

A. Khandelwal & Sons, (HUF) v. Sardar Mall Alok Kumar (HUF) 583

not been challenged but since it is consequential to the order dated 26th November, 2008, we are treating this appeal to be a challenge to both the orders at the request of the appellant's counsel.

14. Accordingly, while staying the operation of the learned Single Judge's orders dated 26th and 27th November, 2008, we direct the defendants No. 1 to 5 in the original suit to maintain full accounts of the movie 'Sorry Bhai', the sale of the audio and video cassettes and CDs and the revenue generated by the film. Such accounts shall be filed in this Court from time to time.

15. Copy of the order be given dasti under the signature of the Court Master.

**2009 (107) DRJ 583**

HIGH COURT OF DELHI

*EAs No. 292 & 293/2008 in Execution 214/2007*

A. Khandelwal & Sons, (HUF).....Decree Holder

*Versus*

Sardar Mall Alok Kumar (HUF).....Judgment Debtor

**Rajiv Sahai Endlaw, J.**

**Decided on 11.12.2008**

### **Hindu Undivided Family**

**Liability of the individual co-parcener — Decree against a Hindu Undivided family carrying business — Earning of the objector of commission from LIC would be his self acquired impartible property and not the property of the judgment debtor — All constituents of a trading Joint Hindu Family are liable for debts thereof not only their share in properties of Joint Hindu Family but also from their personal, self acquired properties — Only exception of the rule is the transaction incurring debt/liability to third party if it is collusive.**

*[Para 20]*

### **Cases Referred :**

Amar Nath v. Hukam Chand Nathumal	AIR 1921 P.C.35
Chandrakant Munilal Shah v. C.I.T.	AIR 1992 SC 66
Kapur Chand Shrimal v. Tax Recovery Officer	AIR 1969 SC 682
Krishan Gopal v. Suraj Mal	AIR 1964 Raj. 218 (DB)
Modi v. CIT	AIR 1976 SC 1953
Nanchand Gangaram Shetji v. Malappa Mahalingappa Sadarge	AIR 1976 SC 835
Rm. L.M.L.V. Alagamai Achi v. VR. PL. M. Palaniappa Chettiar	AIR 1940 Mad 580
Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Das	AIR 1952 Bom 365 (DB)

584 DELHI REPORTED JUDGMENTS 2009 (107) DRJ ....

Shivcharan Das v. Hari Ram AIR 1937 Lah. 247  
Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh AIR 1953 SC 487  
V.R.C.T.V.R. Chidambaram Chettyar v. C.A.P.C. Mutaya Chettyar AIR 1936 Rangoon 160

*PRESENT : Mr. V. Sudeer, Advocate for the Decree Holder.*

*Mr. P.D. Gupta, Mr. Kamal Gupta, Advocates for the Debtor.*

*Mr. Pankaj Gupta, Advocate for the Objector Mr. Alok Jagwayan for the Debtor in EAs Nos. 292-293/2008.*

*Mr. R.S. Kela, Advocate for the Objectors, Santosh Kumar, Taramani & Suman Jain for the Debtor.*

**Rajiv Sahai Endlaw, J.**

1. The objection to the execution raises for adjudication legal issue, as to what is the liability of the individual co-parcener in a decree against a Hindu Undivided Family carrying business — whether it is to the extent of their share in the assets of the said joint Hindu Undivided Family only or does it extend to their personal assets also.

2. The factual matrix in which the aforesaid legal issue has arisen is as under. The decree holder, itself a Hindu Undivided Family through its Karta instituted CS(OS) No. 1129/2002 under Order 37 of the CPC in this court against "M/s Sardar Mall Alok Kumar, HUF through Shiv Dayal Jagwayan, Karta" for recovery of Rs. 27,09,905/- with future interest. It was *inter alia* stated in the plaint that:

"the defendant is a Hindu Undivided Family with Shiv Dayal as its Karta his wife Champa Jagwayan as its member and sons Ashish and Alok Jagwayan as co-parceners".

