CALCUTTA HIGH COURT

Habiba Bibi

Vs

Ram Ranjan Mullick

(R.C. Mitter. J.)

11.12.1936

JUDGMENT

R.C. Mitter, J.

1. The question involved in this appeal raises an important question of first impression, namely, about the scope of Section 10-C, Court of Wards Act, introduced into the Bengal Court of Wards Act of 1879 by the Amending Act 6 of 1936. The relevant facts are not in controversy and may be stated as follows. The appellants obtained on 23rd April 1932 a decree for Rs. 5,445-14-3 against the respondents, Ram Ranjan Mullick and others, who would hereafter be called the Mullicks. At that time the Mullicks were not wards of Court, but later on, on a date not material for the present proceedings, they were declared disqualified proprietors and the Court of Wards assumed management of their properties. On 2nd November 1935 the appellants put their decree into execution in the Court of the SubordinaTe Judge of Burdwan. At that time the Mullicks were wards of Court and so the execution was against them, represented by the manager of the Court of Wards. In the month of December 1935 some immovable properties in charge of the Court of Wards were attached; the terms of the sale proclamation were settled on 27 th January 1936 and on that date the sale was fixed for 5th April 1936. Later on, the sale was postponed to 5th May 1936. In the meantime Section 10-C, Court of Wards Act of 1879, was amended by Act 6 of 1936 [called the Court of Wards (Amendment) Act of 1935]. The said Act received the assent of the Governor-General in February 1936 and was published in the Local Gazette on 5th March 1936. From that date it came into force. On 28th March 1936 the judgment-debtors filed an application wherein they took up the position that the execution could not proceed further by reason of Section 10-C as amended toy Act 6 of 1936. The learned Subordinate Judge overruled the judgment-debtors' objection and allowed the execution to proceed. On appeal the learned District Judge agreed with the contention put forward by the judgment-debtors and dismissed the execution by his order dated 27th April 1936. It is against this order that this appeal has been filed by the decree-holders. Section 5 of Act 6 of 1936 has bodily removed Section 10-C from the parent Act and has substituted for it the following: 10-C. (1) Where any property is in charge of the Court of Wards no civil Court shall execute any decree or order against the person or property of the ward within four years from the date of the commencement of the Bengal Court of Wards (Amendment) Act, 1935 or from the date of the assumption of charge of the property by the Court of Wards, whichever is later, and for seven years thereafter if the interest due under such decree or order be paid in full every year during the said seven years....

In calculating the period of limitation applicable to an application for execution of a decree or order, the time during which the execution of such decree or order is barred under this sub-section shall be excluded.

2. The second sub-section is not material for the decision of this appeal. Section 10-C of the parent Act which was introduced by the amending Act of 1906 ran as follows: If a civil Court has directed any process of execution to issue against any immovable property of a ward, or rents thereof, or any crops standing thereon, the Court of Wards may, at any time within one year after it assumed charge of such property, apply to the civil Court to stay proceedings in the matter of such process; and the civil Court may, on such terms regarding interest or compensation for delay as may appear to it to be just and reasonable, stay such proceedings for such period as it may deem fit.

3. The decree-holders-appellants contend that Section 10-C which came into force on 5th March 1936 has no retrospective effect, at any rate does not apply to pending executions. A point of minor importance is also raised, namely, that if it applies to the present execution the proper order for the Court would be to stay the execution proceeding and not to dismiss it. The principles governing retrospective operations of statutes are well settled. When a statute takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions or considerations already past the presumption is, but it is only a presumption, that it is not to have retrospective operation. It is also a general rule that a statute which takes away or affects a right of action is presumed not to apply to pending actions. But these are general rules and are displaced when the intention of the Legislature, either expressed or to be gathered by necessary implication, is otherwise. Where the intention of the Legislature to give retrospective operation is not indicated by express words, the scope of the Act must be taken into consideration in deciding whether retrospective operation was intended by necessary implication. Bearing these principles in mind we have to gather the intention of the Legislature in respect of Section 10-C of the new Act. The Legislature has not by using express words made the section retrospective.

4. To us, however, it seems clear that the said section was intended to apply to decrees already obtained before Act 6 of 1936 came into force. This is the indication from the provision that decrees cannot be executed within four years of the commencement of the Act or within four years of the assumption of charge by the Court of Wards, whichever is later. That must necessarily include decrees that had already been passed before the said Act came into force. Accordingly if such a decree, that is a decree obtained before 5th March 1936, had been put into execution after the said date that execution could not proceed, there being in such a case no question of a pending proceeding at the date of the commencement of the Act, and in our view the section would also operate upon executions pending at the date of the commencement of the said Act (6 of 1936), as there is no saving in this respect by the Legislature. This is the principle formulated by the Right Hon'ble Sir George Rankin in K.C. Mukherjee v. Ram Ratan Koer . We realize that in that case Section 26(n), Tenancy Act, which was under consideration had no direct reference to legislation but in the circumstances of the case before as we hold that the said principle applies. Any other view would defeat the object which the Legislature had in view when it enacted Section 10-C. It is obvious that the intention of the Legislature was to give the Court of Wards time to pay up liabilities from the assets in its hands by preventing a forced sale for a limited period of time. Section 10-C, as introduced by the Act of 1906, gave the Court of

