

SUPREME COURT OF INDIA

Akkayanaicker

Vs

A.A.A. Kotchadainaidu

Appeal (Civil) 160 of 1999

(Ashok Bhan and S.H.Kapadia)

23/09/2004

JUDGMENT

ASHOK BHAN, J.

Appellant/decreed-holder being aggrieved against the judgment and order of the High Court of Judicature at Madras in CRP No. 3540 of 1992 wherein the High Court while allowing the Civil Revision Petition filed by the respondent has dismissed the execution petition filed by the appellant, has filed the present appeal by leave of the Court.

Appellant/decreed holder (hereinafter referred to as "the decree holder") filed O.S. No. 322 of 1972 seeking a decree in the sum of Rs. 18, 912/- along with agreed rate of interest @ 12% p.a. being the principal and the interest due on the promissory note dated 3.6.1968 executed by the respondent/judgment debtor (hereinafter referred to as "the judgment debtor"). The suit was decreed on 2.5.1973. This decree became final between the parties.

Decree holder filed execution petition No. 226 of 1973 but the proceedings in the same were closed because of the legislative intervention of the Tamil Nadu Indebted Agriculturists (Temporary Relief) Ordinance, 1975 (Ordinance 1 of 1975). As per Section 3 no suit for recovery of a debt or an application for execution of a decree for payment of money passed in a suit for the recovery of a debt could be instituted against an agriculturist in a civil or revenue court before the expiry of a year from the date of the commencement of the Ordinance. Section 4 provided for the stay of proceedings in the suits or applications of the nature mentioned in Section 3 in which relief claimed

was against the agriculturist, not being proceedings for the amendment of pleadings or for the addition, substitution, or the striking off of parties, but otherwise inclusive of proceedings consequent on orders or decrees made in appeals, revision petitions, or applications for review. Section 5 provided that in computing the period of limitation or limit of time prescribed for a suit for the recovery of a debt or an application for the execution of a decree passed in such suit, the time during which the institution of the suit or making of the application was barred by Section 3 of the Ordinance or during which the plaintiff or his predecessor-in-title believing in good faith that Section 3 of the Ordinance applied to such suit or such application refrained from instituting the suit or making the application shall be excluded. The execution of the decree already obtained was suspended for a period of one year.

The legislature thereafter enacted Tamil Nadu Indebted Agriculturists (Temporary Relief) Act, 1975 [Act 10 of 1975] with the object to provide temporary relief to the indebted agriculturists to spare them from the distractions and expenditure involved in litigation launched by their creditors in order that the maximum possible advantage may result to the State in the matter of production of food crops. Section 3, as in the Ordinance, created a bar to the institution of the suits or applications for execution of a decree for payment of money passed in a suit against an agriculturist for a period of one year from the date of the commencement of the Act. Section 4 provided for stay of proceedings if the suits or applications for execution of a decree had already been instituted and Section 5 provided for exclusion of time in computing the period of limitation or limit of time prescribed for a suit for the recovery of the debt or an application for execution of a decree passed in such suit. After the expiry of one year of the Act 10 of 1975, the legislature enacted The Tamil Nadu Indebted Agriculturists (Temporary Relief) Act, 1976 [No. 15 of 1976] with the same object as of Act 10 of 1975 and with similar provisions of bar of institution of suits and the applications for execution, stay of proceedings and exclusion of time while computing the period of limitation for filing the suits or the applications for execution of a decree. Thereafter, the legislature enacted The Tamil Nadu Debt Relief Act, 1978 [Act No. 40 of 1978] for scaling down the debts obtained by the agriculturists including the decrees already passed. Judgment debtor filed an application for scaling down the decree dated 2.5.1973 in terms of Act 40 of 1978. Executing Court scaled down the decree on 18.10.1979 in terms of the Act 40 of 1978.

The decree holder filed execution petition No. 412 of 1989. The judgment debtor filed application E.A. No. 399 of 1991 in E.P. No. 412 of 1989 stating therein that the execution petition filed by the decree holder in the year 1989 was beyond the period of limitation, the same having been filed after 12 years from the date of the passing of the original decree dated 2.5.1973. It was prayed that the proceedings in the execution petition No. 412 of 1989 be terminated. The case of the decree holder was that the execution petition was within limitation as the same had been filed within 12 years of the scaling down of the original decree and the passing of the amended decree on 18.10.1979. The executing court did not accept the contention advanced on behalf of the Judgment debtor and dismissed E.A. No. 399 of 1991 filed by them. It was held that limitation to file the execution petition under Article 136 of the Limitation Act, 1963 would start from the date the decree was amended as it is from that date the decree became enforceable.

The judgment debtor being aggrieved against the order passed by the executing court filed CRP No. 3540 of 1992 in the High Court of Judicature at Madras which was accepted. The High Court held that E.P. No. 412 of 1989 was filed beyond the period of limitation. That the limitation of 12 years for execution of the decree would start running from the date of the passing of the original decree i.e. 2.5.1973 and not from the amended decree dated 18.10.1979. Aggrieved against the aforesaid, special leave petition was filed by the decree holder in which the leave has been granted.

