

LAHORE HIGH COURT

Managing Committee Sundar Singh

Vs

Sundar Malha Singh Sanatan

(Abdur Rahman, J.)

16.02.1945

JUDGMENT

Abdur Rahman, J.

1. The facts have been given both in the referring order made by the Division Bench on 26th March 1948 and by the Full Bench in its judgment, dated 12th May 1943. They need not, therefore, be repeated. It has now been held by the Full Bench that an application for restitution under Section 144, Civil Procedure Code, is not to be regarded as an application for execution of decree. The result is that the period for which the proceedings under the orders of this Court remained suspended cannot be excluded under Section 15, Limitation Act. Learned Counsel for the appellant however contends that in so far as his client Bam Singh could not have, in view of the orders passed by this Court, made an application for restitution for the sum of ₹ 616-2-0 which had been deposited in Court on his behalf before the decision by their Lordships of the Privy Council was registered by this Court, the time spent between 14th August 1934 and 8th July 1938, should nevertheless be excluded in counting the period of limitation. Learned Counsel for the respondent, on the other hand, urges (1) that Ram Singh was not prevented by this Court from making an application for restitution. The proceedings in execution were, it was admitted, suspended by this Court but it was argued that that order had the effect of preventing Raghunath Singh from proceeding with his application; (2) that this Court had suspended execution proceedings only and the order of this Court could not be construed as suspending the proceedings for restitution, and (3) that there is no provision in the Limitation Act under which the period for an application for restitution which has now been held by the Full Bench to be different from an application for execution could be extended by this Court.

2. As to the first question it must be conceded that the application for execution and restitution was made by Raghunath Singh on 10th July 1934, but it must be observed that it was made by him in pursuance of a resolution of the managing committee which had authorised both Ram Singh and Raghunath Singh to take steps to recover the amount due from the trust. It must also be remembered that the application by Raghunath Singh was both for execution and restitution.

An order for attachment was consequently issued by the trial and execution Court on 19th July 1934. But as the trust had already made an application for leave to appeal to His Majesty in Council under Section 110, Civil Procedure Code, an application was made to this Court for stay of execution. This was granted by a Bench of this Court and the execution of the decree was accordingly suspended by the Subordinate Judge. Raghunath Singh appears to have objected on 25th July 1934 on the ground that the stay order was in respect of injunction alone and neither in respect of recovery of costs granted by the High Court nor as regards the refund of what was paid in accordance with the orders of the Court of first instance. This objection prevailed with the Subordinate Judge who directed the proceedings is continue in respect of the recovery of ₹ 2930 which included the sum of ₹ 616-2-0 for which restitution had been asked for. This led the trust to make an application for stay on nth August 1934 to this Court. Paragraph 3 of that application reads as follows: That the respondents have in spite of the service of notice proceeded in execution for the costs of the case amounting to ₹ 2930. It would thus appear that in making this application to this Court the respondents had included the item for which restitution was being asked for and had asked for the stay of execution in respect of that item as well. It is true that in its application the trust complained that the committee had proceeded to take steps to recover the amount by execution but by including the sum of ₹ 616-2-0 which it was proceeding to recover by way of restitution, the trust must be held to have used the term "execution" as covering "restitution" as well. This application was granted by this Court on 14th August 1934, in the following words:

An ad interim order staying further execution proceedings till the disposal of the petition under Order 45, Rule 13, dated 17th July 1934 may issue.

The words "further execution proceedings" in this order must, therefore, be read in the sense in which they were used by the respondents in their application dated 11th August 1934, and in consequence of which Raghunath Singh at least was prevented from taking any steps to realise ₹ 616-2-0 by way of restitution. This disposes 'of the second objection raised by learned Counsel for the respondents. As to the first objection, it is true that Raghunath Singh alone had, in pursuance of the committee's resolution, made an application for restitution and execution but the orders passed by this Court on 14th August 1934 and continued from time to time until they were confirmed on 18th June 1936, and according to which the execution of the whole decree had to remain stayed until the decision by their Lordships of the Privy Council were quite general in their terms and it was not possible for Ram Singh in the face of these orders to make an application for restitution of the money which had been paid on his behalf. This settles the first objection advanced by Mr. Chawla on behalf of the respondents.

3. The question then is whether the time during which Ram Singh could not make an application for restitution has to be excluded in computing the period of limitation. It is true that the

provisions of Section 15, Limitation Act, could not be attracted to proceedings for restitution and the time during which Ram Singh was precluded from making the application could not be excluded under that section but I see no reason why the same principle on which Section 15 is based should not be extended to an application for restitution as well. A Division Bench of the Allahabad High Court in

*Badruddin Khan v. Mahyar Khan*¹, of which my Lord the Chief Justice was a member was of the view that the time during which a party is prevented from taking an action under the orders of the Court has to be excluded in computing the period of limitation for that act and I find myself in respectful agreement with the same. In giving their decision the Division Bench of the Allahabad High Court had referred to an observation by Lord Eldon in *Pultancy v. Warren*² which was to the following effect:

If there be a principle upon which Courts of justice ought to act without scruple, it is this--to relieve parties against that injustice occasioned by its own acts or oversights at the instance of, the party against whom the relief is sought. That proposition is broadly laid down in some of the cases.

This principle fully applies to the facts of the present case. It is at the instance of the present, respondents that the execution and restitution had been stayed and they cannot now turn round and contend that the time during which they had prevented the other party from making the application for restitution should not be excluded. For the above reasons I would hold that the application by Ram Singh made by him on 31st August 1939, was within time. The application should now go back for an expeditious disposal according to law to the execution Court. The appellants will have the costs of proceedings in this Court.

Harries C.J. –

I agree.

¹ AIR 1939 All 66 : 1939 AWR (H.C.) 987

²(1801) 6 Ves. 73