

Golok Chandra Barua Vs. Dev Kanta Barua

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Court : Guwahati

Decided On : May-08-1979

Judge : Baharul Islam, Ag. C.J. and N.I. Singh, J.

Acts : [Constitution of India](#) - Article 145 and 145(1); Supreme Court Rules, 1966 - Order 13, Rule 6; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 45, Rule 15; Representation of People Act, 1951 - Sections 122; [General Clauses Act, 1897](#) - Sections 3(17)

Appeal No. : M.A. (F) No. 34 of 1975

Appellant : Golok Chandra Barua

Respondent : Dev Kanta Barua

Advocate for Def. : S.C. Das, Adv.

Advocate for Pet/Ap. : N.M. Lahiri and B.M. Mahanta, Advs.

Disposition : Appeal dismissed

Prior history : Baharul Islam, Ag. C.J. 1. This appeal is from the order dated 21-4-1975 passed by the District Judge, Nowgong in Money Execution Case No. 2 of 1973. The appeal is by the judgment-debtor. 2. The appellant filed an election petition, namely, Election Petition No. 3 of 1967, in this Court, challenging the election of the decree-holder. This Court set aside the election of the decree-holder by its judgment dated 4-7-1968. The decree-holder filed an appeal before

the Supreme Court

Judgement :

Baharul Islam, Ag. C.J.

1. This appeal is from the order dated 21-4-1975 passed by the District Judge, Nowgong in Money Execution Case No.

2 of 1973. The appeal is by the judgment-debtor.

2. The appellant filed an election petition, namely, Election Petition No.

3 of 1967, in this Court, challenging the election of the decree-holder. This Court set aside the election of the decree-holder by its judgment dated 4-7-1968. The decree-holder filed an appeal before the Supreme Court. The Supreme Court allowed the appeal with costs against the judgment-debtor in both the Courts. Thus the judgment-debtor was liable to pay a total cost of Rs. 16,483.61p.

3. The decree-holder thereafter filed an application on 20-7-1973 in the Court of the District Judge, Nowgong, for execution of the order for costs. The judgment-debtor filed an objection. He, inter alia, raised two objections against the petition for execution, The objections were, (i) that the District Judge at Nowgong had no jurisdiction to entertain the execution petition and, (it) that 'the D. H. has effected a settlement with the J. D on his last visit to Nowgong. According to that settlement, he has waived the claim on my assurance that I will not act against him. Some well-wishers of the Parties were also present and also knew of the settlement.' The learned District Judge overruled both the objections, and hence this appeal.

4. Mr. N. M. Lahiri, learned Advocate-General, Meghalaya, appearing for the appellant, submits that the District Judge of Nowgong has no jurisdiction to entertain the execution petition and that the decree-holder ought have filed the application for execution of the order for costs in this Court. In support of his contention, he places strong reliance on Order XIII, Rule 6 of the Supreme

Court Rules. Rule 6 of the Supreme Court Rules is in the following terms: 'The decree passed or order made by the Court in every appeal, and any order for

costs in connection with the proceedings therein, shall be transmitted by the Registrar to the court or tribunal from which the appeal was brought, and steps for the enforcement of such decree or order shall be taken in that Court or tribunal in the way prescribed by law.' Relying on the expression 'the Court or tribunal from which the appeal was brought' and 'that Court or tribunal' underlined above, Mr. Lahiri submits that 'the Court' and 'that Court' mean the High Court that decided the election case, and in the context, this High Court, and that the respondent ought to have filed the petition in this Court for enforcement of the order for costs.

5. The Supreme Court has framed

the Rules by virtue of powers conferred on it under Article 145 of the Constitution. The relevant portion of this Article may be excerpted:--

'145 (1). Subject to the provisions of any law made by Parliament, the Supreme Court may, from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including.

.....

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

.....'

6. It is clear that Rule 6, amongst others, is subject to the provisions of any law made by the Parliament in this behalf. The Parliament has made provision in regard to execution of orders for costs in election petition in Part VI of the Representation of the People Act, 1951 (hereinafter the R. P. Act) and as such Rule 6 aforesaid, in our opinion, applies to the decree or order for costs made by the Supreme Court in every appeal other than an election appeal under Part VI of the R. P. Act.

7. Mr. Lahiri, also places reliance on Order 45, Rule 15, C. P. C. which is in the following terms:

'15. Procedure to enforce orders of the Supreme Court. -- (1) whoever desires to obtain execution of any de-

cree or order of the Supreme Court shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Supreme Court was preferred,

(2) Such Court shall transmit the decree or order of the Supreme Court to the Court which passed the first decree appealed from, or to such other Court as the Supreme Court by such decree or order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said decree or order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the

execution of its original decree.

....

.'

8. In our opinion, Order 45, Rule 15 Civil P. C. also has no application to the execution of an order of the Supreme Court made in an election appeal under the R. P. Act, and S 122 of the R. P. Act would apply in such a case.

9. Section 116-C occurring in Chap, IVA, aforesaid, on which also reliance has been placed by the appellant provides:

'116C. Procedure in appeal. -- (1) Subject to the provisions of this Act and the rules, if any, made thereunder, every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from any final order passed by a High Court in the exercise of its original civil jurisdiction; and all the provisions of the Civil P. C. 1908 (Act 5 of 1908) and the Rules of the Court (including provisions as to the furnishing of security and the execution of any order of the Court) shall so far as may be, apply in relation to such appeal.

