Anandilal and Another

Vs

Ram Narain and Others

Civil Appeal No. 109 (N) of 1971

(A. P. Sen, V. B. Eradi JJ)

10.05.1984

JUDGMENT

A. P. SEN, J. -

1. The sort point involved in this appeal by certificate from the judgment and order of a Full Bench of the Madhya Pradesh High Court dated October 17, 1969 is whether a partial stay of execution of the decree like the one in question staying sale of the attached property is within sub-section (1) of Section 15 of the Limitation Act, 1908 so as to entitle the decree-holder to claim exclusion of the period during which there was stay of sale but the property was to continue under attachment, for the purpose of computation of the period of limitation provided by Section 48 of the Code of Civil Procedure, 1908. Since the question involved is a substantial question of law, the High Court has granted a certificate of fitness under Article 133(1) (c) of the Constitution.

2. Facts are somewhat complicated but it is necessary to disentangle them to bring out the point in controversy. One Ghasiram, the predecessor-in-title of the present respondent 1 Ram Narain obtained a decree for Rs. 5,548.18 p. from the Court of the District Judge, Ujjain against one Bheraji, the predecessor-in-title of respondents 2 and 3 Chunnilal and Anandilal, now the judgment-debtors. The decree was affirmed in appeal by the Gwalior High Court one April 5, 1938. During the pendency of the appeal, the High Court stayed execution of the decree under Order XLI, Rule 5 of the Code on condition that the appellants-defendants furnished security for the due satisfaction of the decree. Ratanlal, father of the two appellants Anandilal and Jankilal, executed a surety dated August 3, 1927. Against the decree passed by the High Court, the defendants preferred a revision before the Judicial Committee of the Gwalior State which came to be dismissed on February 14, 1941. While the revision was pending before the Judicial Committee, the decree-holder Ghasiram put the decree in execution against the judgment-debtors as also against the surety on February 23, 1939 for attachment and sale of their immovable properties. It appears that some houses and certain zamindari lands of the surety Ratanlal were attached in execution of the decree. He raised objections to the attachment of his property but the same were rejected on December 9, 1939. Against the order dismissing his objections, the surety Ratanlal filed an appeal before the Gwalior High Court which was dismissed on July 22, 1940. He then filed a miscellaneous appeal before the Judicial Committee of the Gwalior State.

3. It is common ground that in that appeal the Judicial Committee passed an interim order dated August 16, 1940 directing that until further orders the properties attached in execution shall continue to remain under attachment but further proceedings for the sale thereof hall remain stayed. On November 24, 1944 the Judicial Committee dismissed the said appeal and consequently the interim stay stood dissolved. Thereafter, the present respondent 1 Ram Narain appears to have

purchased the decree from the heirs of the original decree-holder and the execution proceedings were resumed. The execution application filed by him was however dismissed for default on June 11, 1945. It was restored on December 14, 1946 but was again dismissed for default on January 21, 1954 as the counsel for the decree-holder stated that he had no instructions. Thereafter, a fresh application for execution was filed by the decree-holder on February 18, 1954. This application was opposed by the surety Ratanlal inter alia on the ground that it was barred by limitation having been filed beyond the period of 12 years prescribed by Section 48 of the Code.

4. The question is whether respondent 1 Ram Narain, the assignee decree-holder, was entitled to exclusion of the period from August 16, 1940 to November 24, 1944 under Section 15(1) of the Limitation Act for computation of the period of 12 years prescribed under Section 48 of the Code. The District Judge, Ujjain rejected the objection raised by the appellants holding that although the stay of execution was partial inasmuch as only sale of the attached properties had been stayed by the Judicial Committee, the decree-holder was entitled to the benefit of Section 15(1). The appellants preferred an appeal before the High Court which was allowed by the learned Single Judge by his order dated February 9, 1962. The learned Single Judge held that an order of partial stay like the one in question granted by the Judicial Committee which only postponed the sale of the attached properties did not have the effect of making the decree inexecutable and therefore Section 15(1) of the Limitation Act was not attracted. He understood the decision of Grille, C.J. and J. Sen, J. in Sitaram v. Chunnilalsa as laying down that Section 15(1) was applicable only when there is absolute stay of execution.

