

Kotak & Co.

Vs

State of U.P.

Civil Appeal No. 1295 Of 1973

(M. P. Thakkar, B. C. Ray JJ)

08.01.1987

JUDGMENT

THAKKAR, J. -

1. The proposition canvassed by the appellant, namely, that from the point of time that an order for rateable distribution is passed by the executing court the monies in question cease to be the property of the judgment-debtor and become the property of the decree-holder, regardless of whether or not actual payment pursuant to the said order is made, is supported by the decisions of three High Courts namely, Madras, Calcutta and Bombay. As early as in 1922 the Madras High Court in *Official Receiver of Tanjore v. M. R. Venkatarama Iyer* (AIR 1922 Mad 31 : 42 MLJ 361 : 68 IC 512) has taken the view canvassed by the appellant as is evident from the passage quoted hereunder :

It seems to me that from the time of the order of rateable distribution the money must be treated as belonging, not to the judgment-debtor, Nataraja Iyer, but to the decree-holder in whose favour the order was passed. Mr Devadoss for appellant contended that the effect of a rateable distribution order is merely to allocate the money to the different suits without affecting its ownership. The latter, he says, still rests in the judgment-debtor by the sale of whose property it was allocated. I do not think this is so. The section does not speak of distribution to the credit of the different decrees, but of distribution among the decree-holders. The latter are entitled to draw it out at will; and the judgment-debtor most certainly is not. I think the money in this case must be treated as the property of the decree-holder, the present respondent and that the Official Receiver could no more recover it from court than he could recover it from the respondent if it had actually been paid out to him by court. Mr. Devadoss eventually admitted that he could not recover the money in the circumstances of the present case if it had passed into respondent's possession. I would dismiss the appeal with costs.

2. A learned single Judge of the Calcutta High Court has expressed the same view in *Murli Tahilram v. T. Asoomal & Co.* (AIR 1955 Cal 423) wherein it is observed :

But where a private citizen has sued another to judgment and has in fact got by an order of court a Receiver appointed of his goods and such goods have been sold by the Receiver under orders of the court and where there has been a prior direction in the court's order to pay the sale proceeds to the private judgment-creditor, a subsequent claim by the State for arrears of sales tax cannot defeat the judgment-

creditor or deprive him of the fruits of his decree which is regarded as property.

And the same view has been reiterated by a Division Bench of the Calcutta High Court in *Basanta Kumar Bhattacharjee v. Panchu Gopal Dutta* (AIR 1956 Cal 23) wherein the court has taken recourse to the following reasoning to support the proposition :

This contention, we think, should prevail. The order allowing the application for rateable distribution that was passed on December 2, 1953 should, we think, be reasonably read as deciding that the decree-holders had title to the money. What remained to be done was the ascertainment of the exact amount which each decree-holder was entitled to and payment of the same.

The decision as regards title had already been made and with the decision that the money was the decree-holder's money, the position, in our opinion, was that it could no longer be considered in law to be the judgment-debtor's money. The question of priority of the State's claim does not, therefore, fall to be decided. On the date the letter of attachment of the Certificate Officer was received, there was no money belonging to the judgment-debtors in the hands of the court.

The High Court of Allahabad which has differed from the aforesaid High Courts by the judgment under appeal has proceeded on the assumption that the High Court of Bombay has taken a contrary view in *ITO v. Chandanbai Balaram Doshi* (AIR 1957 Bom 91 : 58 Bom LR 564 : ILR 1956 Bom 743). We are afraid, the principle enunciated by the High Court of Bombay in the said case has been misunderstood. No order for rateable distribution had been passed by the executing court in the said case. Even so, while discussing the law on the subject in the context of the scheme of the CPC, the High Court of Bombay has articulated the principle thus :

The scheme clearly indicates that until the court has directed appropriation of the amount to the claim made by the decree-holder or creditors entitled to rateable distribution, the amount received in court continues to remain as of the judgment-debtor....

By necessary implication it means that as soon as an order for rateable distribution is made, the amount ordered to be distributed will cease to be the property of the judgment-debtor. We are of the same opinion as that of the High Courts of Madras, Calcutta and Bombay. As soon as the question of rateable distribution between the decree-holders and the State having statutory priority is determined, and the court passes an order as to how to appropriate the assets of the judgment-debtor, the rights of the parties become crystallized. What then remains is to give effect to the determination made by the court by officials in charge of concerned departments dealing with Accounts and Cash which is a ministerial act. The rights of the respective decree-holders or claimants are governed by the order for rateable distribution passed by the court as a result of the adjudication and determination made by the court. Nothing further remains to be done by the court in the judicial sphere thereafter. The order partakes of the character of a judgment and decree passed by the court. What the officials of the Accounts and Cash department are required to do thereafter is to carry out the command of the court by implementing or giving effect to the order. The test which can be usefully applied is to pose the question whether the said officials can refuse to implement the order by refusing to make payment once the court has passed the order. Obviously and undoubtedly they cannot. Therefore it is evident that nothing turns on whether or not actual payment pursuant to the order of the court is made. And when the court officials make payment to the decree-holder, they make payment because the property in the said monies has vested unto them by virtue of the order

of distribution passed by the court. What is being paid by the officials of Accounts and Cash sections will be the decree-holder's money, it having ceased to belong to the judgment-debtor the moment the order for distribution was made, even though actual disbursement was made later. If the State lays its claim after the order for distribution is made by the court, it will be of no avail as the property would have gone beyond the reach of the State, it having ceased to be the property of the debtor against whom the State had a claim. No question of priority can arise in that situation -the State having missed the bus. In the present case, the amount had ceased to be the property of the judgment-debtor from the point of time that the order for rateable distribution was passed by the executing court. There was no question therefore of the State being entitled to claim priority in respect of the claims lodged by it subsequent to the order for rateable distribution. The High Court was thus in error in reversing the order passed by the executing court.

3. We, therefore, allow the appeal, set aside the order of the high Court insofar as the appellant is concerned, and restore the order of the executing court insofar as the appellant is concerned.

4. The appeal is disposed of accordingly. There will be no order as to costs.

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