(2)'

10. Mr. Lahiri submits that the relevant provisions of the Civil P. C. for the execution of any order of the Supreme Court have been invoked by virtue of Section 116C of the R. P. Act. It is true that for certain purposes, the relevant provisions of the Civil P. C. may be invoked even in the execution of any order of the Court, but that is, in our opinion, only for the purpose of providing the machi-

nery of the execution of the decree, inasmuch as the R. P. Act has not provided for such a machinery. Section 116C has not provided that the petition for execution of a decree for costs in an election petition can be filed in the High Court. The forum where an application for execution of an order for costs can be filed has been created only by Section 122 of the R. P. Act.

11. Section 122 of the R. P. Act, provides for execution of orders as to costs in election matters. It provides:

'Any order as to costs under the provisions of this Part may be produced before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within a Presidency-town, before the Court of Small Causes having jurisdiction there, and such Court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

Provided that.....'.

12. 'This part' mentioned in Section 122 means Part VI of the R. P. Act. Part VI of the R. P. Act deals with disputes regarding elections. Part VI has five Chapters. Chap. IV-A of Part VI provides for appeals before the Supreme Court from an order made by a High Court in an election petition.

13. The forum where an application for execution of an order for costs can be filed is 'the principal Civil Court of original jurisdiction.' Mr. Lahiri submits that 'the principal Civil Court of original jurisdiction' is the High Court where the election

petition was filed. We find it difficult to accept the submission. In the earlier sections in Part VI including the Sections under Chap. V which provides for costs, the expression used is

'the High Court,' while in Section 122, which provides for execution of order as to costs the expression used is not

'the High Court' but 'the principal Civil Court of original jurisdiction'. Instead of saying that any order as to costs in an election petition may be produced 'before the High Court', it has been mentioned that it may be

produced 'before the principal Civil Court of original jurisdiction' within the local limits of whose jurisdiction any person directed by such orders to pay any sum of money, who may be called the judgment-debtor, has a place of residence or business. The change is significant. The significance is that the High Court is not intended to be the forum of execution of order as to costs in election appeal passed by the Supreme Court for another reason. In case the judgment-debtor resides in a presidency-town, the application may be filed before the Small Causes Court having jurisdiction. This also clearly shows that 'High Court' has not been intended to be the forum where a petition for execution of an order for costs passed by the Supreme Court can be filed. Had 'the principal Civil Court of original jurisdiction' in Section 122 of the R. P. Act meant 'the High Court', there was no reason for the Parliament not to say that a petition for execution of an order for costs in an election appeal may be filed in the High Court that tried the election petition.

14. A special law overrides a general law. The Civil P. C. is a general law, and generally provides for the execution of decrees or order for costs, while the R. P. Act, 1951, is a special law and its Part VI makes special provisions for costs and execution of orders for costs. Therefore the provision of Section 122 of the R. P. Act holds the field in execution of orders for costs passed by the Supreme Court in appeal arising from election petitions.

15. In Section 3(17) of the General

Clauses Act the 'District Judge' has been defined as: 'District Judge shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.' The definition of the District Judge in the General Clauses Act is applicable in all Central Acts and Regulations made after the commencement of the General Clauses Act, unless there is anything repugnant in the subject or context, as has been stated in the initial part of Section 3 of the General Clauses Act itself. Although some of the High Courts in India have their ordinary original civil jurisdiction and although the High Courts in trying

election petitions exercise ordinary original civil jurisdiction, the High Courts are not the principal Civil Courts of original jurisdiction within the meaning of S, 122 of the R. P. Act The expression, therefore, would mean a District Judge, The first submission of the learned counsel, therefore, has no substance.

16. The second submission of the appellant is that the decree was satisfied out of Court, Order 21, Rule 2, Civil P. C. provides for payment to a decrees holder out of Court. It is in the following terms:

'2. Payment out of Court to decree-holder.

(1) Where any money payable under a decree of any kind is paid out of Court or a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor or any person who has become surety for the judgment-debtors also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and it after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, tha Court shall record the same accordingly.'

17. 'Decree of any kind is otherwise adjusted', was added by the Civil P. C. Amendment Act of 1976 and was not a part of Rule 2 at the relevant time. Be that as it may, the payment or adjustment within the meaning of Rule 2 of Order 21 must be to the satisfaction of the decree-holder and the decree-holder also has to certify such payment or adjustment to the Court whose duty it is to execute the decree and it is the duty of the Court to record such satisfaction or adjustment. In this case there is nothing to show that there was adjustment as mentioned in the objection filed by the Judgment-debtor, nor there is any certificate of such an adjustment given by the decree-holder filed before the Executing Court. Further under Article 125 of

the Limitation Act, 1963, the period of recording the adjustment is 30 days from the date of payment or adjustment. But no payment or adjustment has been recorded. It must therefore be held that adjustment under Order 22, Rule 2 has not been proved by the appellant.

18. In the result, this appeal fails and is dismissed. But in the facts and circumstances of the case, we leave the parties to bear their own costs.

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