Wards a privilege, namely, the right to apply for stay of execution proceedings. This right could obviously be exercised only when an execution was pending as are the words of the section. The civil Court had a discretion to stay execution. Section 10-C as introduced by the Act of 1936 was obviously to enlarge the right of the Court of Wards in this respect by taking away the discretion to refuse which the civil Court had under the old section and in defining precisely the period of stay. The effect of holding that Section 10-C as introduced by the Act of 1936, does not apply to pending executions, would be to deprive the Court of Wards of the limited privilege it had enjoyed under the old Section 10-C, because that section is no longer in force being repealed by the Act of 1936. A similar reason weighed with Sir George Jessel when he held that Section 14, Sub-section 1, Conveyancing Act of 1881, was applicable to an action pending at the time when the said Act came into force: *Quitter v. Mapleson*[1]

5. The learned advocate appearing for the appellants has drawn our attention to Para. 2, Section 10-C, 01. (1) and has urged that paragraph indicates that Para. 1 was not intended by the Legislature to apply to pending executions. The process of execution involves a series of distinct steps to be taken from the date of the presentation of the application for execution till the decree is realized. The words used in Para. 1 are general: "no civil Court shall execute." Para. 2 enlarges the period of limitation provided for in the Limitation Act, as Section 15, Limitation Act, would not cover the case, that section contemplating a stay of execution by an order of Court. We accordingly hold that the learned District Judge was right in holding that Section 10-C stands in the way of the decree-holders.

6. The last question that has been raised is as to the form of the order. The learned advocate for the appellants has urged that if Section 10-C of Act 6 of 1936 applies the proper order would be to stay execution in the first instance for a period of four years from 5th March 1936. He says that the order dismissing his execution would deprive his clients of the benefit of the attachment already effected. Dr. Basak concedes the point. We accordingly do not express any view on the point as to whether an execution pending at the time when Act 6 of 1936 came into force is to be dismissed or stayed. Para. 2, Section 10-C Clause (1) would suggest that a dismissal order is the proper order, but as Dr. Basak has said that he would be satisfied if a stay order is made, we do not decide the point but in modification of the order made by the learned District Judge order the execution proceedings to be stayed tilt 5th March 1940, with liberty to the Court of Wards to apply to the Court of first instance for extension of the stay order for a further period, if they comply with the provisions about the regular payment of interest as provided for in the last part of para. 1 of Section 10-C. The result is that subject to the aforesaid modification the appeal is dismissed but without costs.

B.K. Mukherji, J.

7. I agree with my learned brother that the appeal should be dismissed with the modification regarding stay of execution proceeding. It is an established

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of construction that when the law is changed during the pendency of an action, it is the law which existed at the time of the commencement of the action that determines the rights of the

parties, unless the new law manifests a clear intention to the contrary. There is a well recognized exception to this rule in enactments which deal with adjective law and the reason is that nobody can be said to have a vested right in a particular form of procedure. In the case before us, the rights secured by the decree are strictly speaking not permanently impaired or taken away, but they are certainly suspended, and the decree-holder is prevented for a period of four years or more to reap the fruits of his decree. This is a clear encroachment on his vested right, and we have to ascertain therefore as to whether the new Section 10-C, Court of Wards Act, which came into force after the execution was started, and which to some extent pre-judicially affected the rights of the decree-holder, was meant to be retrospective in its operation, either by clear words used in the section or by necessary implication. One recognized method of finding out the intention of the Legislature, is to ascertain the object and necessity of the new enactment, by considering the state of law at the time when the Act was passed: Craies on Statute Law, Edn. 4, p. 119. "In order properly to interpret statute", said Lord St. Leonards, it is as necessary now as it was when Lord Coke reported Hayden's case Hayden v. Carroll 3 Ridg Parl Cas 545 to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide and the remedy provided by the statute to cure that mischief: (1857) 6 H L C 1424 at p. 179(supra).

8. The *cases Quitter v. Mapleson*[2] *and O'Flaherty v. Me Dowell*[3] furnish good instances of the application of this principle where the object of the new enactment was held to be the determining factor for giving retrospective operation to its provisions even in cases which were then pending in appeal. Now Section 10-C of Court of Wards Act, as it stood before amendment, empowered the Court of Wards to apply within one year after it had taken charge, for stay of proceedings in execution against any immovable property of the ward or against its rents and produce, and the civil Court could in its discretion stay proceedings for such period and on such terms as it thought proper. Manifestly the object was to allow some time to the Court of Wards, so that with better administration and management, they mightre-organise the ward's estate, and pay off the debts, thus saving the estate from being sold or depleted. The remedy, however, did not prove adequate, and the whole scope of the new statute seems to be to take away the discretion of the civil Court in the matter and fix the period for which suspension of execution proceedings could be demanded as a matter of right. If this is the primary object of the new enactment, the object would be certainly frustrated, if a distinction is made between cases, where the application for execution of the decree has already been made, and where no steps have yet been taken in that direction. Indeed the language of the new section makes it expressly retrospective to some extent by bringing within its scope all decrees, which were in question, at the date of the Act. This is clear from the words: No civil Court shall execute any decree or order against the person or property of the ward within four years from the date of the commencement of the Bengal Court of Wards Amendment Act 1935, which evidently contemplate that the decrees are already in existence when the Act comes into force. If the new section in express words cut down the rights of the existing decree-holders who had obtained decrees prior to the amending Act, it would be inconsistent with the principle of the Act to limit the provision to those decree-holders, who had not yet taken out execution. This would also appear from the words "no Court shall execute the decree," as used in the section. It would be a narrow interpretation to put upon the words to make them mean that the Court should not entertain the

first application for execution merely, but. might go on with all further steps in execution proceedings, if the petition for execution were already presented. The word 'execute', in our opinion, means and includes all the steps and processes in execution of a decree till it is fully satisfied. On these grounds I concur with my learned brother in the order that he has passed.

Cases Referred.

1(1882) 9 Q B D 672 at p. 675
2(1882) 9 Q B D 672
3(1857) 6 HLC 142