

**ORISSA HIGH COURT**

Mulraj Doshi

Vs

Gangadhar Singhanian

Civil Revn. No.167 of 1981

(R.N. Misra, C.J.)

21.04.1982

**ORDER**

**R. N. Misra, C.J.**

1. This is a judgment-debtor's application under Section 115 of the Civil P.C. challenging the executability of the order of eviction passed by the Controller amounting to a decree in the court of the Subordinate Judge at Rourkela. The opposite party filed House Rent Control Case No.28 of 1958, obtained an order of eviction and levied execution thereof in the court of the Munsif, Panposh. The District Judge of Sundergarh transferred the said case in exercise of powers under Section 24 of the Civil P.C. to the court of the Subordinate Judge at Rourkela. When notice to show cause why the order of eviction may not be executed was issued, the judgment-debtor appeared before the Subordinate Judge and objected to his jurisdiction to proceed with the execution on the ground that it was contrary to the provisions of Section 15 of the Orissa House Rent Control Act. The objection has been overruled and the judgment-debtor has carried this revision application.

2. Section 15 of the Act provides :-

"The order of the Controller made under Section 7 directing the tenant to put the landlord in possession of the house, shall be deemed to be a decree and shall be executable as such in the Court of the Munsif within the local limits of whose jurisdiction the house is situate."

Relying on this provision, the judgment-debtor has contended that the order of eviction having been deemed to be a decree is only executable in the court of the Munsif and such a statutory execution is not available to be transferred to any court other than the named one. Therefore, in exercise of powers under Section 24 of the Civil P.C., the District Judge had no jurisdiction to transfer the case to a court other than the court of the Munsif. At the time the stay application came up for consideration, the entire matter was heard. Mr. S.C. Mohapatra volunteered to support the application and petitioner's counsel assisted Mr. Mohapatra in support of the stand

taken in the revision. According to Mr. Mohapatra, the direction for transfer of the execution case is contrary to law, inasmuch as the statute constitutes the Munsif with local jurisdiction to be the executing court.

3. It is not disputed that the Munsif named in Section 15 of the Orissa House Rent Control Act is a Civil Court and to proceedings in his Court, the Civil P.C. has application. The Supreme Court in the case of *Ram Chandra Aggarwal v. State of Uttar Pradesh*<sup>1</sup>, was considering the applicability of Section 24 of the Civil P.C. to a reference made under Section 146 of the Criminal P.C. It observed (at p.1891) :-

"The next contention - and it was the one pressed strenuously by him - was that a proceeding upon a reference under Section 146(1) entertained by a civil Court not being an original proceeding the provisions of Section 141, C.P.C. are not attracted and that, therefore, those provisions of the Civil Procedure Code which relate to suits are not applicable to a proceeding undertaken by a civil Court upon a reference to it under Section 146(1) of the Code of Criminal Procedure. A number of cases dealing with this point were brought to our notice either by him or by Mr. Goyal. It seems to us, however, that those cases are not relevant for deciding the point which is before us. In passing, however, we may mention the fact that a Full Bench of the Allahabad High Court has held in *Maha Ram v. Harbans*<sup>2</sup>, that the civil Court to which an issue on the question of proprietary rights has been submitted by a revenue Court under Section 271 of the Agra Tenancy Act, 1926 has jurisdiction to refer the issue to arbitration under paragraph 1 of Schedule II of the C.P.C. This decision is based upon the view that by virtue of Section 141, C.P.C. the provisions relating to arbitration contained in the second schedule to the Code of Civil Procedure, before the repeal of that schedule, applied to a proceeding of this kind. Similarly recently this Court has held in *Munshi Ram v. Banwarilal*<sup>3</sup>, that under Section 41 of the Arbitration Act and also under Section 141, C.P.C. it was competent to the Court before which an award made by an arbitration tribunal is filed for passing a decree in terms thereof to permit parties to compromise their dispute under Order 23, Rule 3, C.P.C. Though there is no discussion, this Court has acted upon the view that the expression civil proceeding in Section 141 is not necessarily confined to an original proceeding like a suit or an application for appointment of a guardian etc., but that it applies also to a proceeding which is not an original proceeding. Thus, though we say that it is not necessary to consider in this case whether the proceeding before the civil Court is a civil proceeding as contemplated by Section 141 or not there is good authority for saying that it is a a civil proceeding. All that we are concerned with in this case is whether the provisions of Section 24(1)(b) of the Code of Civil Procedure are available with respect to a proceeding arising out of a reference under Section 146(1), Cr.P.C. The relevant portion of Section 24 may, therefore, be set out. It reads thus :

