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Court : Madhya Pradesh

Decided On : Jan-28-1985

Reported in : AIR1986MP208

Judge : Gulab C. Gupta, J.

Acts : Limitation Act, 1908 - Schedule - Article 183

Appeal No. : Civil Revn. No. 506 of 1980

Appellant : Hemchand

Respondent : Premchand

Advocate for Def. : P.C. Naik, Adv.

Advocate for Pet/Ap. : R.K. Pandey, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Gulab C. Gupta, J.

1. The appellant-decree-holder, feeling aggrieved by the order dated 28-1-1980, passed by the Second Civil Judge (Class II), Jagdalpur, holding that the execution application was barred by limitation, challenges the same by filing this revision

under Section 115 of the Code of Civil Procedure.

2. It appears that the applicant obtained a decree against the non-applicants on 13-8-1954 from the Court of Civil Judge (Class II), Murwara, for arrears of rent amounting to Rs. 1724/- including costs. On an appeal filed, the appellate Court, by its judgment and decree dated 1-7-1955, modified the decree by ordering payment of interest at the rate of 4% per annum from 16-9-1953, i. e., the date of the suit, till realization. It is not disputed that application for execution of this decree was presented within the period of limitation prescribed for the purpose. On 23-3-1957, the applicant applied for transfer of the decree to Jabalpur and the decree was transferred to Jabalpur where a sum of Rs. 410/- was realized till 2-5-1962. During the pendency of the execution at Jabalpur, the applicant again applied to the Court at Katni for re-calling the decree from Jabalpur and transfer the same to Jagdalpur. This application was made on 4-7-62 and was seriously contested by the judgment-debtors. Ultimately, the Court at Katni rejected the objection by its order dated 15-1-1977 and ordered transfer of the decree to Jagdalpur Court. The transfer certificate was issued on 31-3-1977. It appears that the transfer certificate was sent to the District Judge, Jabalpur, who eventually forwarded the same to the Civil Judge(Class II), Jagdalpur, for further necessary action in accordance with law. In the meantime, the applicant filed an application on 11-3-1977 requesting the Court at Jagdalpur to execute the decree in accordance with law. An objection was taken by the non-applicant judgment-debtor that the application dated 11-3-1977 was a fresh application for execution and it should be treated as barred by limitation. The objection prevailed and the execution dismissed. It is this order which is impugned in the present revision.

3. The submission of the learned counsel for the applicant is that the executing Court wrongly construed the factual and legal aspect of the matter and illegally held that the execution was barred by time. In the alternative, it is submitted that the application for transfer made at Katni, should have been treated to be a step-in-aid and, therefore, sufficient to dismiss the plea of limitation. The learned counsel for the non-applicant-judgment-debtor, however, vehemently supported the order and submitted that transfer of decree, by itself, was not sufficient to start execution and a fresh application in the Court at Jagdalpur was necessary for the

purpose, which should have been filed within 12 years from the date of decree as provided under the Limitation Act. Reliance is placed on a decision of this Court in *Ramesh Chandra Mishra v. Security and Finance (P) Ltd.*, Civil Revn. No. 551 of 1981, decided on 30-8-1983.

4. The period of limitations for an application for execution of a decree was earlier governed by Article 183 of the Limitation Act, 1908 and is now governed by Article 136 of 1963 Act. Article 183(5) of 1908 Act provided that where an application for execution has been made, the period of three years shall be reckoned from the date of the final order passed on an application made in accordance with law to the proper Court for execution or to take some step-in-aid of execution of the decree or order. This clause was interpreted by Gujarat High Court in *State of Rajasthan v. R. Savkasha*, AIR 1972 Guj 179 to mean that in cases where a decree is transferred from one Court to another for execution, an application for execution has to be made in the transferee Court within a period of three years from the date of order of transfer. This provision, however, is no longer on the statute book. Article 136 of 1963 Act now provides a period of 12 years for execution of a decree, other than a decree granting mandatory injunction and the time begins to run for execution of such a decree when the decree becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery takes place. Since in the instant case, the execution application was filed in accordance with Article 183 of the old Act, within a period of three years, it is really not necessary to decide which of the (wo Acts would apply. The provision that an application for execution cannot be made after a period of 12 years, is common to both the Acts. Under the circumstances, the only question for consideration of this Court is : whether the execution before the transferee Court at Jagdalpur had become barred by limitation?

