  
Oct., 15th

*Central Excise and Salt Act (I of 1944)—Section 3—Tobacco for manufacturing bidis; cigarettes; cigar; etc:—Point of time when duty leviable—Process of curing—When to be considered to be complete—Constitution of India (1950)—Articles 14 and 19—ex gratia reduction of duty—Whether violative of the provisions of these Articles.*

*Held*, that the duty on tobacco becomes leviable as soon as it is cured and the weight thereof for this purpose necessarily is as it exists as soon as the process of curing has been completed. The weight of the unmanufactured