BOMBAY HIGH COURT

Bhagwan Shankar

Vs.

Rajaram Bapu Vithal

S.A. No. 271 of 1949

(Chagla, C.J., Gajendragadkar and Dixit, JJ.)

08.02.1951

JUDGMENT

Chagla, C.J.,

1. The pltf., Bhagwan, obtained an ex-parte money decree in the Ct. of the Joint Second Class Subordinate Judge at Sholapur, on 13-09-1937, against the deft. Rajaram, who was a permanent resident of a village in the Akalkot State. The deft. did not submit to the jurisdiction of the Sholapur Ct The decree was transferred for execution to the Ct. of the Nyayadhish of the Akalkot State. On 09-06-1945, an appln. was made to the Akalkot Ct. for execution. This appln. was dismissed and this order was confirmed by the Dist. J. of Akalkot on 08-06-1948. Meanwhile the Akalkot State merged into the Union of India. The pltf. appealed to the H. C. The appeal was first heard by Chagla, C.J. and Gajendragadkar J. on 19-01-1951, when their Lordships made a reference to a F. B. in the following terms:

Order of Reference

Chagla, C.J.

The applt. before us obtained a money decree in the Joint Second Class Subordinate Judge's Ct. at Sholapur. This decree was transferred to the Ct. of Nyayadhish, Akalkot. The darkhast for the execution of the decree was presented on 09-06-1945, and it was dismissed by the Dist. J. at Akalkot. It is from that order that this appeal is preferred.

2. The J. D. was a foreigner quae the Ct. at Sholapur which passed the decree, and his contention was that as he had not submitted to the jurisdiction of that Ct. the Sholapur Ct. was not a competent Ct. as far as Akalkot was concerned and therefore the Akalkot Ct. could not execute a foreign judgment within the meaning of Section 13, Civil Procedure Code This contention was

upheld by the Dist. J. Akalkot. Mr. Chitale before us controverts both the findings of the Ct. below.

3. His first contention is that inasmuch as Akalkot has now merged with the State of Bombay the J. D. is no longer a foreigner quae the Sholapur Ct. and therefore the Sholapur Ct. which passed the decree was a competent Ct. and there is no bar against the execution of the decree under Section 13 and his second contention is that the J. D. submitted to the jurisdiction of the Sholapur Ct. and even though he might be a foreigner by submitting to its jurisdiction, he made the Sholapur Ct. a competent Ct. for the purpose of Section 13. In support of the first argument, Mr Chitale reld. upon a judgment of a Divisional Bench of Rajadhyaksha J. and Shah J. in *Chunilal Kasturchand v. Dundappa*[1], The facts of that case were very similar to the facts before us and the view that found acceptance with both the learned Judges was that although a Ct. may not be a competent Ct. quae a particular J. D., if the status of J. D. alters by subsequent events and the J. D. is no longer a foreigner quae that Ct. the decree of that Ct. can be executed. It appears on a perusal of both the judgments that emphasis was laid on the fact that the Ct. that passed the decree had jurisdiction as judged by municipal law. In this case also it is not disputed that the Sholapur Ct. had jurisdiction judged by municipal law. But the difficulty which seems to present itself is this that although the Sholapur Ct. had jurisdiction under the municipal law, it is quite clear that under private international law it had no jurisdiction to pass a decree against a foreigner who had not submitted to the jurisdiction of that Ct. It seems to be equally clear on the authorities that the decree which a Ct. passes against a foreigner who has not submitted to its jurisdiction is a nullity. Therefore, the question that arises is whether a decree which is a nullity can cease to be a nullity and can become executable by reason of political events supervening. On the one hand we have the view taken by the two learned Judges that the J. D. had no substantive right in the decree passed against him being a nullity and that right could be taken away by reason of subsequent events. On the other hand, it is suggested that no event that subsequently transpires can possibly affect the nature of a decree which must be determined at the date when it was passed. If a decree is a nullity, it must continue to remain a nullity, whatever may subsequently happen. It is also suggested that the right given to a person to ignore the summons of a foreign Ct. would become entirely illusory if after exercising that option and refusing to submit to the foreign Ct. he finds himself bound by a decree passed by that Ct. by reason of political changes in his country or in the country in which the foreign Ct. was situated. Mr. Gokhale suggests that the judgment to which we have just refd. deserves reconsideration.

4. Therefore we will refer to the Full Bench the following question:

> "Whether a decree passed by a foreign Ct. against a person who has not submitted to its jurisdiction can ever become enforceable by reason of any subsequent event and whether *Chunilal Kasturchand v. Dundappa* to the extent that it decides this point, was rightly decided." The second question raised by Mr. Chitale as to whether the J. D. submitted to the jurisdiction of the Sholapur Ct. need not be consd. by the F. B. If the bench approves

of the view taken by Rajadhyaksha and Shah JJ. then Mr. Chitale is entitled to succeed. If, on the other hand, the F.B. reverses the decision, then the second point will have to be consd. and the appeal will come back to us for determination of that issue.

Opinion of Full Bench

5. Chagla, C.J. :- The question refd. to this F. B. is whether a decree passed by a foreign Ct. against a person who has not submitted to its jurisdiction can ever become enforceable

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by reason of any subsequent event, and whether *Chunilal Kasturchand v. Dundappa*[2], to the extent that it decides this point, was rightly decided. The facts material for the decision of that question are set out in the referring judgment and it is not necessary to repeat them. We have heard well consd. arguments advanced both by Mr. Chitale and by Mr. Gokhale and after carefully considering them we are of the opinion that *Chunilal Kasturchand v. Dundappa* was rightly decided, and we will briefly indicate why we have come to that conclusion.