3. It was further stated that the decree holder/plaintiff had over a period of time disbursed interest (@ 18% p.a.) bearing loan to the defendant; that the defendant was giving interest to the plaintiff till 31st March, 2001 by crediting the same to the account of the plaintiff; that the plaintiff had disbursed the loan to the defendant as defendant's Karta was a friend of the Karta of the plaintiff and was in need of money; that as on 30th June, 2002 a sum of Rs. 27,09,905/- inclusive of interest was due from the defendant to the plaintiff.

4. The defendant in that suit applied for leave to defend which was considered by this court on 10th December, 2006. A letter dated 18th March, 2002 written by the defendant to the plaintiff in acknowledgment of debt is referred to in the order dated 10th February, 2006. In the said letter Mr. Shiv Dayal Jagwayan, Karta of the defendant had written to the Karta of the plaintiff as under:-

"My dear Ashok Ji,

You have been a family friend for over 25 years. Your family, friends and you had advanced to my firm M/s. Sardar Mall Alok Kumar Kumar over Rs. 35,00,000/- as at 31/03/2001 (With Interest), you have been asking for repayment of these funds. I assure you that I shall repay the

A. Khandelwal & Sons, (HUF) v. Sardar Mall Alok Kumar (HUF) **585**

same to your shortly. You are aware that I have various properties in my name or in the name of my family members. Before any of the properties is sold I shall repay the loan. In case I am unable to pay immediately I shall transfer the land and Godawn at Siraspur to you for Rs. 20,00,000/-, Godawn at Samaipur for Rs. 15,00,000/- before 30/6/2002. The balance amount shall be repaid.

I confirm the loan outstanding as at 31/03/2001 with M/s. Sardar Mall Alok Kumar with following details:

1. A. Khandelwal & sons	2285253
2. Kamla Khandelwal	217143
3. Sunita Khandelwal	442205
4. Ashok Kr. Khandelwal	278480
5. Geeta Khandelwal	161617
6. Ajay Khandelwal HUF	141414

-----  
3526112  
-----

With Best Wishes  
(SHIV DYAL JAGWAYAN)

5. What is of significance to be noticed for the present purposes is that the Karta of the defendant had in the aforesaid letter referred to M/s Sardar Mall Alok Kumar as a "firm".

6. It is also recorded in the order dated 10th February, 2006 aforesaid that other suits filed by other family members of the Karta of the plaintiff against the defendant had been decreed. The counsel for the defendant on 10th February, 2006 also submitted that the decree be passed for the principal amount against the defendant and keeping in view the financial difficulty being faced by the defendant, interest should be minimal possible. The principal amount claimed in the suit being Rs. 17,60,000/-, this court *vide* order dated 10th February, 2006 passed a decree in favour of the plaintiff and against the defendant/judgment debtor for recovery of Rs. 17,60,000/- along with interest at 6% per annum w.e.f. 31st March, 1997, pendente lite and future.

7. The plaintiff aforesaid filed execution No. 214/2007 for execution of the aforesaid decree, the total amount due till then being Rs. 26,20,609/-. In column 9 of the execution application, against column "the name of the persons against whom the execution of the decree is sought", the decree holder stated "(i) Mr. Shiv Dayal Jagwayan, the Karta of the above named judgment debtor and (ii) Mr. Alok Jagwayan one of the co-parceners (iii) Mr. Ashish Jagwayan one of the co-parceners". The decree was sought to be executed by attachment and sale of movable and immovable properties of the judgment debtors, details whereof were given in schedule to the execution petition and also *inter alia* by attachment of commission

receivable by Mr. Alok Jagwayan from LIC as detailed in the Annexure 'C' to the execution/petition.

8. This court *vide* order dated 17th August, 2007 issued warrants of attachment with respect to the properties detailed in schedule 'B' to the petition. *Vide* order dated 13th November, 2007 this court also issued notice to the LIC to show cause as to why the commission payable to Mr. Alok Jagwayan, co-parcener of M/s Sardar Mall Alok Kumar, HUF be not attached. On 5th May, 2008 a further order was made of issuance of letter to LIC for sending commission payable to Mr. Alok Jagwayan to this court by way of pay order in the name of the Registrar General of the court. In response thereto that E.As. No. 292 & 293/2008 came to be filed by Shri Alok Jagwayan and which fall for consideration.

