

MADHYA PRADESH HIGH COURT

C. P. Syndicate Ltd.

Vs.

Firm Hasanali Abdul Ali

Letters Patent Appeal No. 4 of 1955, Decided on 13.2.1959 from judgment of J.R. Mudholkar, J. in Misc. First Appeal No. 163 of 1949 (G.P. Bhutt, C.J., T.C. Shrivastava and P.K. Tare, JJ.)

17.02.1954. 13.02.1959

JUDGMENT

Bhutt, C.J.

1. This is a letters patent appeal of the C. P. Syndicate Ltd., Nagpur, against the order of Mudholkar, J. in Miscellaneous (First) Appeal No. 163 of 1949, confirming the order of the Additional (District Judge, Chhindwara, in civil suit No. 3-B of 1934, by which its execution application was held to be barred by limitation.

2. The C. P. Syndicate Ltd., Nagpur obtained a consent money decree on 22nd July 1936 in the Court of the, First Additional District Judge, Nagpur, in civil suit No. 3-B of 1934, against Hasan Ali, Gulam Abbas and Abdul Kadar who are brothers. The decree was subsequently transferred for execution to the Court of the Additional District Judge, Chhindwara. The decree-holder filed an application for execution of the decree on 5-4-1941, which was dismissed on 13th December, 1941. A fresh execution application was filed on the same date, namely, 13th December 1941. Hasan Ali made an objection to the execution alleging that on 18th July 1936 the decree-holder had entered into an agreement with him that the execution of the decree would be permanently stayed and he would pay the decretal amount on monthly installments of Rs. 100/- commencing on the termination of two years from file date of the decree. This objection was dismissed on 25th July 1942. On 30th September 1942, Hasan Ali preferred an appeal to the High Court. Thereafter the execution application was dismissed on 25th September 1943. A fresh execution application was then filed on 5th May 1944, which was dismissed on 18th November 1944. The appeal to the High Court was thereafter dismissed on 5th December 1947. Afterwards, the decree-holder

filed another execution application on 6th January 1948. This execution application was held to be barred by limitation by the Additional District Judge, Chhindwara, and his order was upheld in appeal by the learned Single Judge.

3. The learned counsel; for the decree-holder rested his case only upon Article 182(5), Schedule I, of the Indian Limitation Act, 1908, which is reproduced below :
Description of suit. Period of limitation 182. For the execution of a decree or order of any Civil Court not provided for by Article 183 or Section 48 of the Code of Civil Procedure, 1908. Three years or where a Certified copy of the decree has been registered, six years. (5) (Where the application next hereinafter mentioned has been made) the date of the final order passed on an application made with law to the proper Court for execution, or to take some step in aid of execution of the decree or order.

This provision requires –

- (1) that there must be an application to the proper Court for execution or to take some step in aid of execution of the decree or order;
- (2) that the said application must be made in accordance with law; and
- (3) that the order made thereon must be a final order. Explanation 2 defines 'proper Court' as meaning the Court whose duty it is to execute the decree or order.

4. Here the execution application made on 13th December 1941 was doubtless made to the proper Court which, under Section 38 of the Code of Civil Procedure, is either the Court which passes the decree or the Court to which it is sent for execution. It is also not in dispute that the application was made in accordance with law. The only question is whether the final order on the application must be deemed to have been made on 25th, July 1942, when the objection of Hasan Ali was dismissed by the executing Court or on 5th December 1947, when his appeal was dismissed by the High Court.

5. While considering this question, the cases decided before the amendment of Article 183(5) by the Indian Limitation (Second Amendment) Act, 1927, are not to be taken into consideration, for before the amendment, clause (5) of Article 182 made the date of applying for execution or to take some step in aid of execution of the decree or order, as the date from which the limitation was to be computed. It is no doubt true that a final order must be held to be an order which finally determines the rights of the

parties so far as the Court passing the order is concerned. The order passed by the executing Court would also, therefore, be a final order. However, the question is whether that order alone is the final order when the matter has been taken up in appeal to a higher Court.

6. This question came up before their Lordships of the Judicial Committee in *Annamalai Chettiar v. Valliammai Achi* ¹ In that case, the objection of the judgment-debtor to the attachment of certain sums of money in the hands of the garnishees was allowed on 22nd October 1936. Against that order, the decree-holder appealed to the High Court on 3rd December, 1936. The appeal was dismissed on 27th September 1938. Thereafter the decree-holder filed another execution application on 25th November 1939. The question was whether limitation should be computed from 22nd October 1936 when the objection was allowed by the executing Court or from 27th September 1938, when the appeal was dismissed by the High Court. Their Lordships held on dual grounds that the limitation ought to be computed from the date on which the appeal was decided. First, they held that the execution petition ought to be held to be finally disposed of by the High Court on appeal and thus the case was brought within the first branch of Article 182(5). Secondly they held that the appeal to the High Court by the decree- holder must be held to be an application according to law to take a step in aid of execution of the decree to the proper Court. On the question whether the expression 'proper Court' included a High Court; their Lordships disagreed with the view expressed by the Bombay High Court in *Govinddas Rajaramdas v. Ganpatdas Narotamdas*, ² in which it was held that an appeal to the High Court was not an application to the proper Court within the meaning of Explanation 2 to Article 182(5). On this point, their Lordships observed :

"Under Section 107, Civil Procedure Code, an appeal Court has the same powers, and is required to perform, as nearly as may be, the same duties as are conferred and imposed by the Code on Courts of original jurisdiction. Where an application for execution is dismissed by the lower Court, the appeal Court is the proper and indeed the only court which can then execute the decrees of lower Courts; normally it remands the case to the lower Court with directions to execute according to law on the basis of the High Court's decision; but in a proper case, the High Court would no doubt execute the decree or order itself."

