

ALLAHABAD HIGH COURT

Panna Lal

Vs.

Saraswati Devi

Exn. Second Appeal No. 744 of 1958.

(S.S. Dhavan, J.)

06.01.1960

JUDGMENT

Dhavan, J.

1. This is a judgment-debtor's appeal against an order of the learned Additional District Judge, Kanpur rejecting his objections against execution and directing the execution court to proceed with the execution. As observed by the appellate court the amount involved is Rs. 100/- only but the judgment-debtor has thought fit to resist the execution to the extent of coming to this court in second appeal.

2. The decree-holder obtained a decree for possession and damages. Possession was delivered and the decree was satisfied to that extent. As regards the decree for damage she made several applications for execution which however were dismissed for default. On 4-1-1951 the judgment-debtor claiming to have satisfied the decree for damages outside the court, made an application under Order 21 Rule 2 C. P. C. The decree-holder opposed this application and prayed for its dismissal with costs. The application was ultimately dismissed, but the judgment-debtor filed an appeal which was not decided till 1956 when it was rejected.

3. On 14-2-1956 the decree-holder filed her final application for execution which has led up to the present appeal. The judgment-debtor objected that it was time barred. It is common ground that if limitation is to run from the dismissal of the last application for execution, the present application is beyond limitation. If, however, the proceedings initiated by the judgment-debtor under Order 21, Rule 2 C. P. C. are to be considered as a step in aid of execution of the decree, limitation would not run until the final rejection of this application in appeal in 1956 and the present execution would be within limitation. The trial court held that the proceedings under Order 21, Rule 2 did not save limitation but the learned Judge in appeal took a different view. He held that the execution is within time and reversed the decision of the execution court. The

judgment-debtor has come to this Court in appeal.

4. In my opinion the view of the appellate court is correct. It cannot be denied that whenever a judgment-debtor asks the court under Order 21 Rule 2 to certify a satisfaction of a decree, he makes it impossible for the decree-holder to execute the decree unless and until his application is rejected. Even if the decree-holder were to apply for execution he would not succeed without getting the judgment-debtor's application rejected. A written objection of the decree-holder asking the court to reject the application under Order 21, Rule 2 is step in laid of execution for it is calculated to remove an obstacle against the execution of the decree.

5. I am fortified in my opinion by a decision of a Division Bench of this Court in *Ghansham v. Mukha*¹, in which, in similar circumstances, a judgment-debtor's objection against execution on the ground of limitation was rejected on the ground that a previous application made by them to the court, with the co-operation of the decree-holder, stating that they had made payment to the decree-holder and that the balance would be paid thereafter with the decree-holder's consent and praying that the execution case be struck off was held to have kept in force the decree and therefore, saved it from becoming time-barred.

6. Learned counsel relied on a decision of the Madras High Court in *Kuppuswami Chettiar v. Rajagopala Iyer*², but with great respect to the learned Judges who decided that case, I am of the opinion that the words "to take some steps in execution of the decree" in the third column against Article 182 of the Limitation Act should be interpreted liberally in favour of the decree-holder. If he has taken any step which would remove an obstacle to the further execution of his decree, he would be entitled to the benefit of this provision. In the present case the decree-holder took steps to set aside an objection which was a hindrance against execution and was therefore, a step in aid of execution.

7. For these reasons the appeal must fail and is dismissed. The respondent decree-holder shall have his costs from the judgment-debtor throughout.

Appeal dismissed.

¹ ILR 3 All 320

² AIR 1922 Mad 79