9. The contention of Mr. Alok Jagwayan is that the judgment debtor in the execution is only "the HUF firm" M/s Sardar Mall Alok Kumar and the objector Mr. Alok Kumar Jagwayan is not a party to the execution; that the commission payable to him by the LIC is not liable to be attached towards the satisfaction of the decree because he has no liability to pay any sum to the decree holder or to the judgment debtor; because the liability of the objector as a member/co-parcener of M/s Sardar Mall Alok Kumar is limited and confined to the assets/property received by him as his share of the properties of the said joint family or to his interest therein; that he has not received any property nor any share in the property owned by or belonging "to the said HUF firm"; that the said "HUF firm has no movable or immovable property in its name"; "the commission payable by Life Insurance Co. of India and receivable by the applicant/objector is his self earned income which is his separate property and is not liable to be considered as property of the above mentioned HUF firm"; that his personal and separate property is not capable of being attached towards the satisfaction of the said decree. It may be highlighted that the objector has also referred to the judgment debtor as the HUF firm and not HUF only.

10. The decree holder has in reply stated that the objector Mr. Alok Kumar has and is acting as the Karta/Manager of M/s Sardar Mall Alok Kumar, judgment debtor; that the cheque dated 23rd January, 2002 for Rs. 1 lac issued to the decree holder by M/s Sardar Mall Alok Kumar during the pendency of the suit, was signed by the applicant Mr. Alok Kumar in his capacity as Karta/Manager for M/s Sardar Mall Alok Kumar; that from the issuance of the aforesaid cheque it was evident that the objector Mr. Alok Kumar was party to the contract requiring the judgment debtor HUF to pay back the dues of the decree holder and thus the contention that the objector was merely a co-parcener was false; that even otherwise being an adult co-parcener and having ratified the contract by subsequent conduct by making part payment of the loan by cheque signed by him as Manager, the objector was liable to be treated as a contracting party; reliance was placed

on an extract from Mulla's Hindu Law in this regard to contend that such a co-parcener is liable as a contracting party.

11. The objector filed a rejoinder reiterating its stand; with respect to cheque for Rs. 1 lac, the issuance thereof was not denied but it was stated that he had never acted as the Karta and in the year, 2002 owing to the ill health of his father Mr. Shiv Dayal Jagwayan, for sometime he was given authority to issue cheques from the bank account maintained for and on behalf of the judgment debtor firm and it was in these circumstances that the cheque was signed by him as Karta/Manager of the judgment debtor. It was otherwise contended that the objector in the year 1997 when the transaction commenced as per the decree holder, was a minor and had attained majority subsequently. It was further contended that the objector was not a party to the suit.

12. The legal position, as far as in relation to a Hindu Undivided Family is concerned, admits of no conflict. It is settled that a decree against Hindu Undivided Family can be executed only against the assets of the Hindu Undivided Family and not against the personal assets of the co-parceners of the said HUF. The question which arises is, whether the position is to be different when the Hindu Undivided Family is carrying on trade/business and what is commonly known as a HUF firm or a joint Hindu family firm. It has to be first noticed that neither in the plaint nor in the decree there is reference to the defendant/judgment debtor as a HUF firm. It is only in the letter dated 18th March, 2002 set out in the order dated 10th February, 2006 passing the decree that the said HUF is referred to as a firm. In the execution proceedings, again, it is the objector who has in his objection petition described the judgment debtor as a HUF firm. The objector having done so, the law to be applied is as applicable to a HUF firm.

