

Santi Ranjan Dass Gupta

Vs

M/S. Dasuram Mirzamal

Civil Appeal No. 858 of 1968

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

11.03.1976

JUDGMENT

RAY, C.J. -

1. This appeal by certificate is from the order dated July 26, 1967 of the High Court of Assam.
2. The only question in this appeal is whether the respondent's application filed on July 27, 1965 for execution of the decree obtained by him is barred by limitation.
3. The respondent on January 7, 1952 obtained a decree against the appellant for the sum of Rs. 71,980 in a money suit filed in the Court of Subordinate Judge, Gauhati. On December 8, 1956 the respondent decree-holder filed an application No. 89/56 for executing the said decree. On July 15, 1957 the appellant, the judgment debtor, filed an application pleading adjustment of the decree. On April 15, 1958 the judgment debtor withdrew the said application. On December 18, 1957 the Subordinate Judge, Gauhati dismissed the decree-holder's application No. 89/56. The decree-holder preferred an appeal. The High Court at Gauhati on July 1, 1959 set aside the order of the Subordinate Judge and allowed the appeal for execution of the decree.
4. Meanwhile on January 18, 1958 the appellant judgment debtor in the Gauhati suit obtained a decree against the respondent for the sum of Rs. 1,22,000 in the Court of the Subordinate Judge at Nowgong. In execution of the decree in the Nowgong suit the appellant on or about January 29, 1958 obtained an attachment of the respondent's decree passed in the Gauhati suit.
5. On August 13, 1959 the Subordinate Judge, Gauhati struck off the execution application No. 89/56 from the file.
6. The respondent filed an appeal against the decree obtained by the appellant in the Nowgong suit. The High Court on April 28, 1964 accepted the appeal filed by the respondent and dismissed the Nowgong suit filed by the appellant.
7. On July 27, 1965 the respondent filed an application for execution in the Court of the Subordinate Judge, Gauhati. The appellant preferred an objection contending that the application is barred by limitation. On March 4, 1966 the Subordinate Judge dismissed the execution application as barred by time.
8. On July 26, 1967 the High Court accepted the appeal filed by the respondent and directed the execution to proceed.

9. The contention of the appellant is that the order obtained by the appellant attaching the respondent's decree did not amount to a stay within the meaning of Section 15 of the Indian Limitation Act, 1908, and, therefore, the respondent's application for execution which was filed on July 27, 1965 was barred by limitation. The appellant contended that when the Subordinate Judge, Gauhati on August 13, 1959 struck off the execution application of the respondent the respondent should have filed an application for execution within three years from that date.

10. The High Court referred to the order dated January 29, 1958 passed by the Nowgong court attaching the decree obtained by the respondent. The High Court relied on the provisions contained in Order 21, Rule 53(1)(b) of the Code of Civil Procedure and held that the attachment continued restraining the respondent from executing the decree until the notice issued by the court attaching the decree was recalled. The Nowgong court did not pass any order recalling the order. On March 1, 1958 the Nowgong court passed an order which was as follows :

Notice served. No objection filed by J. D. (meaning thereby judgment debtor). Heard both parties. Execution case is struck off for the present. Attachment to continue until further orders.

11. In the context of this order of attachment passed by the Nowgong court the attachment continued until the Nowgong suit was dismissed by the High Court on April 28, 1964. The High Court rightly held that there was no question of limitation because the application was filed within three years from April 28, 1964 when the bar against execution was raised and the order restraining the respondent decree-holder from executing the decree in the Gauhati suit ceased to be operative.

12. Another contention which had been raised by the appellant and repeated here is that when the Gauhati court on August 13, 1959 struck off the execution case No. 89/56 the execution application filed on July 27, 1965 was barred by time. The High Court held that the Gauhati court on August 13, 1959 merely struck off the execution application, and, therefore, the subsequent application which was made was a continuation of the execution proceedings. The High Court held that striking off the application did not amount to any order deciding the merits of the application.

13. The order obtained by the appellant attaching the decree of the respondent in the Gauhati suit has been rightly held by the High Court to have precluded the respondent from executing the decree during the time the attachment was in force. The other conclusion of the High Court that the execution application dated July 27, 1965 was a continuation of the earlier application is also correct. The order striking off the execution application has been rightly construed by the High Court as merely consigning the application to the record room for statistical purposes. The application dated July 27, 1965 indicates in column 2 as the respondent rightly stated that the previous application for execution was struck off on August 13, 1959 because of the order of attachment passed by the Nowgong court. The attachment order was nullified only when the appellant's suit was dismissed by the High Court on April 28, 1964. The respondent's decree became executable at that time. The inescapable conclusion is that the application for execution on July 27, 1965 is a continuation of the old application.

14. For these reasons, the judgment of the High Court is affirmed. The appeal is dismissed with costs.

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