SUPREME COURT OF INDIA

RATANSINGH

Vs.

VIJAYSINGH AND ORS.

11/12/2000

(K.T.Thomas, R.P.Sethi)

Appeal (civil) 7194 2000

J U D G M E N T

THOMAS, J. Leave granted.

A decree-holder after securing a decree went into slumber and remained as such for a pretty long period like a Rip Van Winkle. When he awoke he realised that his decree became rust corroded and lost its enforceability due to efflux of a number of years. In his search to find out at least a straw to cling on he came across an order of the High Court by which a Second Appeal preferred by his opposite party was dismissed as time barred. The Execution Court resuscitated the decree with the help of the said order, but the District Court in a revision held otherwise. This appeal by Special Leave is against the order of the District Court as the High Court shut its door for the decree-holder when he knocked at it. The High Court pointed out to him that the revisional powers of the High Court under Section 115 of the Code of Civil Procedure (for short the Code) had already been exercised by the District Court on which such powers were delegated in the State of Madhya Pradesh.

The decree which the appellant succeeded in obtaining was one for possession of the suit property. The trial court passed the decree on 14.12.1970. The respondent filed the First Appeal against it but it was dismissed on 1.8.1973. The execution petition was filed only on 24.3.1988 which obviously was beyond time fixed by the Limitation act. Then appellant thought of availing himself of the benefit of an order passed by the High Court on 31.3.1976 when the High Court rejected a Second Appeal filed by the respondent against the decree and judgment of the first appellate court. That order of rejection was passed only on the ground that the delay in filing the Second Appeal was not properly explained. As the appellant now made an endeavour to utilize the said order we may extract the material portion of it hereunder:

In the light of the foregoing discussion, it is apparent that the cause does not appear to be genuine and even if it is true, it has arisen due to the negligence or inaction of the appellant and his counsel. A cause which has arisen due to the negligence or inaction of the appellant and/or his counsel, cannot be said to be a sufficient cause. In the result, I find that no sufficient cause for condonation of delay in the filing of this appeal has been made out. The application has, therefore, to be rejected and is accordingly rejected. Consequent to the rejection of this application, the appeal also stands dismissed as barred by time. I make no order as to costs.

Though the ending statement in the said order is that the appeal also stands dismissed, a reading of the order as a whole makes it clear that the second appeal was not entertained on merits at all. The High Court considered the only question whether the second appeal filed by the judgment debtor could be treated as valid appeal to be heard on merits. As the High Court found that the appeal was presented after the expiry of the period of limitation and since there was no valid explanation for the delay, the application for condonation of delay was liable to be dismissed and consequently the second appeal was rejected.

Learned counsel for the appellant contended before us that dismissal of the second appeal would make the position different as the time would run from the date of such dismissal. He adopted a second contention that interpretation of law of limitation should be such as to prevent the scuttling of the remedy.

Article 136 of the Schedule to the Limitation Act 1963 provides 12 years for execution of any decree or order of any civil court (other than a decree granting a mandatory injunction). The third column in the Article which indicates the time from which period begins to run, states that when the decree or order becomes enforceable.

The forerunner of the said Article in the Limitation Act, 1908, (for short the old Limitation Act) was Article 182. It worded like this: For the execution of a decree or order of any civil court not provided for by Article 183 or by section 48 of the Code of Civil Procedure, 1908 3 years (or where a certified copy of the decree or order has been registered 6 years). The time from which the period would begin to run was shown as (1) the date of the decree or order, or (2) where there has been an appeal the date of the final decree or order of the appellate court, or the withdrawal of the appeal. (There are some other items also in the third column of the Article but they are not relevant for the purpose of this case). Section 48 of the old CPC prescribed a period of 12 years before the expiry of which a fresh application could be made for execution. It must be noted that the present Limitation Act has amended Section 48 of the old CPC. The position under Article 182 of the old Limitation Act was quite different from its corresponding Article 136 of the present Limitation Act. Now period of execution of a decree starts running from the date when it becomes enforceable. In the Objects and Reasons for introducing the bill for altering the parameters of Article 182 following has been stated, inter alia, thus:

Existing Article 182 has been a fruitful source of litigation and therefore the proposed Art.135 (now Art.136) in lieu thereof, provides that the maximum period of limitation for the execution of a decree or order of any civil court shall be 12 years from the date when the decree or order became enforceable (which is usually the date of the decree or order) or, where the decree or subsequent order directs any payment of money or delivery of any property to be made at a certain date or at recurring periods, from the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree or order. There is no reason why a decree should be kept alive for more than 12 years; Section 48 of the Civil Procedure Code, 1908, provides that a decree ceases to be enforceable after 12 years.