5. Aggrieved by the decision of the learned Single Judge, respondent 1 preferred a Letters Patent Appeal which was referred by a Division Bench to a Full Bench as the question whether a partial stay was within Section 15(1) of the Limitation Act was of considerable importance. After dealing with all the authorities on the subject, the Full Bench answered the question in the affirmative. It was of the view that the Limitation Act like any other enactment must receive a construction which the language in its plain meaning is capable of bearing and that there was no justification for placing a narrow and restricted construction on the word "execution" occurring in the phrase "execution of the decree" in Section 15(1) of the Limitation Act as implying an absolute bar to the execution of the decree. According to the Full Bench, such a construction was not warranted as it would involve reading into the section words such as "totally, wholly, as a whole, or by all possible means" which are not there. According to its plain language, it held, that Section 15(1) did not excluded a partial stay of execution. After referring to several decisions of different High Courts, the Full Bench particularly placed reliance on the decision of the Calcutta High Court in Sreenath Roy v. Radhanath Mookerjee holding that the words "execution of the decree" mean enforcement of the decree by what is known as by any of the "processes of execution". It accordingly held that the word "execution" in Section 15(1) must be construed in a broad sense taking in all or any of the various processes of execution and observed that the decision in Sitaram case does not take a contrary view. The Full Bench therefore held that the decree-holder was entitled to the exclusion of the period from August 16, 1940 to November 24, 1944 under Section 15(1) of the Limitation Act in reckoning the period of 12 years prescribed by Section 48 of the Code. We concur with the view expressed by the Full Bench.

6. It is well settled that Section 48 of the Code was controlled by Section 15(1) of the Limitation Act. Section 48 of the Code enacted a rule of limitation and prescribed a period of 12 years for an application for execution of decrees and orders. It has since been repealed by Section 28 of the Limitation Act, 1963 which enacts that "in the Code of Civil Procedure, 1908 (Act V of 1908), Section 48 shall be omitted". In its place a new provision Article 136 has been introduced and that

prescribes "for the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court a period of 12 years, etc.". Thus, the substance of Section 48 continues to be the law and for that reason, and also for the reason that with regard to pending applications, the law as laid down in the decisions interpreting Section 48 might have to be referred to, it is necessary to give reasons.

7. There has been a sharp divergence of judicial authority on the question whether a partial stay was within Section 15(1) of the Limitation Act. The preponderance of judicial opinion appears to be in favour of the view that Section 15(1) contemplates an absolute stay. There is a long line of decisions starting from Kundo Mal v. Daulat Ram-Vidya Parkash, Firm where Din Muhammad, J. laid down that if execution is not completely and absolutely stayed, Section 15(1) contemplates an absolute stay which renders the decree-holder incapable of taking out any proceeding for execution of the decree, which are all based on the dictum of Macleod, C.J. in Chanbasappa v. Holibasappa to the effect that Section 15(1) only applies to an absolute stay. The Patna High Court also took the same view in Kirtyanand Singh v. Pirthichand Lal Choudhri. The dicta of Macleod, C.J. in Chanbasappa case and of Din Muhammad, J. in Kundo Mal case do not give any reason for the view taken. Sen, J. in Virchand case however gave reasons for taking the view that Section 15(1) contemplates an absolute stay which renders the decree-holder incapable of taking out any proceeding for execution of the decree. The learned Judge observed that a partial stay e.g. a stay of execution in one particular mode is not stay of execution within the meaning of Section 15(1) if it is open to the decree-holder to execute his decree in any other manner. He referred to the contrary view taken by the Bombay High Court in Bai Ujam v. Bai Rukhmani, by the Rangoon High Court in Nachiappa Chetty v. Maung Pe and by the Calcutta High Court in Govinda Nath Chaudhuri v. Basiruddin Mandal where it had been held that stay of execution of a part of the decree or against a particular property will nevertheless save limitation for execution of the decree as a whole, and remarked that in view of the decision of the Privy Council in Kirtyanand Singh v. Prithichand Lal, these decision were no longer good law. We find it difficult to accept the reasoning.

