

Hansraj Nathu Ram

Vs

Lalji Raja & Sons of Bankura

Civil Appeal No. 173 of 1956

(N. Rajgopala Ayyangar, J. R. Mudholkar, J. L. Kapur, K. C. Das Gupta, A. K. Sarkar JJ)

30.04.1962

JUDGMENT

KAPUR, J. –

This is an appeal against the judgment and order of the High Court of Madhya Bharat at Gwalior on a certificate of that Court under Art. 133(1)(c) and like Civil Appeal No. 24 of 1961, raised the question of the applicability of the Indian Code of Civil Procedure and the question whether the decree sought to be executed was a decree of a foreign Court or not. It is a reverse case in the sense that the decree sought to be executed was passed by a Court in West Bengal - a province of what was British India. In the appeal the appellant is the judgment-debtor and the decree-holder is the respondent.

On December 3, 1949, a decree was passed in favour of the respondent by the Subordinate Judge, Bankura, in the West Bengal and a certificate of transfer was applied for on July 27, 1950, granted on August 8, 1950, and was transferred for execution on August 28, 1950. On September 25, 1950 the decree-holder took out execution in the Court of the Additional District Judge, Morena, in what was Gwalior State and subsequently became a part of the United State named Madhya Bharat and after the Constitution the Part B State of Madhya Bharat. On the judgment-debtor's objection the application for execution was dismissed on December 29, 1950, but the appeal against that order was allowed by the High Court on November 15, 1954.

It is unnecessary to set out the various sections of the Indian Code of Civil Procedure or to trace the various steps by which ss. 43 and 44 were amended in that Code; that we have done in C.A. No. 24 of 1960 decided today. It was contended before us by the judgment-debtor that the Court had no power to transfer the decree under s. 38 to the Court in Morena. On the date when the decree was transferred the Courts in Madhya Bharat were governed by the Indian Code of Civil Procedure as adapted by the Madhya Bharat Adaptation Order of 1948 but the power of transfer by the Court at Bankura was governed by ss. 38 and 39 of the Indian Code of Civil Procedure. Under the Code, the Court to which the decree could be transferred was one established in what was British India because the Code extended to the territories of what was British India and it was not till, the coming into force of Act II of 1951 on April 1, 1951, that the Indian Code was applied to the "Territories of India" which comprised Parts A, B and C State.

It was contended by Mr. N.S. Bindra counsel for the respondent that under ss. 38 and 39 of the Indian Code of Civil Procedure a decree could be sent for execution to any Court, the expression "Court" being understood as a place where justice was administered and for this reliance was placed on *Manawala Goundan v. Kumarappa Reddy* [I.L.R. 30 Mad. 326] where the word "Court" in s. 622

of the old Civil Procedure was defined as a place where justice is judicially administered; but that was in a case where it had to be determined whether a District Registrar was Court for the purpose of Civil Procedure Code. The definition as given in that case is not of any help in determining the question now before us because what we have to see is whether the Court at Morena even though it administered justice judicially was covered by the word "Court" in s. 38 or not. As we have said above "Court" in the section means a court to which the Indian Code of Civil Procedure applies and not any Court. Similarly at the relevant time in ss. 40 and 42 of the Indian Code of Civil Procedure "Court" necessarily meant a Court to which Indian Civil Procedure Code applied i.e., a Court in what was British India. The Court at Morena not being such a Court the decree could not be transferred to it under the Indian Code of Civil Procedure and ss. 38 and 39 were inapplicable to justify such a transfer.

The decree, it was then argued, was executable under s. 43 of the Indian Civil Procedure Code as amended by the Adaptation of Laws Order of June 5, 1950, which had retrospective effect as from January 26, 1950. After the amendment that section reads :-

"S. 43 Any decree passed -

(a) by a Civil Court in Part B State, or

##(b).....(c).....##

may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in the States".

The argument was that in the present case the expression "in a Part B State" should be read as if the expression was "in a Part A State". This again is not permissible for us. Section 43 has to be interpreted as it is and a Court cannot read it as if its language was different from what it actually is. It is not permissible for this court to amend the law as suggested. Besides the Indian Civil Procedure was not extended to Madhya Bharat till April 1, 1951, by Act II of 1951. The decrees of foreign courts were, under the Gwalior Code of which Morena was a part, executable neither under s. 233 which required a suit to be brought on the basis of foreign decrees nor under the Madhya Bharat Code of Civil Procedure. The decree therefore could not be executed in Morena under s. 43 of the Indian Code of Civil Procedure.

It was next argued that the appellant firm was not a foreigner because it did not fall under the foreigners Act (Act 31 of 1946) and reference was made to s. 2(a)(iii) which was amended by Act 38 of 1947 on December 15, 1947; but this Act is not relevant for the purpose of finding out whether the decree was a foreign decree or not because the execution of decrees is governed by the provisions of the Code of Civil Procedure and not by the Foreigners Act. Under the former a decree can be executed by a Court which passed the decree or to which it was transferred for execution and the decree which could be transferred has to be a decree passed under the Code and the Court to which it could be transferred has to be a Court which was governed by the Indian Code of Civil Procedure. But in the present case it was not transferred to a Court which at the time of the transfer was governed by the Indian Code of Civil Procedure and therefore the transfer was ineffective for the purpose of execution and as we have said above, s. 43 of the Indian Code was inapplicable before Act II of 1951 to the State of Madhya Bharat. It is not necessary to go into the other question raised if the above two questions are decided against the respondent.

We therefore allow this appeal, set aside the judgment and order of the High Court and restore that of the executing court. The appellant will have its costs in the court.

Appeal allowed.

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