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It plainly speaks of other proceeding pending in any court subordinate to it and not only to the civil proceeding pending before a subordinate Court. The

decisions of the Privy Council and one decision of this Court which we have earlier quoted would warrant the application of the provisions of the Code of Civil Procedure generally to a proceeding before a civil Court arising out of a reference to it by a Magistrate under Section 146(1) of the Code of Criminal procedure. The expression proceeding used in this section is not a term of art which has acquired a definite meaning. What its meaning is when it occurs in a particular statute or a provision of a statute will have to be ascertained by looking at the relevant statute. Looking to the context in which the word has been used in Section 24(1)(b) of the Code of Civil Procedure it would appear to us to be something going on in a Court in relation to the adjudication of a dispute other than a suit or an appeal. Bearing in mind that the term proceeding indicates something in which business is conducted according to a prescribed mode it would be only right to give it, as used in the aforesaid provision, a comprehensive meaning so as to include within it all matters coming up for judicial adjudication and not to confine it to a civil proceeding alone. In a recent case *Kochadai Naidu v. Nagayasami Naidu*<sup>4</sup>. Ramachandra Iyer, J. (as he then was) was called upon to consider the very question which arises before us. The learned Judge held that a proceeding before a Civil Court arising out of a reference to it under Section 146(1), Cr.P.C. can be transferred by the High Court or District Court under Section 24, C.P.C. because it is in any case a proceeding. He has also considered this question from the angle of the nature of the proceeding and expressed the view that "the proceeding was a civil proceeding to which the procedure for suits could, with the aid of Section 141, C.P.C. be applied. If indeed the term proceeding in Section 24 is not confined to a civil proceeding there is no need whatsoever of taking the aid of Section 141, C.P.C....."

A learned single Judge in this Court in the case of *Binayak Boxi v. Harihar Misra*<sup>5</sup>, has taken the same view. Lord Simonds speaking for the Judicial Committee in the case of *Adaikappa Chettiar v. Chandrasekhara Thevar*<sup>6</sup>, observed :-

".....The true rule is that where a legal right is in dispute and the ordinary Court of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal...."

A learned single Judge of this Court in the case of *Lakshman Kumar Patnaik v. Smt. Binapani Sahu*<sup>7</sup>, held that to the execution proceeding arising out of an order under the Orissa House Rent Control Act, the Code of Civil Procedure has full application. Once the order of eviction is deemed to be a decree and is executed in the Civil Court, there can be no scope to dispute that the Code of Civil Procedure would apply. A Full Bench of this Court in the case of *Land Acquisition Officer, Kalahandi v. Mst. Rahim Rai*<sup>8</sup>, dealing with references under the Land Acquisition Act also held :-

"The result of the aforesaid analysis is that a Subordinate Judge while functioning as a

Court under the Act is a court subordinate to the District Judge and the latter has jurisdiction to transfer the case to the Subordinate Judge."

A Full Bench of the Bombay High Court in the case of *Ranchhodlal Vallabhdas v. Mahendrakumar Ambalal*<sup>7</sup>, took the view that the District Judge was entitled to exercise jurisdiction under Section 24 of the Civil P.C. in the matter of transferring a proceeding under the Bombay Rents, Hotel and Lodging House Rates Control Act.

4. By the Amending Act of 1976 (Central Act 104 of 1976), Sub-Section(3) was inserted into Section 24 of the Civil P.C. and 'proceeding' was defined to include 'a proceeding for the execution of a decree or order'. Under Section 24 in order that a transfer may be directed, it is necessary –

- (i) that the suit or proceeding must be pending before the Court from which it is transferred;
- (ii) that the Court to which it is transferred is one competent to try it; and
- (iii) that the Court to which it is transferred is subordinate to the High Court or the District Court which orders the transfer.