6. The decree which was passed in this case was passed by the Sholapur Ct. and it was exercising jurisdiction upon a non-resident foreigner. But the Sholapur Ct. had the right to exercise jurisdiction upon a non-resident foreigner because Section 20, Civil Procedure Code confers such jurisdiction. Section 20 (c) clearly contemplates that a Ct. in British India may entertain a suit against a nonresident foreigner if the cause of action has accrued within jurisdiction wholly or in part, and for the purpose of this Full Bench we are assuming that the suit filed by the pltf. was properly filed, that the Sholapur Ct. had jurisdiction to entertain it, and that the decree passed by the Sholapur Ct. was a decree passed by a competent Ct. and the decree was a valid and binding decree. It is perfectly true that ordinarily Cts. all over the world exercise jurisdiction only against persons who are within their jurisdiction and whom they can reach with the arm of the law. It would be futile for a Ct. to assume jurisdiction when it cannot issue process against the party against whom it is seeking jurisdiction. But special laws make exceptions and one of the exceptions is to be found in Section 20 (c) where, as we said before, the Legislature has conferred upon the Cts. in India the right to proceed against non-resident foreigners although they are not within reach of the processes of that Ct. Therefore we have clearly this position that the decree passed by the Sholapur Ct. was not a nullity. It is equally true that if the deft. who was a citizen of Akalkot and therefore a foreigner quae the Sholapur Ct. did not submit to the jurisdiction of the Sholapur Ct. and did not acquiesce in the jurisdiction, then the decree passed by the Sholapur Ct. could not be enforced when it was transferred for execution to the Akalkot Ct. The true view of the matter is not that the decree was a nullity, but its enforcement or excitability was limited to the Sholapur Ct. and it could not be executed or enforced in a foreign territory because the deft. had not submitted to the jurisdiction of the Sholapur Ct. The principle of private international law which is embodied in Section 13 (a) is that a Ct. will not enforce the judgment of a foreign Ct. if that judgment is of a Ct. which is not a competent Ct. and for the purpose of competency in private international law a Ct. is never competent when it passes a

judgment against a nonresident foreigner who has not submitted to its jurisdiction. Therefore, as far as this particular decree was concerned, as the deft. we are assuming, did not submit to the jurisdiction of the Sholapur Ct. quae the Akalkot Ct. the judgment of the Sholapur Ct. was a foreign judgment passed by a Ct. not of competent jurisdiction and therefore the decree could not be executed in the Akalkot Ct. so long as the Sholapur Ct. continued to be a foreign Ct. But once it is conceded that the decree was not a nullity and it was valid and binding as far as the Sholapur Ct. was concerned, then there is no difficulty, with respect, in understanding and appreciating the judgment which we have to consider in this Full Bench, because if the character of the Akalkot Ct. changes and if the status of the deft. alters because of that fact, then the impediment which was initially there in the decree being enforced in the Akalkot Ct. disappears and the decree which was unenforceable till that change came about becomes enforceable and executable in the

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Akalkot Ct. This is not in any way violating private international law. Private international law remains the same. But under the circumstances of the case the Sholapur Ct. no longer being a foreign Ct. quae the Akalkot Ct. the question of private international law does not arise at all. The decree is then being executed under the Municipal law and clearly under the Municipal law the decree is executable as it has been passed by a Ct. of competent jurisdiction.

7. Some difficulty has been caused by reason, with great respect, of the language used by the P. C. in *Gurdyal Singh v. Raja of Faridkot*[3], But when one analyses the particular passage on which reliance has been placed, the position is made clear. Their Lordships of the P. C. stated (p. 238) :

> "In a personal action, to which none of these causes of jurisdiction apply, a decree pronounced in absentem by a Foreign Ct. to the jurisdiction of which the deft. has not in any way submitted himself, is by International Law an absolute nullity."

Emphasis is placed upon the expression used by the P. C. viz., that the decree is an absolute nullity. But the P. C. goes on in the next sentence to qualify what it has said before and this is what their Lordships say (p. 238) :

> "He is under no obligation of any kind to obey it, and it must be regarded as a mere nullity by the Cts. of every nation, except (when authorised by special local legislation) in the country of the forum by which it was pronounced."

Therefore the decree is not an absolute nullity. Something which is an absolute nullity can never be enforced in any part of the world under any circumstances. But the P. C. itself contemplates that such a decree can be enforced in the forum by which it was passed provided special local legislation authorizes that forum, and therefore in one sense the decree is a nullity in a limited sense. The other way of putting the same idea is that the decree is a valid decree, but it is not enforceable in Cts. other than Cts. where it was passed by reason of private international law. Therefore, once the position is made clear that the decree is not an absolute nullity, or, with

respect to their Lordships, not even a nullity, but merely there is an impediment in the way of its being executed, then no difficulty arises in coming to the conclusion to which, again with respect very rightly, Rajadhyaksha J. and Shah J. came.

8. Then there is one other point with which also the judgment has dealt and that is that a vested right was created in the deft. by reason of Section 13 (a) of the Code; a similar provision existed in Akalkot before merger and that vested right has been taken away and reliance is placed on Section 5 of the Merger Order. That clause, as rightly pointed out by both the Judges, only refers to vested rights which have been affected by repeal of any legislation which was in operation in the merged States. In this case, although the Civil Procedure Code of Akalkot has been repealed, Section 13(a) has taken its place in identical terms and therefore whatever prejudice has been caused to the deft. has not been caused by the repeal of any legislation. The prejudice has been caused by an Act of State which altered the status of Akalkot and also altered the status of the deft. and made Akalkot Ct. a Municipal Ct. and made the deft. a citizen, whereas Akalkot Ct. before was

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a foreign Ct. and the deft. was a foreigner.

9. The result, therefore, is that we answer the question in the affirmative.

Answered accordingly.