PUNJAB AND HARYANA HIGH COURT

Kartar Singh

Vs

Sultan Singh

Ex. Second Appeal No. 288-D of 1964

(A.N. Grover, J.)

19.12.1964. 12.08.1966

JUDGMENT

A.N. Grover, J.

1. The facts in this appeal are these. A decree for eviction was passed under the Delhi and Ajmer Rent Control Act, 1952. At the time when it was passed it was not executable for two years from the commencement of the Delhi Tenants (Temporary Protection) Act, 1956 (Act 97 of 1956). It is common ground that it became executable on 11th March, 1959. However, there was another hurdle in the way of eviction proceedings and that was the Slum Areas (Improvement and Clearance) Act, 1956 (Act 96 of 1956) which came into force on 29th December 1956. On 29th May 1962 an application was made by the decreeholder to the Competent Authority under that Act which granted the requisite permission on 3rd May 1963 but directed that the decree would not be executed prior to July 1963. On 5th June 1963 an application for execution was filed and the objection taken was that it was barred by time.

The executing Court held that it was not barred for two reasons. The first was that the time started running only after 31st July 1963 from which date alone the decree could be executed according to the orders of the Competent Authority. The second reason was that the judgment-debtor had made an application for setting aside of the decree on 23rd April 1959. This application was dismissed on 21st October, 1960 after reply had been filed by the decree-holder. The reply constituted a step-in-aid in execution and the decreeholder was entitled to deduct the time so spent. On appeal the learned Senior Sub-Judge affirmed the decision of the executing Court principally on the ground that Article 181 of the Limitation Act, 1908, was applicable in view of a decision of Mehar Singh J. (as he then was) *dated 27th November 1964 in Ram Kirpal v. Jain Sweitamna Temple, Buildings etc.*[1], and time began to run only with effect from 31st July, 1963 when the right to apply for execution accrued to the decree-holder. No decision was given on the second point which had prevailed with the executing court.

2. According to Mr. S. N. Chopra, the appellant, it would be Article 182 of the Limitation Act which would govern the present case and that the limitation would commence running from the date of the decree or order. It is pointed out that once time begins to run for the purpose of Article

182 no subsequent disability or inability would stop it and deduction could only be allowed from the prescribed period of limitation under some provision of the Limitation Act itself. There is no provision in that Act other than section 15 (1) and if the case does not fall under section 15 (1) the execution application must be held to be barred by time. Mr. Chopra has relied inter alia on my decision in which the above view was expressed in *Pearey Lal v. Krishan Sarup*[2], It is next urged that even if the decree was executable up to 11th March 1959 there was no justification for the decree-holder making an application to the Competent Authority under Act 96 of 1956 until after a lapse of a period of three years. There was no bar whatsoever in the way of the decree-holder in applying to the Competent Authority soon after the decree became executable in March 1959. In *Yeshwant Deorao v. Walchand Ramchand*[3], it has been laid down that Articles 181 and 182 of the Limitation Act and Section 48 of the Code of Civil Procedure have to be read together. The Articles expressly refer to the section but they are independent or parallel provisions, different in their scope and object. Section 48 (2) extends the 12 years' period of closure by a further period of similar duration but the necessity of resort to Article 182 is not thereby obviated. The decree-holder must have been taking steps to keep the decree alive and the only circumstance that would relieve of this obligation is the existence of fraud under section 18 of the Limitation Act. Mr. Chopra therefore claims that when Article 182 was applicable the Courts below were wholly in error in holding that the execution application was within time. Mr. Chopra has further sought to elaborate his contention by referring to *Ramaswami Pillai v. Govindasami Naicker*[4], and *Chidambaram Chettiar v. Meyyappa Chettiar*[5], In the first case it was held that an order of adjudication did not under section 16 (2) of the Provincial Insolvency Act effect an absolute stay of all proceedings against the insolvent by suit or otherwise, but contained only a direction that before a suit was brought a condition precedent should be complied with, namely, the obtaining of leave to sue from the Court. Section 15 of the Limitation Act did not operate to save limitation in cases where the suit could have been instituted on complying with a preliminary requisite in that behalf, viz. the obtaining of leave to sue from the Court. According to Mr. Chopra, limitation would not be saved in the present case also even though the permission of the Competent Authority was necessary in view of the rule laid down in this case. In the latter decision the previous Madras case was relied upon and it was held that unless section 15 (1) of the Limitation Act became applicable or could be Availed of, limitation could not be saved. In *Sayaji Rao v. Madhavrao Raghunathrao*[6], which is another case relied upon by Mr. Chopra, the plaintiff claimed deduction of the time taken by him for obtaining permission to file a suit against a defendant against whom suit could be filed only after obtaining permission under section 86 of the Code of Civil Procedure . It was observed that the plaintiff could have applied very much earlier man he did and that no deduction could be allowed for that period for the purpose of limitation.

3. The question in the present case is not one of deduction of a certain period from the prescribed period of limitation. The contention on behalf of the decree-holder is that when the decree was passed it was inexecutable and by virtue of the provisions of Act 96 of 1956 it continued to be inexecutable until permission of the Competent Authority was obtained.

