

RAJASTHAN HIGH COURT

Mohammed Ali

Vs.

Bhanwari Bai

Civil Revn. Petn. No. 362 of 1979

(M.C. Jain, J.)

16.02.1981

ORDER

M.C. Jain, J.

1. This revision petition is directed against the order dated November 23, 1979 passed by the Additional Munsif and Judicial Magistrate No. 1, Jodhpur, in execution case No. 8/1977, whereby the judgment-debtor petitioner's objection, regarding the jurisdiction of the Court to execute the decree, was rejected.

2. The suit for arrears of rent and ejection was decreed by the trial Court on January 13, 1969 and the said decree was affirmed in the first appeal and second appeal on May 23, 1974 and April 29, 1975 respectively and a compromise was arrived at between the parties in the Supreme Court and a decree in pursuance of compromise was passed on November 17, 1976. Thereafter, the decree-holder submitted an application for execution in the Court of Munsif, City Jodhpur on March 18, 1977. In the execution application, the judgment-debtor submitted his objections under Section 47, Civil Procedure Code read with Section 151 Civil Procedure Code on April 5, 1977. The execution application as well as the objection petition No. 41/1977 were transferred from the Court of Munsiff to the Court of Additional Civil Judge, Jodhpur by the order of District Judge, Jodhpur, No. 473 dated October 5, 1977. Thereafter again both the cases were transferred by the District Judge to the Court of Additional Munsiff and Judicial Magistrate No. 1, Jodhpur by his order No. 521 dated November 8, 1977. The learned Additional Munsiff, by his order dated January 31, 1978 dismissed the transferred objection-petition on September 7, 1978. The judgment-debtor further submitted in execution objection purporting to be in reply to the notice under Order 21, Rule 22, Civil Procedure Code. One of the objections raised was that

the Court to which the execution application has been transferred by the District Judge, has no jurisdiction to execute the decree as that Court has neither passed the decree nor that Court is the Court to which the decree is sent for execution by the Court which has passed the decree. The learned Additional Munsiff after hearing both the parties decided the objection against the judgment-debtor by the impugned order. Aggrieved against that order, the judgment-debtor has preferred this revision petition.

3. I have heard Mr. M.C. Bhoot learned counsel for the petitioner judgment- debtor and Mr. G.M. Mehta learned counsel for the non-petitioner Decree- holder.

4. Mr. Bhoot learned counsel for the petitioner submitted that under Section 38 of the Civil Procedure Code only the Court which has passed the decree or the Court to which the decree has been sent for execution have powers to execute the decree. He urged that the Court to which the execution case is sent for execution, under Section 24, Civil Procedure Code has no jurisdiction to execute the decree in view of the provisions contained in Sections 38 and 39. He submitted that the expression "Court which passed the decree" has been defined under Section 37 unless the transferee Court under Section 24 is covered by this expression, the transferee Court can have no jurisdiction to execute the decree. If there is any ground for transfer which may be covered under Section 24, Civil Procedure Code according to Sri Bhoot, it is only the Court which has passed the decree, can transfer the decree under clause (d) of Section 39. In the present case, he submitted that the Court of the Additional Munsiff and Judicial Magistrate, Ist Class No. 1, is not the Court which has passed the decree and that Court does not answer to the description of the Court as defined under Section 37; so powers under Section 24 could not have been exercised by the District Judge for transfer of the execution case, although in Section 24 word "proceeding" has been explained to mean proceeding for execution of a decree or order. According to Sri Bhoot, proceeding in the nature of execution can of course be transferred by the District Judge under Section 24 but it can only be transferred to any subordinate Court which is competent to try or dispose of the same and Sections 37 and 38 deal with such Courts which are competent to try and dispose of the execution cases. Jurisdiction cannot be conferred by the District Judge under Section 24 on any Court which is not covered by Sections 37, 38 and 39, Civil Procedure Code Reliance was placed by Shri Bhoot on a decision of this Court in *Ram Daval v. Smt, Kisturi* ¹

5. As against the above submissions Sri Mehta learned counsel for the decree-holder

non-petitioner submitted that an execution case can be transferred by the High Court and the District Court to any Court subordinate to it and competent to try and dispose of the same. The District Judge in exercise of its power under Section 24 can transfer the execution case to any subordinate Court which is competent to try and dispose of that case. The word "competent" does not mean that the Court should have territorial jurisdiction. It would be sufficient that the transferee Court should have pecuniary jurisdiction. He urged that Section 24 is an exception to Sections 38 and 39 and Sections 38 and 39 do not in any way curtail the power of transfer conferred on the High Court and the District Court under Section 24. All the powers of the executing Court shall vest in the Court to which case has been transferred under Section 24. In support of his contention he referred to some cases to which I shall advert at the appropriate place.

6. This revision petition in view of the arguments advanced by the learned counsel, raises a short question though an important one. The short question which arises for consideration is whether an execution case can be tried and disposed of by the Court to which it has been transferred under Section 24, even when that Court is neither a Court which has passed the decree nor the Court to which decree has been sent for execution under Section 39.

