

BOMBAY HIGH COURT

Chanbasappa Nagappa Haveri

Vs

Holibasappa Basappa Motibennur

(Norman Macleod, K, C.J., Shah, J.)

01.02.1924

JUDGMENT

Norman Macleod, Kt. C.J.

1. This appeal raises an interesting point which does not seem to be covered by any distinct authority. The facts are somewhat confusing.-One Basappa Murgeppa filed a suit against Chanbasappa and another in the Haveri Court, in the Dharwar District, in which the High Court passed a decree on April 2, 1914, directing that the plaintiff should recover from the defendant a certain sum of money and costs. That decree was transferred by the Haveri Court to the Hubli Court for execution. A Darkhast was taken out on September 2, 1914, but before execution proceedings could go any further the decree was attached by a creditor Murgeppa who had obtained a decree against Basappa in the Haveri Court on April 7, 1916. On August 8, 1916, the Darkhast in the Haveri Court was disposed of as the plaintiff did not apply for transfer of execution to the Hubli Court as directed. But although the Darkhast was disposed of the Haveri Court seems to have been of opinion that its attachment on the decree in the previous suit, which was then resting in the Hubli Court, continued.

2. On July 4, 1917, the Hubli Court wrote to the Haveri Court asking to be informed what had happened to the attachment, and on July 10, 1917, the Haveri Court wrote to the Hubli Court that the attachment still continued, and that the amount of the decree should be payable to the decree-holder of the Haveri Court. On receipt of this reply the Hubli Court disposed of the Darkhast on July 13, 1917.

3. Nothing further was done and the decree remained in the Hubli Court; until January 21, 1921, when Murgeppa, the holder of the decree in the Haveri Court, informed the Haveri Court that his debt was satisfied and his attachment should be removed, and accordingly the Haveri Court removed the attachment on January 21, 1921, and informed the Hubli Court accordingly.

4. Then the original decree-holder Basappa applied to the Hubli Court on March 4, 1921, to

continue the execution of his decree. The Court informed him on February 5, 1921, that his Darkhast was already disposed of and asked him to present another Darkhast giving all the necessary information. Accordingly he filed the present Darkhast on April 13, 1921.

5. The question of limitation was raised, but the Subordinate Judge held that the question of limitation did not arise and directed execution to proceed.

6. In appeal this order was confirmed on the ground that the appellant's contention that the attachment of the decree ceased on August 8, 1916, when Darkhast No. 20 of the Haveri Court was dismissed cannot be accepted as the Haveri Court expressly kept the attachment alive.

7. It seems to us that both Courts have failed to realize what happens when a decree is attached. Murgeppa had got a decree against Basappa who before that had obtained a decree against Chanbasappa. So Murgeppa sought by attachment to prevent Basappa reaping the fruits of his decree against Chanbasappa, and that could only be done under the provisions of the Code of Civil Procedure, and therefore, under Order XXI, Rule 53(1)(p), Murgeppa asked the Haveri Court to issue to the Hubli Court a notice requesting the Hubli Court to stay the execution of its decree which would remain effective under the provisions of the rule unless and until-

(i) the Court which passed the decree sought to be executed (that is to say in this case the Haveri Court) cancelled the decree, or

(ii) the holder of the decree sought to be executed (that is to say Murgeppa) or his judgment-debtor (that is to say Basappa) applied to the Court receiving such notice (that is to the Hubli Court) to execute its own decree.

8. I should mention here that the decree of the Haveri Court when it was transferred to the Hubli Court became for the purposes of the execution a decree of the Hubli Court.

9. When the notice had been received, the Hubli Court was bound, on the application of the creditor Murgeppa who had attached the decree or his judgment-debtor Basappa, to proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

10. Under Sub-rule (3) the holder of the decree sought to be executed by the attachment of another decree of the nature specified in Sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

11. So that the important question here is whether limitation ceased to run against Basappa, the original decree-holder, or his attaching creditor Murgeppa, when the notice was sent to the Hubli

Court. If that notice amounted to an order enjoining the Hubli Court from executing the decree, then the time while that injunction was running would be excluded under Section 15 of the Indian Limitation Act. But we think that Section 15 only applies to an absolute stay, and not to a limited stay as would be ordered by the notice under Order XXI, Rule 53(1)(b). The stay does not prevent either the holder of the decree sought to be executed or his judgment-debtor from seeking to execute the original decree, and that being the case, time must be taken as running against them. It follows then that nothing was done towards the execution of this decree within the three years before the application was made on March 4, 1921, and consequently, that application was barred by limitation.

12. From another point of view this must be the necessary result of the proceedings under Order XXI, Rule 53(1)(b). Otherwise the proceedings between the original decree-holder and his judgment-creditor might continue over an unlimited space of time to the great disadvantage of the original judgment-debtor who might be faced with proceedings in execution many years after the decree has been passed without any intermediate steps being taken in aid of execution.

13. The appeal, must be allowed and the Darkhast dismissed with costs throughout.

Shah, J.

14. I entirely agree. I only desire to add that I have not overlooked the possibility of treating the application of March 4, 1921, as an application for the continuation or revival of the original application for execution which was made in September 1914. But in view of the fact that on July 13, 1917, this first application for execution was disposed of, and no steps whatever were taken for execution of the decree until the second application of March 4, 1921 came to be made, I do not think that the first Darkhast could be treated as pending after it was disposed of in 1917 nor can the second application be held to be an application for the revival of the first Darkhast to save limitation in favour of the plaintiff.