It may be mentioned here that the decree holder filed execution petitions 62 of 1980, 12 of 1981 and 681 of 1984. Thrice arrest warrants were issued against the judgment debtor. Once he was arrested but he escaped from the custody and absconded. On an application filed by the decree holder, his property was brought to auction sale. Judgment debtor deposited Rs. 50/- and Rs. 100/- towards the payment of the decretal amount. The case was adjourned innumerable times at the requests of the judgment debtor to pay the decretal amount but in spite of the arrest and the publication for auction sale of his property the judgment debtor failed to deposit the decretal amount.

Shri Nedumaran, learned counsel appearing for the decree-holder has argued that for the purpose of Article 136 of the Limitation Act, 1963 (hereinafter referred to as "the Act") the starting point of limitation is not the date of the decree but the date when the decree becomes enforceable. The proceedings in execution application No. 226 of 1973 filed by the decree-holder were closed and adjourned sine die because of the legislative intervention of Tamil Nadu Indebted Agriculturists (Temporary Relief) Ordinance, 1975 and thereafter by the Act 10 of 1975 and Act No. 15 of 1976 which provided for the stay of filing of the suits and the applications for execution of a decree for recovery/payment of money and the period during which the execution of the decrees remained suspended was to be excluded. When there was a legislative bar for the execution of a decree and later due to legislative intervention the decree had to be scaled down and amended then enforceability of decree shall commence when the bar ceases or from the date the decree is amended and scaled down. The decree was scaled down on 18.10.1979 in terms of Act No. 40 of 1978 and it is from that date the decree became enforceable. Reckoned the period of 12 years from this date as provided under Article 136 of the Act the execution application filed by the decree-holder in 1979 was within the period of limitation.

As against this Shri Rishiraj Borooah, learned counsel appearing for the respondents strenuously contended that the period of 12 years for execution of the decree is to be reckoned from the date of the passing of the original decree and not from the date the decree was scaled down and amended.

On the above contentions, it has to be determined whether the execution application filed by the decree-holder was within the prescribed period of limitation? We shall commence the determination of the question by first reading Article 136 of the Act which is as follows:

"Description of suit

Period of limitation

Time from which period begins to run

136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court

Twelve years

(when) the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation."

From the perusal of Article, extracted above, it is clear that the execution of a decree (other than a decree granting a mandatory injunction) or order of any civil court, a period of 12 years is prescribed. Column 3 is in two parts indicating the time from which the period of limitation begins to run, that is, the starting point of limitation; the same are (i) when the decree or order becomes enforceable and (ii) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at the recurring period when default in making the payment or delivery in respect of which execution is sought, takes place. Proviso says that there shall be no period of limitation for enforcement or execution of a decree granting a perpetual injunction. In the present case, we are concerned with the first of the above- mentioned starting points, namely, when the decree or order becomes enforceable.

Before the enactment of the Limitation Act, 1963 (Act 36 of 1963) the limitation for the purposes of execution had been dealt with under Section 48 of the Civil Procedure Code (for short "CPC") and Articles 182 and 183 of the Limitation Act of 1908. We are not concerned with Article 183 in the present case as the same was applicable to execution of decrees and orders of Courts established by Royal Charter and of the Supreme Court. Section 48 of the CPC and Article 182 covered the execution of the decrees and orders of all the civil Courts. Section 48 stated that "where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any such application presented after the expiration of 12 years from the date of the decree sought to be executed." Section 48 therefore provided a maximum period of 12 years before the expiry of which any fresh application for execution could be made and a decree ceased to be enforceable after 12 years. Article 182 governed the first and the successive execution applications which the decree-holder could file within such maximum period under the CPC. Article 182 also provided that such applications should be made within a period of three years from the various points of time specified in the Article. A competent execution petition had to satisfy both the requirements.

The Law Commission of India in its third report felt that Article 182 was a very fruitful source of litigation and had become a weapon in the hands of both the dishonest decree- holder and the dishonest judgment-debtor. The Law Commission in its report recommended that the maximum period of limitation for the execution of a decree or order of any civil court should be 12 years from the date when the decree or order became enforceable (which usually is the date of the decree) or where the decree or subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree. It was recommended that there was no need for a provision compelling the decree- holder to keep the decree alive by making an application every three years. Normally, a decree-holder is to realize his decree within a period prescribed but an exception was required to be made to the effect that the Court may order the

execution of a decree upon application presented after the expiration of a period of 12 years, where the judgment-debtor had by fraud or force prevented the execution of the decree at sometime within the 12 years immediately from the date of the application. That Section 48 of the CPC may be deleted and its provisions may be incorporated in the Act. It was recommended that Article 183 should be deleted.