7-8. For proper appreciation and adjudication of the controversy, it is essential to read the relevant parts of the provisions contained in Sections 24, 37, 38 and 39 of the Civil Procedure Code. 24. General power of transfer and withdrawal –

- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage -
 - (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.
- (3) For the purposes of this section,
 - (b) "proceeding" includes a proceeding for the execution of a decree or order.

9. Part II of the Civil Procedure Code deals with execution and this part is divided into several heads. Sections 36 and 37 have been given under the head "General". Sections 38 to 46 are covered under the heading "Courts by which decrees may be executed." Section 38 provides that the decree may be executed either by the Court which has passed the decree or by the Court to which it is sent for execution. A decree is sent for execution to another Court of competent jurisdiction by the Court which passed the decree on the application of the decree-holder under Section 39, Civil Procedure Code under any of the conditions mentioned under clauses (a) to (d) of Section 39. Clause (d) is in the nature of residuary clause. If the case is not covered under clauses (a) to (c) and the Court considers that the decree should be executed by some other Court, then after recording reasons, the Court, which passed the decree, may send the decree for execution to another Court. The expression "Court which passed the decree" has been defined under Section 37. According to Section 37, the Court of first instance shall be deemed to be a Court which passed the decree and where the Court of first instance has ceased to exist or to have jurisdiction to execute it, then in that situation that Court would be a Court which passed the decree, which would have jurisdiction to try that suit. An explanation has been added to Section 37, which deals with the effect of transfer of area of one Court to another Court. According to Sri Bhoot, the District Judge can only transfer the execution case from the Court of first instance to another Court if the Court of first instance has ceased to exist or has ceased to have jurisdiction and some other Court has jurisdiction to try that suit. His emphasis is that it does not cover the case of a Court to which execution is transferred under Section 24. Section 24 of the Civil Procedure Code makes a provision for general power of transfer and withdrawal of cases. The power is conferred on superior Courts namely the High Court and District Courts. Under clause (b) of sub-section (1) of Section 24, the High Court or the District Court is empowered to withdraw any suit, appeal or other proceedings pending in any Court subordinate to it and transfer the same for trial and disposal to any Court subordinate to it and competent to try or dispose of the same either of its own motion without notice to the parties or on application of any of the parties and after notice to them and hearing them. It would appear from this provision that powers of withdrawal have been conferred on the superior Courts for transfer of suit or appeal or other proceedings. Further it is significant that sub-section (3) has been inserted in Section 24 by the Civil Procedure Code Amended Act No. 104/1976, whereby expression "proceeding" has been given a meaning so as to include a proceeding for the execution of a decree or order. This provision has been inserted

with a view to settle the divergence of judicial opinion. There was divergence of judicial opinion, on the question as to whether Section 24 applies to execution proceedings. This divergence has been set at rest by providing that the word "proceeding" shall include proceeding for the execution of a decree or order in Section 24. The District Judge of his own motion is empowered to withdraw an execution case from any Court subordinate to it and transfer the same for disposal to any other Court subordinate to it and competent to dispose of the same. What is important to consider is as to whether the Court which does not satisfy the condition of Section 38, is a Court competent to proceed with the execution which has been transferred to it under Section 24. Whether the word "Competent" occurring under Section 24 has any reference or relevance to Section 38. If the word "Competent" occurring in Section 24 is restricted to Courts as mentioned in Section 38, then the very object of Section 24 would be rendered nugatory. Then the power of transfer can never be exercised in connection with the execution proceedings. Section 38 read with Section 39 of the Civil Procedure Code do not deal with transfer of execution proceedings. Section 39 deals with transfer of decree for execution. If a situation given under clause (b) of Section 37, does not exist, then again question of exercise of power under Section 24 in relation of execution cases will not arise and the general power of transfer conferred on superior Court would be otiose, meaningless and superfluous. It may be pointed out that Section 24 is a special provision conferring general powers of transfer and withdrawal of cases on superior Courts. Having regard to the object of Section 24 and having regard to the nature of power conferred upon the superior Courts, Section 24 cannot be read as subject to Section 38, Civil Procedure Code. The word "competent" occurring in Section 24 only means that the transferee Court should have pecuniary jurisdiction. Any, narrower interpretation of the word "competent" would result into setting at naught the general powers of transfer.

10. In *Maliram Nemichand Jain v. Rajasthan Financial Corporation*² the Division Bench of this Court agreed with the expression, given by Bapna J. while interpreting the word "competent" in Section 24 of the Civil Procedure Code, in *Chouth Mal v. Bhonrilal*³ In that case the execution Proceedings were transferred from the court of district judge, Jaipur District, under the orders of the High Court. The Presiding Officer of the court of District Judge, Jaipur City felt that on account of his relationship with the judgment-debtor, he will not be able to take any proceedings in the matter. A question arose as to whether the District Judge, Jaipur District was competent to deal with the execution proceedings. It was held that the District Judge,

presiding over the District Court of the Jaipur District was competent to deal with the execution proceedings when they are duly transferred under the orders of the High Court. The Division Bench agreed with the following observations of Bapna J, in Chouth Mal's case (AIR 1956 Rajasthan 192 at p.193):

"The competency referred to in Section 24 must be taken to be only with respect to the pecuniary jurisdiction, and I find support for this view of *Kishore Lal v. Balkishan* ⁴ and *Parshottamdas v. Bhagubhai*, ⁵ The same view has been taken in *F.E. Geyer v. M.M. Geyer*, ⁶ The contention raised above has no force".