8. The decision of the Privy Council in Kirtyanand Singh case does not lay down any contrary proposition. There, the point appears to have arisen from an order passed by the Court in the Raj suit to the effect that "the decree-holders were to wait for some time for payment". That order was subsequently set aside having been in operation for about seven months. The decree-holders' contention was that they were entitled to the benefit of Section 15(1) with respect to the aforesaid period of seven months. Lord Tomlin, delivering the judgment of the Judicial Committee, construed the aforesaid order as meaning not an order staying execution within Section 15(1) of the Limitation Act, and observed :

> Now the first thing to be observed is that at the time when that order was made there was in fact no application for execution pending at all. It was an order, again, made in the Raj suit and not in the rent suits; it was an order made on an application by the decree-holders seeking leave to proceed against property in the hands of the receiver in the Raj suit. It was an order which did not stay execution at all, but simply said that so far as that application in that suit was concerned the appellants were to wait. That seems to their Lordships not to be in any sense within the meaning of the section a stay of the execution by injunction or order.

9. In Lala Baijnath Prosad v. Nursingdas Guzrati the Calcutta High Court appears to have adopted a middle course. Chakravarti, C.J. delivering the judgment of the Court observed :

> If the decree-holder is prevented altogether from executing his decree, it is but reasonable that time should not run against him so long as he remains disabled and the section says so. But there seems to be no reason why the section should be construed as meaning that even when the injunction or order is limited to one or some of several judgment-debtors or to one or some of their properties or to some particular mode of execution and even when the decree-holder is left free to proceed against the other judgment-debtors or other properties or in other ways, he will be entitled to the benefit of the section.

The learned Chief Justice observed that in such a case the execution of the decree is not stayed but only execution in certain ways and against certain persons or properties is prevented, and then added :

> But assuming 'stayed' includes 'stayed in part', the utmost that can be claimed under the terms of the section is that if a decree-holder is restrained for a time from proceeding against some particular judgment-debtor or some particular property or in some particular way and when the bar is lifted, he applied for execution against the same judgment-debtor or the same property or in the same way, he will be entitled to exclude the period during which he remained restrained.

10. We feel, that there is no justification for placing a rigid construction on a beneficent provision like Section 15(1) of the Limitation Act. It is not necessary for us to go into the history of the legislation which has been dealt with at length in many of the decisions laying down that Section 48 of the Code is controlled by Section 15(1) of the Limitation Act. All that we need say is that both the enactments have throughout been treated as supplementary to each other, and concern with procedural law. It is also true that in construing statutes of limitation consideration so hardships and anomaly are out of place. Nevertheless, it is, we think, permissible to adopt a beneficent construction of a rule of limitation if alternative constructions are possible. It is plain on the terms of Section 15(1) that the word "execution" appearing in the collocation of words "the execution of which has been stayed" must be construed in a liberal and broad sense. As observed by the Calcutta High Court in Sreenath Roy case the words "execution of the decree" mean the enforcement of the decree by what is known as "process of execution".

11. Agreeing with the Full Bench, we are inclined to the view that the word "execution" in Section 15(1) embraces all the appropriate means by which a decree is enforced. It includes all processes and proceedings in aid of, or supplemental to, execution. We find no rational basis for adopting a narrow and restricted construction on a beneficent provision like the one contained in Section 15(1). There is no reason why Section 15(1) should be given a restricted meaning as allowing the benefit to a decree-holder where there is a complete or absolute stay of execution and not a partial stay, i.e. a stay which makes the decree altogether inexecutable. Nor can we subscribe to the proposition that in cases of partial stay, the benefit under Section 15(1) can be had only where an execution application is directed against the same judgment-debtor or the same property, as against whom an execution was previously stayed. Stay of any process of execution is therefore stay of execution within the meaning of the section. Where an injunction or order has prevented the decree-holder from executing the decree, then irrespective of the particular stage of execution, or the particular property against which, or the particular judgment-debtor to prolong the life of the decree itself by the period during which the injunction or order remained in force. The majority view to the contrary taken by some of the High Courts overlooks the well settled principle that when the law prescribes more than one modes of executions, it is for the decree-holder to choose which of them he will

pursue.

12. For these reasons, the appeal must fail and is dismissed with costs.

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