In similar circumstances, it was held in *Rajindra Prasad v. Indrasan Prasad* ³ that an

appeal by the decree-holder to the High Court must be treated as an application, made to the proper Court to take a step in aid of execution of the decree and accordingly the execution application which was filed within 3 years from the date of the dismissal of the appeal was held to be within limitation. However, the execution application could also be deemed to have been made within limitation under the first branch of Article 182(5) as was held by their Lordships of the Judicial Committee in the case of AIR 1945 PC 176 (supra) : see also *Golum Mustafa v. Arifunnessa* ⁴

7. There is no doubt that in the cited cases there was an obstruction to the execution of the decree by the .successful termination of the Judgment-debtor's objection by the executing Court, which the decree-holder was required to remove before he could proceed with the execution. In *Ibrahim v. Sheoprata* ⁵ it was accordingly held that where the objection of the judgment-debtor is dismissed by the executing Court, his appeal against the order of dismissal of the objection does not operate as a bar to the decree-holder taking out a fresh execution and consequently the limitation for the fresh execution runs from the date of the dismissal of the objection by the executing Court. The operation of Article 182(5), however, does not depend upon whether or not there is an impediment to the decree-holder issuing a fresh execution but anon the finality of the order passed on the application for execution. In a case where there is an appeal there is no finality until the appeal is decided. In *Negendra Nath v. Suresh*, ⁶ it was observed by their Lordships of the Judicial Committee as below :

"It is at least an intelligible rate that so long as there is any question sub judice between any of the parties, those affected shall not be compelled to pursue the so often thorny path of execution, which, if the final result is against them, may lead to no advantage."

Although these observations were made in a case governed by Article 182(2), they are equally applicable here.

8. In *Abhe Ram v. Bhola*, ⁷ where the appeal to the High Court was preferred by the objector who was a stranger to the decree, limitation was held to run under Article 182(5) from the date of the decision of the appeal. So also in *Rameshwar v. Rajendra* ⁸ and in *Harit Krishna v. Anil Krishna* ⁹ the appeals were made by the unsuccessful judgment-debtors but the limitation was held to run from the date of the decision of the appeal. So also in *Lakshmanan Chettiar v. Malayandi Chettiar* ¹⁰ in which the appeal had been preferred by the judgment-debtor, it was observed that an appeal is a

continuation of the proceedings in the lower Court and sets at large the finality attached to the decision of the subordinate Court, and, therefore, where an application has been made by the decree-holder to the proper Court for execution of the decree and there is an appeal against the order made on that application, it is the ultimate decision of the appellate Court that is the 'final order' within the meaning of Article 182 (5). Even under the residuary Article 181, in which limitation runs from the date on which the right to apply accrues, it was held by their Lordships of the Judicial Committee in *Jowad Hussain v. Gendan Singh*¹¹ that where an appeal has been preferred against a preliminary decree, the time for applying for final decree runs from the date of the appellate decree. In that case, their Lordships quoted with approval the following dictum of Tudball, J. in the Full Bench case of *Gajadhar Singh v. Kishen Jiwan Lal*¹² namely –

"If an appeal is preferred, the final decree is the decree of the appellate Court of final jurisdiction. When that decree is passed, it is that decree, and only that, which can be made final in the cause between the parties."

It will thus be observed that finality attaches only to the appellate order or decree of the Court of the highest jurisdiction, whichever party may file the appeal. In this view, it must be held that limitation for the application for execution filed on 6th January 1948 began to run from 5th December 1947 when the appeal was decided by the High Court, and accordingly the execution application was made within time.

9. The appeal is accordingly allowed, the orders passed by the learned Single Judge and the Additional District Judges, Chhindwara, are set aside and the case IB remitted to the Court of the Additional District Judge, Chhindwara, for taking further proceedings according to law. Cost throughout shall be on the judgment-debtors. Hearing fee Rs. 200/-.

Appeal allowed.

Cases Referred.

1. AIR 1945 PC 176
2. ILR 47 Bom 783
3. AIR 1954 Pat 46

4. 51 Cal WN 316
5. AIR 1926 Pat 129
6. AIR 1932 PC 165; ILR 60 Cal 1
7. 157 Ind Cas 604 K
8. ILR 30 Pat 338
9. AIR 1950 Cal 370
10. AIR 1954 Mad 177
11. AIR 1926 PC 93
12. ILR 39 All 641; AIR 1917 All 163