11. The cases prior to Amendment of 1976 are also relevant and they directly throw light on the question. In *Muhammad Habibullah v. Tikani Chand* ⁷ an objection was raised regarding the jurisdiction of the Court of Small Causes at Agra to carry on execution proceedings. The decree was passed by the Additional Subordinate Judge and an application for execution was filed by the decree-holder. Subsequently the District Judge, Agra transferred that application for execution to the Court of Small Causes. The Division Bench of the Allahabad High Court considered the provisions of Sections 38 and 39, Civil Procedure Code and observed that the transfer under Section 39 is totally different from the transfer of one particular application -for execution under Section 24 Civil Procedure Code It was also observed in that case that Section 38 is not exhaustive and a decree can be executed by the Court to which it is transferred under Section 24.

12. Reference may also be made to *Karuppiah Ambalam v. Nadar* ⁸ In that case a decree was passed by the Sub-Court, Dindigul in the Madurai District, since the property was situated within the jurisdiction of the Sub- Court Sivaganga, in the Ramanathapuram District, the decree was transferred to the Sivaganga Court. Thereafter the decree-holder submitted an application under Section 24, Civil Procedure Code for transfer of the execution case before the District Judge of Ramanathapuram District praying that the execution case may be transferred to another Sub-Court in the same District. Thereupon the District Judge transferred the execution petition. A revision petition was preferred against the order of transfer. The Division Bench of the Madras High Court considered the expression "competent" occurring in Section 24 and it was observed that the word "competent" in Section 24(1)(b)(ii) cannot be used to restrict the power of the District Court or High Court under Section 24, Civil Procedure Code to transfer the execution proceeding only to a

Court which has territorial competency, or jurisdiction over the place where the judgment-debtor resides or works for gain. But it has to be given a sufficiently wide interpretation to include each and every Court within the jurisdiction of the superior Court, empowered to deal with such execution application. In Allahabad and Madras cases a question also arose as to whether an execution could be transferred under Section 24. That question ceases to be relevant in view of the amendment having been made in Section 24, C.P.C.

13. In *Ram Dayal v. Smt. Kisturi (supra)* cited by Sri Bhoot the question for consideration was different and this question did not arise for consideration as to whether the Court to which decree has been transferred under Section 24 has jurisdiction to execute? In trial case the suit was decreed by the court of Munsif, Kotputli, when the suit was transferred by the District Judge, under Section 24. The execution application was presented before the Munsif Court Shahpura. It was observed that though it might be true that because of the provisions of Sections 37, 38 and 39 of the Civil Procedure Code, the Munsif Court Shahpura could execute the decree only upon its transfer by the Munsif Court Kotputli, but it had inherent jurisdiction, to execute the decree, because of the residence of the judgment-debtors and their properties being situated within the local limits of its jurisdiction. It was considered to be a case of irregularity in the exercise of jurisdiction, because without receiving any order of transfer of decree from the Munsif Court, Kotputli, the Munsif Court Shahpura entertained the execution application and it was observed that it would not be a case of exercising jurisdiction by a Court which has a total absence of it. It was observed that Munsif Court, Shahpura was both on the date of the suit as well as on the date of the execution competent to entertain the suit, pass a decree and execute it. The plea of weiver was raised by the decree-holder and the same was also decided against the judgment-debtors. Thus this authority does not directly throw light on the question which arises in the present case and this is not of any help to the appellant.

14. In the light of what I have discussed above, I am clearly of the opinion that the Court of Additional Munsiff and Judicial Magistrate I Class No. 1, Jodhpur has jurisdiction to proceed with the execution of case in view of the fact that the same has been transferred by the District Judge in exercise of the powers conferred on him under Section 24, Civil Procedure Code The Munsiff, City Jodhpur and the Additional Munsif and Judicial Magistrate No. 1, I Class, Judhpur, both are the Courts of same territorial and pecuniary jurisdiction and thus the transferee Court i.e. the Court of

Additional Munsiff and Judicial Magistrate is competent to dispose of the execution case and as such under orders of the District Judge, that Court has jurisdiction to proceed with the execution case.

15. In this view of the matter, this revision petition in my opinion does not merit acceptance.

16. No other point has been pressed before me.

17. In the result, this revision petition is hereby dismissed. No orders as to costs.

Petition dismissed.

Cases Referred.

1. 1970 Raj LW 217
2. AIR 1974 Raj 204
3. AIR 1956 Raj 192
4. AIR 1932 All 660
5. AIR 1932 Bom 486
6. AIR 1949 Lah 34 (FB)
7. AIR 1925 All 276
8. AIR 1965 Mad 435