13. As far as a partnership firm within the meaning of the Indian Partnership Act is concerned, again there is no ambiguity that a decree against the firm is executable against the partners personally also and not limited to their share in the partnership firm. Whether the same principles are to be applied to a HUF firm also. Section 5 of the Partnership Act clarifies that the same principles cannot be applied to a HUF firm on the basis of the provisions of the Partnership Act. The apex court in **Nanchand Gangaram Shetji v. Malappa Mahalingappa Sadarge, AIR 1976 SC 835** has held that the legislature in its wisdom excluded joint Hindu trading families from operation of the Partnership Act and thus the principles thereof cannot be applied to joint Hindu trading families. It has to be, thus, seen whether without reference to the provisions of the Partnership Act, what is the liability of various constituents of such families. The determination thereof would also entail determination of what is the private property of such constituents and what is the family property.

14. The privy counsel was faced with the latter proposition in **Amar Nath v. Hukam Chand Nathumal, AIR 1921 P.C.35**. In that case the appellant, though a member of the Joint Hindu Family carrying on business took no part in the business, was not privy to the debts incurred, in his youth was absent from India for education and joined the Indian Civil Services and was earning salary. But he never severed himself from the Joint Hindu Family. The privy counsel held that in such families the rule is that acquisitions of members are joint property and partible *i.e.* liable to be shared with other members of the family and impartibility is the exception. It was further held that property acquired by possession of special science or learning is a recognized exception. However it was further laid down that where such acquisition of special science or learning is paid for at the expense of the family or to the detriment of the family, it is regarded as the family investment and the emoluments earned by the possessor are joint property of the family or the fruits of investment made in one member of family. Applying the said principles it was held that the training and appointment of appellant in civil services was to the detriment of the family and thus money decree against him was upheld and his appeal dismissed. The privy counsel while holding that it would be impractical to distinguish between personal and family element in ultimate gains *i.e.* the salary in that case, however left the question to be determined in execution.

15. The Hindu law as enunciated above was changed by the Hindu Gains of Learning Act, 1930. By Section 3 thereof no gains of learning is to be held not to be exclusive and separate property of the acquirer for the reason of such learning having been acquired with the aid of family funds or for the reason of his having been maintained or supported from family funds. The Apex court in **Chandrakant Munilal Shah v. C.I.T., AIR 1992 SC 66** held the definition of learning in the said Act to be very wide and encompassing within its sweep every acquired capacity which enables the acquirer of the capacity to pursue any trade, industry, profession or avocation in life.

16. In the light of the aforesaid position, the earnings of the objector of commission from LIC would be his self acquired impartible property and not the property of the judgment debtor.

17. Also there is no averment on behalf of the decree holder that the commission payable by the LIC is an income of the judgment debtor. This is all the more relevant since the Karta of the plaintiff/decreed holder was the Chartered Accountant of the defendant/judgment debtor. It is for this reason only that the plaintiff/decreed holder could in the suit assert that the defendant/judgment debtor has also in its books of account admitted liability of the amounts claimed by the plaintiff/decreed holder and readily furnished list of properties to be attached and details of the income of the objector from commission payable by LIC. The Karta of the plaintiff/decreed holder having been the Chartered Accountant of the defendant/judgment debtor, if the

A. Khandelwal & Sons, (HUF) v. Sardar Mall Alok Kumar (HUF)

589

commission payable by the LIC had been shown in the books as the income of the defendant HUF, would have certainly stated so.

18. I do not, therefore, consider it necessary to put the matter to trial on this aspect.

19. With respect to the liability of various constituents of the joint Hindu Trading families, **Krishan Gopal v. Suraj Mal, AIR 1964 Raj. 218 (DB)**, **Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Das, AIR 1952 Bom 365 (DB)**, **Shivcharan Das v. Hari Ram, AIR 1937 Lah. 247, Rm. L.M.L.V. Alagamai Achi v. VR. PL. M. Palaniappa Chettiar, AIR 1940 Mad 580, V.R.C.T.V.R. Chidambaram Chettyar v. C.A.P.C. Mutaya Chettyar, AIR 1936 Rangoon 160** have *inter alia* held that where the manager of a joint family business has incurred debts, the other co-parceners, whether they be adult or minors are liable but to the extent only of their interest in the joint family property — they are not liable personally unless in the case of adult co-parceners, the contract sued upon, though purporting to be entered into by the manager alone, is in reality one to which they are actual contracting parties or one to which they can be treated as contracting parties by reason of their conduct, or one which they have subsequently ratified.