When is a decree becoming enforceable? Normally a decree or order becomes enforceable from its date. But cases are not unknown when the decree becomes enforceable on some future date or on the happening of certain specified events. The expression enforceable has been used to cover such decrees or orders also which become enforceable subsequently.

Filing of an appeal would not affect the enforceability of the decree, unless the appellate court stays

its operation. But if the appeal results in a decree that would supersede the decree passed by the lower court and it is the appellate court decree which becomes enforceable. When the appellate order does not amount to a decree there would be no supersession and hence the lower court decree continues to be enforceable.

A decree is defined in Section 2(2) of the CPC as under: Decree means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Sec. 144, but shall not include- (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default.

Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

In order that decision of a court should become a decree there must be an adjudication in a suit and such adjudication must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit and such determination must be of a conclusive nature. If those parameters are to be applied then rejection of application for condonation of delay will not amount to a decree. Consequently, dismissal of an appeal as time barred is also not a decree. We are aware that some decisions of the High Courts have taken the view that even rejecting an appeal on the ground that it was presented out of time is a decree within the meaning of the said definition. We are also aware of the contrary decisions rendered by High Courts on the same point. Dealing with some of those decisions a Full Bench of the Calcutta High Court [S.P. Mitra, CJ, Sabyasachi Mukherjee, J (as he then was) and S.K. Datta, J] has held in Mamuda Khateen and ors. vs. Beniyan Bibi and ors. (AIR 1976 Calcutta 415) that if the application under Section 5 of the Limitation Act was rejected the resultant order cannot be decree and the order rejecting the memorandum of appeal is merely an incidental order. The reasoning of the Full Bench was that when an appeal is barred by limitation the appeal cannot be admitted at all until the application under section 5 of the Limitation Act is allowed and until then the appeal petition, even if filed, will remain in limbo. If the application is dismissed the appeal petition becomes otiose. The order rejecting the memorandum of appeal in such circumstances is merely an incidental order. We have no doubt that the decisions rendered by the High Courts holding the contrary view do not lay down the correct principle of law.

In such a situation the mere fact that the second appeal was dismissed as a corollary to the dismissal of application for condonation of delay has no effect on the decree passed by the first appellate court.

Learned counsel cited the decision of a two Judge Bench of Calcutta High Court in Shyama Pada Choudhury vs. Saha Choudhury & Co. & ors. (AIR 1976 Calcutta 122) as the Bench repelled the contention that the time would start running from the date of the decree of the lower court when the appellate court did not interfere with the lower court decree. That position was adopted in the background where the appellate court affirmed the decree of the lower court though with a slight modification regarding the costs portion. In such a situation it was rightly held that the appellate court decree became enforceable and hence the time would start running from the date of that decree.

Learned counsel reminded us of the observation made by this Court in Anandilal & anr. vs. Ram

Narain and ors. (AIR 1984 SC 1383) that there is no justification for placing a rigid construction on the provisions of the Limitation Act. But we must remind ourselves of the other profile that in construing statutes of limitation, considerations of hardships are out of place. What is needed is a liberal and broad based construction and not a rigid or narrow interpretation of the provisions of the Limitation Act.

The observations of the Privy Council contained in Nagendra Nath Dey and anr. vs. Suresh Chandra Dey and ors. (AIR 1932 PC 165) cited by the learned counsel do not help in the present context as it related to the scope and interpretation of Article 182 of the old Limitation Act. The serious departure made by the Parliament from the said article to the present one cannot be lost sight of while considering the decisions rendered under the former article.

So the end result is this: The decree became enforceable on 1.8.1973 when the appellate court passed the decree which superseded the decree of the trial court. As no decree was passed by the High Court in the second appeal the decree of the first appellate court remained unaffected and the enforceability once commenced remained undisturbed for a period of 12 years therefrom. The execution process initiated by the appellant long after the expiry of 12 years from 1.8.1973 is thus irretrievably barred. Hence no interference is called for. The appeal is accordingly dismissed.