There is no dispute before us that conditions (i) and (iii) are satisfied in this case, namely, the execution case was pending at the time of transfer and that the Munsif, Panposh was a Court subordinate to the District Judge of Sundergarh. The only question which requires examination in view of the contentions advanced is whether the Court of the Subordinate Judge of Rourkela is one competent to try it. It was pointed out by a Division Bench of the Andhra Pradesh High Court in the case of *Dronavajjula Vidyamba v. Vallabhajosyula Lakshmi Venkayamma*<sup>8</sup>, that where the proceeding had been instituted in the Court of the lowest grade competent to try it and it was transferred under Section 24 to a Court of higher grade, Section 15 of the Civil P.C. was not available to be relied upon to raise an objection in the matter of the Court of higher grade entertaining the suit. A Full Bench of the Madras High Court in the case of *P. Madhavan Unni v. M. Jayapandia Nadar*<sup>9</sup>, dealing with the phrase "competent to try" occurring in Section 24(1) of the Code, held (at p.6) :-

".... To hold that it is necessary that the Court to which the case is transferred must have territorial jurisdiction would make it impossible for a High Court to transfer a case pending in the Court of a District Judge to that of the District Judge of another district, for these District Judges would not have concurrent territorial jurisdiction. The section would, therefore, be nullified if the interpretation put upon it in the case of *Ramdas v. Habibullah*<sup>10</sup>, were to be accepted. In order not to render the section useless, I am constrained to hold that the word competent must be taken to refer to pecuniary jurisdiction only." Though a decision to the contrary was cited before me in the case of *Hakim Mohammed Ali v. Bhanwari Bai*<sup>11</sup>, I am inclined to accept the view indicated by the Full Bench of the Madras High Court, namely "competent to try" under Section 24 of the Civil P.C. refers to pecuniary jurisdiction and not territorial jurisdiction.

5. Section 15 of the Orissa House Rent Control Act after making the order of eviction a decree by a deeming provision fixes the Court where execution has to be levied. The use of the words "shall be executable ... in the Court of the Munsif within the local limits of whose jurisdiction the house is situate" has no other effect than indicating the executing Court. Once the execution case is filed in that Court and the proceeding commences in the prescribed manner, it becomes a pending civil proceeding to which the Code of Civil Procedure applies and in view of what has been stated above, it must follow that the District Judge has power to exercise jurisdiction under Section 24 of the Civil P.C. The objection of the judgment-debtor that the District Judge would have no jurisdiction to transfer the execution proceeding is without any force and has been rightly rejected.

6. Counsel for the opposite party had pointed out that the order of transfer by the District Judge should have been challenged and not the order of the executing Court on the question of maintainability. As I find, this seems to be a case where the direction of transfer was before the judgment-debtor appeared. He, therefore, filed his objection in the transferee Court. In view of what I have said above on merit of the matter, this aspect does not require any independent examination.

7. The Civil Revision fails and is dismissed. There will be no order for costs.  
Revision dismissed.

#### Cases Referred.

<sup>1</sup> AIR 1966 SC 1888

<sup>2</sup> ILR (1941) All 193 : (AIR 1941 All 101) (FB)

<sup>3</sup> AIR 1962 SC 903

<sup>4</sup> ILR (1961) Mad 413: (AIR 1961 Mad 247)

<sup>5</sup>(1968) 34 Cut LT 43

<sup>6</sup> AIR 1948 PC 12 8 AIR 1911 Ori 71 (FB)

<sup>7</sup> ILR (1963) Cut 905

<sup>8</sup>AIR 1956 Bom 481 (FB)

<sup>9</sup>AIR 1958 And Pra 218

<sup>10</sup> AIR 1973 Mad 2 (FB)

<sup>11</sup>136 Ind Cas 384 : (AIR 1933 All 178)

<sup>12</sup> AIR 1981 Raj176