20. With due respect to the judgments (Supra) of different high courts, I am of the view that all constituents of a trading Joint Hindu Family are liable for debts thereof not only from their share in properties of Joint Hindu Family but also from their personal, self acquired properties for the following reasons:-

- (i) the trading Joint Hindu Family being merely a compendious name in which all constituents thereof are trading, there is no rationale for discriminating between the manager and other co-parceners, in the matter of debts/liabilities.
- (ii) there is no reason why, when the co-parceners have a share in the profits of the business as per their share in the family, they should not share the losses and debts also in the same proportion.
- (iii) a manager or the Karta is merely by his position as eldest in the family and by such position does not become entitled to any extra share in the profits of the business and there is no reason to make his personal or self acquired properties liable and exclude those of others.
- (iv) a third party dealing with such trading Joint Hindu Family may not know its actual constitution as a Joint Hindu Family and not a partnership and is likely to give credit thereto on the strength of the financial capacity of all persons appearing to be having a share therein. In this regard it is significant that there is no statutory compulsion for such trading Joint Hindu Family to affix the words "HUF" to its trading name, as is in the case of a limited company under the Companies Act. Most of such trading

families are known not to affix HUF to their trading name, though it is not so in the present case. Order XXX Rule 10 of CPC also permits a HUF carrying on business under any name to sue and be sued in such name or style as if it were a firm name. To make only the manager's private properties and the Joint Hindu Family properties liable for debts/liabilities can given a tool in the hands of unscrupulous families of arranging their affairs in a manner to defeat debts/liabilities.

- (v) it is not essential for a Joint Hindu Family to carry on business. However, if they do carry on business they/its constituents need no special protection.
- (vi) the reason given in judgments (Supra), which are all of more than half century ago for protecting private/personal/self acquired properties of co-parceners was that the said co-parceners were then considered as subservient to and having no say whatsoever in the matter or affairs of the family or against the will or say of eldest member of the family. However, the social fabric has drastically changed since then. Neither is Joint Hindu Family the norm nor do considerations of regard, respect today deters youngsters in the family from putting forth their views. In fact the youngsters in the family are today consulted in all matters and considered to be more knowledgeable and having the pulse of the time. Today the single unit or maximum two generations staying together is the norm. In the circumstances there is no compulsive trading Joint Hindu Family and the trading Joint Hindu Family may be adopted as a trading vehicle for commercial and other reasons. In today's time a younger member of family does not feel shy to severe relationships. In today's context, if there is a trading Joint Hindu Family, all constituents thereof ought to be made liable for debts/liabilities of business and out of their self acquired properties also. In today's times it is impossible to believe that a co-parcener would compulsorily allow another to act as manager and if he does so, he ought to be bound by his actions. Law is a living organ and has to evolve with the time and changing social conditions.
- (vii) all the judgments (Supra) refer to Manager and not to Karta of the HUF. Manager of business is not necessarily the Karta of the HUF. The Apex court in **Narindra Kumar J. Modi v. CIT, AIR 1976 SC 1953** has held that with the consent of others, even a junior member of the family can act as Karta. It was so held by this court also in **Nopany Investments Pvt. Ltd., v. Dr. Santokh Singh (HUF) RSA 209/ 2005** decided on 19th April, 2007 and appeal where against was dismissed by Apex Court. If that be so, there is no need to subject self acquired properties of



A. Khandelwal & Sons, (HUF) v. Sardar Mall Alok Kumar (HUF) **591**

**Manager only to attachment and sale for debts/liabilities of the business of the family.**

21. In my view the only exception to the rule of making all constituents of trading Joint Hindu Family liable personally also to debts thereof, ought to be when a particular transaction incurring debt/liability to third party is entered into by a constituent thereof in collusion with such third party and to cause detriment to other members.

22. However, in the facts of the present case, I find that even applying the law with which I have respectfully differed, the objector is personally liable.