In pursuance to the recommendations made by the Law Commission of India Section 48 of the CPC was repealed by Section 28 of the Act and Article 182 was replaced by the present Article 136. As noticed earlier in this judgment, Article 136 of the Act being the governing statutory provision, prescribes a period of 12 years when the decree or order becomes enforceable. This Court in Hameed Joharan Vs. Abdul Salam, 37, after referring to the meaning ascribed to the word "enforce" from various dictionaries held that the words "when the decree or order becomes enforceable" should be read in their literal sense and as per intention of the legislature 12 years period is to be reckoned from the date the decree became enforceable. It was observed that the language used by the legislature in Article 136 if read in its proper perspective must have been to clear up any confusion that might have arisen by reason of the use of the expression "the date of the decree or order" which was used in the earlier Act. The requirement of the Limitation Act in the matter of enforcement of a decree is the date on which the decree becomes enforceable or capable of being enforced. The intention of the legislature being clear and unambiguous a meaning other than the literal meaning of the words used in the statute did not arise.

Section 48 of CPC which provided for a limitation of 12 years for the execution of a decree has been replaced by Article 136 of the Act. The words 'when the decree becomes enforceable' which find place in Article 136 were not there in Section 48 of CPC. Because of the change brought about by the legislature the starting point of limitation would be the date on which the decree becomes capable of execution. The amendment carried out in the decree in the present case was substantial and not inconsequential like correction of clerical or arithmetic mistake under Section 152 of CPC. The decretal amount was substantially reduced because of the scaling down of the decree in terms of Act 40 of 1978. A learned Single Judge in Fatimunnisa Begum vs. Mohd. Zainulabuddin Saheb, , relying upon the expression in Article 136 of the Act "when the decree becomes enforceable" which is not there in Section 48 of the CPC concluded that the decree which was subjected to an amendment can be enforced only as amended and the period of limitation would start only from the date of the amendment of the decree. The learned Single Judge held as follows:

"The next decision on which reliance was placed was Ouseph v. Lona, AIR 1979 Ker. 14. This decision undoubtedly supports the case of the respondents. But I am unable to agree with the principle enunciated in this decision. No doubt, the principle of S. 48 is now embodied in Article 136 which provided for 12 years period of limitation for the execution of a decree, but the starting point must be determined with reference to the express language of Article 136 which says "when the decree becomes enforceable". These words were not there in S. 48. In my opinion, the proper interpretation would be, to reckon the period from the date of the decree that is sought to be enforced, i.e., if there is an appeal, it is the appellate Decree and if there is an amendment, it is from the date of the amended decree. As I said earlier, even in a case of affirmance, if time begins to run from the date of the appellate decree and not the original decree, much more so in the case of a decree which is amended as the original decree no longer retains its form. The amendment gives a fresh starting point of limitation. Even though Article 136 does not contain the words 'in case of an

*appeal', the Courts have construed that it is the appellate decree that is relevant as ultimately it is that decree which becomes capable of execution. In the case of an amendment, the original decree no longer retains its form and what is sought to be executed is the amended decree. Therefore, the words 'enforceable' must be construed with reference to the decree that is sought to be enforced. Reckoned from the date of the amendment, the execution petition filed is within time." **

In our opinion, learned Single Judge in the above case has correctly interpreted the scope of Article 136. We agree with the view expressed that in case of amendment the original decree no longer retains its form and what is sought to be executed is the amended decree. The word "enforceable" has to be construed with reference to the decree that is sought to be enforced. In the present case, as stated above, the decree- holder filed an application for execution in the year 1973 itself but its proceeding were closed and adjourned sine die because of the legislative intervention which continued till the legislature enacted Act No. 10 of 1978 and provided for the scaling down of the debts obtained by the agriculturists including decrees already passed. In pursuance to this legislative enactment the decree passed in favour of the decree- holder was substantially scaled down and the decree was amended on 18.10.1979 in terms of the Act No. 40 of 1978. It is this decree which became enforceable. Prior to this date the decree-holder could not enforce his decree because of the legislative intervention. The original decree could not be enforced. It is only the amended decree which could be enforced. **When there was a legislative bar for the execution of a decree and later due to legislative intervention the decree had to be scaled down and amended then enforceability of decree shall commence when the bar ceases or from the date the decree is amended and scaled down. If the period of 12 years is counted from the date of the amendment of the decree then the execution petition filed by the decree-holder on 18.9.1989 is within the period of limitation. #**

Further, on verification of the record we find that the decree-holder has all through been vigilant and initiated several proceedings to recover the decretal amount. The earlier execution application filed in the year 1973 was adjourned sine die because of the legislative intervention. After the amendment of the decree he filed execution petition Nos. 62 of 1980, 12 of 1981 and 680 of 1984. Thrice arrest warrants were issued against the judgment-debtor. Once he was arrested but he escaped from the custody and absconded. His property was put to sale. Judgment-debtor deposited Rs. 50/- and Rs. 100/- towards the payment of decretal amount. The case was adjourned a number of times at the request of the judgment- debtor but in spite of the adjournments given to satisfy the decree, his arrest and publication to sell his property, the judgment-debtor had failed to deposit the decretal amount.

For the reasons stated above, this appeal is accepted with costs. Order of the High Court is set aside and that of the executing court is restored. The executing Court shall now proceed with the execution petition and dispose it off in accordance with law. Since the decree is of the year 1973 we would request the executing Court to dispose of the execution petition on priority basis and if possible within a period of three months from the date of the receipt of the copy of this order.

Office is directed to remit back the original record to the executing Court immediately.