Time would, therefore, start to commence running only when the permission was granted even if Article 182 was applicable. Reliance has been made on Ram Kirpal's case which is reported in 1965-67 Pun LR 481. Mehar Singh J. (as he then was) treated the prohibition contained in Act 96 of 1956 as absolute. According to him, a decree could become executable only if and when permission was obtained under section 19 (1) of Act 96 of 1956 and time under Article 182 of

the Limitation Act would start running only from the date it became executable, namely, the date according to the order of the Competent Authority. Mr. Chopra points out that in the aforesaid case the permission had been obtained within the period of three years from the date of the decree but I do not see how that would affect the real basis on which the case was decided, namely, that it was imperative for the decree-holder to seek permission under Section 19(1) of Act 96 of 1956 before he could execute the decree. In *Tarlok Nath v. Rattan Singh*[7], decided by P. D. Sharma J. on 27th September 1965 (Punj), the above decision was followed. Sharma J. also relied on the observations in *Rameshawar Singh v. Homeswar Singh*[8], to the following effect :-

> "In order to make the provisions of the Limitation Act apply, the decree sought to be enforced must be in such a form as to render it capable, in the circumstances, of being enforced."

It was held that in view of section 19 of Act 96 of 1956 an eviction decree would be incapable of being enforced unless the permission of the Competent Authority had been obtained.

4. Mr. Chopra has assailed the correctness of the view expressed by the two learned Judges of this Court on the ground that no exclusion of period can be allowed except in accordance with the provisions of section 15(1) which is not the case here, that being the well established rule. To my mind even if the period taken in obtaining permission from the Competent Authority in cases of the present type cannot be excluded under section 15 (1) nevertheless the decree being inexecutable at the time it was made and thereafter until permission is accorded Article 182 would not be applicable at all and, therefore, the residuary Article 181 would govern the present case. It is not disputed that if Article 181 applies, then the execution application was within time.

5. The second point on which the executing Court held that the application was within time has also some merit and cannot be brushed aside. It has not been disputed that the judgment-debtor made an application under section 55 of the Delhi Rent Control Act, 1958 in April 1959. That section provides that where any decree or order for the recovery of possession of any premises to which Act 96 of 1956 applies is sought to be executed on the cesser of operation of that Act the Court executing the decree may reopen the case and set aside the decree if it is satisfied that the decree or order could not have been passed if the Act of 1958 had been in force on the date of the decree. The decree-holder filed a reply dated 5th September 1959 denying that the decree was liable to be reopened. In other words, the subsistence and the force of the decree was reaffirmed and reiterated by the decree-holder. In *Panna Lal v. Sm. Saraswati Devi*[10], it was held that the words "to take some step in execution of the decree" in the third column against Article 182 of the Limitation Act should be interpreted liberally in favour of the decree-holder. If he had taken any step which would remove an obstacle to the further execution of his decree, he would be entitled to the benefit of this provision. Hence, the written objection of the decree-holder asking the Court to reject the application of the judgment-debtor under Order 21, Rule 2 of the Code of Civil Procedure was a step-in-aid of execution for it was calculated to remove an obstacle against the execution of the decree. The previous Bench decision in *Ghansham v. Mikha*[10], was followed. In *Jagdeo Narain v. Bhubaneshwari Kuer*[11], it was laid down that any step taken by the decree-holder to remove an obstacle thrown by the judgmentdebtor or in the way of the execution of the decree was a step-in-aid of the execution. Article 182, clause (5), did not require that the application to take step-in-aid should be made only in the course of execution proceedings under section 47. Such a step could be taken in connection with any other proceeding which affected

the execution of the decree. In that case the judgment-debtor had applied under Order 21, Rule 90 of the Code of Civil Procedure for setting aside of sale. The decree-holder filed a list of witnesses but the application was dismissed. The judgment-debtor applied for review of the order. The decree-holder then in the course of the trial of the review application filed a list of witnesses and a petition of objection to the review. It was held that the filing of the list of witnesses and the petition of objection were such steps-in-aid as to give a fresh start for limitation. In *Ayi Goundan v. Soki Goundan*[12], a Full Bench held that an application by a decree-holder for appointment as a receiver to safeguard the properties for the purpose of the realisation of the decree was a step-in-aid of execution and a subsequent application for delivery of those properties would also be a step-in-aid. *Ghanyyalal and Co. v. Jassa Ram Hira Nand*[13], was followed. In *Hatimulla v. Sukhamoy Chaudhuri*[14], it was held that where on a judgment-debtors application under Order 21, Rule 2 of the Code of Civil Procedure the decree-holder attended the Court with witnesses to contest the application, that act could be construed to mean a step taken in aid of execution. It is thus clear that the Courts have consistently taken a liberal view of the expression "step-in-aid" appearing in Article 182 (5). In the present case the judgment-debtor had attempted to get rid of the decree which if successful would have led to the result that there would have been nothing to execute. The decree-holder resisted that attempt and affirmed the validity and enforceability of the. decree. This can well be said to be a step-in-aid in view of the very liberal and broad manner in which that expression has been construed.

6. In the result, this appeal fails and it is dismissed. I leave the parties to bear their own costs. The judgment-debtor shall have two months' time to vacate the premises in dispute.

Appeal dismissed.

Cases Referred.

1Ex. S. A. No. 226-D of 1963 (Punj)
21963-65 Pun LR 793 : (AIR 1963 Pun 457)
3AIR 1951 SC 16
4AIR 1919 Mad 656
5AIR 1944 Mad 67
6AIR 1929 Bom 14
7(Ex. S. A. No. 159-D of 1964)
8AIR 1921 PC 31
9AIR 1960 All 572
10(1881) ILR 3 All 320
11AIR 1928 Pat 612
12AIR 1945 Mad 139
13AIR 1929 Lah 57
14AIR 1930 Cal304