23. The decree holder in the suit claimed interest @ 18% per annum. However, in view of the statement of the defendant/judgment debtor for concession in the matter of interest owing to financial difficulties this court in the order dated 10th February, 2006 granted interest @6% per annum only, not only pendente lite and future but also for the period prior to the institution of the suit. The said order dated 10th February, 2006 though not expressly recording the consent of the parties is in the nature of a consensual order and in fact records the presence of Mr. Shiv Dayal Jagwayan, Karta of the judgment debtor in the court. When the judgment debtor has on 10th February, 2006 already availed concession aforesaid, when the objector was adult constituent thereof and prior whereto admittedly was acting as Karta/Manager thereof, the objector is deemed to be a contracting party and/or to be treated as a contracting party to the transaction by reason of his conduct and/or which he has ratified. The objector is thus personally liable.

24. The issuance of the cheque for Rs. 1 lac under the signatures of the objector shows that the objector was fully in the know of the debts towards the decree holder and was then admittedly also acting as the Karta/Manager of the defendant. Nothing has been stated or placed on record as to when thereafter the objector ceased acting as the Karta/Manager. It is, thus, not as if the suit or the order dated 10th February, 2006 therein was behind the back of the objector. The objector has himself stated that his father who was the Karta of the HUF was suffering ill health at that time necessitating his taking over the affairs of the HUF.

25. The next important fact relevant for the present purposes that it is the plea of the objector himself that the judgment debtor firm has no movable or immovable assets. The attachment orders which were issued with respect to the immovable properties have invited objections with respect to each of the said properties. Can a decree holder who has been awarded a concessional rate of interest for not only the period during the pendency of the suit and future interest but also for prior to the institution of the suit in the hope of the early satisfaction of the decree can be left high and dry. The judgment debtor was carrying on business of its own volition and with the volition of the adult co-parceners. Not only the Karta/Manager but all

592

DELHI REPORTED JUDGMENTS

2009 (107) DRJ ....

including the objector reaped benefits of the profits/earnings of the said business/trade of the judgment debtor. The objector himself in the present case has pleaded that the judgment debtor firm and the family is now left with no income but the commission from the LIC. The same is indicative of the business being carried on by the judgment debtor firm being the main source of income of the family. When the co-parceners have enjoyed the profits of the business not limited to their share as in a partnership firm, there is no reason why in the matter of debt they ought to be heard to say that they are not liable personally for the debts. In this regard, it is also relevant to note that the various sales tax State Acts have made provision in this regard whereunder each and every co-parcener of the HUF firm is treated as a dealer for the purposes of recovery of the sales tax dues, if any, from such a firm.

26. The judgment of the Apex court in **Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh, AIR 1953 SC 487** relied upon by the counsel for the objector is not applicable and nowhere lays down the position in relation to an HUF firm as the judgment debtor in the present case is. Similarly, the other judgment of the Apex court in **Kapur Chand Shrimal v. Tax Recovery Officer, AIR 1969 SC 682** relied upon by the objector merely holds that the manager of a HUF is not liable to be arrested and detained for failure to satisfy the tax dues by the HUF, under the scheme of the Income Tax Act.

27. I therefore do not find any merit in the objections and the same are also not found to raise any triable issue. Both the applications are dismissed, however, with no order as to costs. The attachment of commission payable by the LIC of India to Mr Alok Kumar Jagwayan to continue and the LIC of India be directed to continue remitting the said commission to this court by cheque in the name of the Registrar (General) of this court.

---

**2009 (107) DRJ 592**

HIGH COURT OF DELHI

*CS(OS) 1767/2007 & IA No. 1724/2008*

**Bei Confluence Communication Ltd.....Plaintiff**

*Versus*

**M.R.S. Filmcraft & Advertisement Pvt. Ltd .... Defendants**

**Hima Kohli, J.**

**Decided on 14.11.2008**

**Civil Procedure Code, 1908**

**Order 37 — Cheques were unpaid on account of insufficient funds — Photocopies of the aforesaid cheques enclosed with the list of documents, originals of which were on the record of the proceedings**