5. The view of this Court in *Ramesh Chatidra's ease* (supra) is that the transferee Court has no jurisdiction to start execution proceedings unless a fresh application for execution of the decree has been filed in the said Court. An application filed in the Court which passed the decree, according to this Court, cannot be treated as

an application filed in the transferee Court and for the same reason, cannot be deemed to be the continuation of the earlier execution application filed in the Court which passed the decree. This view is based on an earlier decision of the Judicial Commissioner's Court at Nagpur in *Sultanali v. Balaji*, AIR 1924 Nag 413. The learned Counsel for the non-applicant very strongly relies on this decision and submits that earlier execution application filed by the applicant in the Court at Katni is not relevant for deciding the period of limitation for starting execution proceedings in the Court at Jagdalpur and hence, the view taken by the Jagdalpur Court, should be accepted as correct. The learned counsel for the applicant, however, relies on a decision of the Supreme Court in *S.K. Sahgal v. Kishore Khanna*, AIR 1959 SC 809 and submits that the proceedings in the Court at Jagdalpur, would be deemed to be continuation of proceedings at Katni Court and, hence, question of limitation would not arise.

6. As noted earlier, the contention of the non-applicant-judgment-debtor is apparently supported by the decision in *Ramesh Chandra's case* (supra). It is the established practice of this Court that a decision of this Court acts as a binding precedent. In case, any Judge of the Court is not able to accept the decision, he is obliged to either hold that it is no longer good law because of the law laid down by the Supreme Court, or otherwise refer the matter to a larger Bench for re-consideration.

According to the learned counsel for the applicant, the matter is fully covered by the decision of the Supreme Court in *S.K. Sahgal's case* (AIR 1959 SC 809) (supra) which has not been noticed by the learned single Judge deciding *Ramesh Chandra's case* (supra). If this be so, then the law laid down by the Supreme Court would override the effect of *Ramesh Chandra's case* (supra) and it will not be necessary to refer the matter to a larger Bench. This will require a close scrutiny of the decision of the Supreme Court in *S.K. Sahgal's case* (supra).

7. In *S.K. Sahgal's case* (supra), the proceedings related to execution of a decree passed by the special Judge under the U.P. Encumbered Estates Act, 1934. The decree was sent for execution to the Collector of Banaras as required by the Act. Since the judgment-debtor owned an estate in the District of Purnea in Bihar, the

said decree was transferred to the Court of Subordinate Judge, Purnea, for execution. After the order of transfer, an application was made to the Subordinate Judge, Purnea, to execute the decree by attachment and sale of the property. The execution of Purnea Court was challenged as barred by limitation provided under Article 182 of the Limitation Act, 1908. The High Court held that the said Article had no application to the facts of the case, an execution proceedings in Purnea Court were merely a continuation of the execution proceedings pending before the Collector at Banaras. The view of the High Court was affirmed by the Supreme Court. The following passage in the judgment being relevant for our purposes, may be reproduced here as under : --

'10. Lastly, it was said that the decree was barred by limitation long before the order for its transfer was made. It was contended that Article 182 of the Limitation Act governed the case, and the application for its execution had been made beyond the time limited. The question is, does the article apply? The High Court held that that article had no application to the present case and that no question of limitation arose 'for the execution proceeding in Purnea Court is merely a continuation of the execution proceeding pending before the Collector of Banaras'. In our opinion, the High Court was right in the view that it took. It is quite clear that if the application for execution with which we are concerned was made in a pending execution proceeding, no question of the application of An. 182 arises. It has long been recognised by the Courts in our country that a right to continue a proceeding which is pending is a right which arises from day to day and no question of any bar of limitation with regard to the enforcement of such a right arises: see *Kedar Nath Dutt v. Harra Chand Dutt*, (1882) ILR 8 Cal 420 and *Subba Chariar v. Muthuveeran*, (1912) ILR 36 Mad 553'.

The Supreme Court did not stop here, but proceeded to decide whether the application filed for execution in Purnea Court was for continuing a pending execution proceeding. The specific question framed by the Court for its decision was whether the execution proceedings started in the Court of Subordinate Judge, Purnea, was a continuation of the execution proceedings by the Additional Collector, Banaras? This was answered in affirmative by stating that 'we think it was'. While dealing with this matter, it was the view of the Supreme Court that

proceedings before the Collector under the U.P. Act were to be treated as proceedings for execution under the Code of Civil Procedure. It further held that-

'..... When the decree is executed outside the United Provinces, where, as already stated, it can be legally executed, the amount realised by the execution by the Collector has to be taken into account. When the Subordinate Judge, Purnea, has to decide the question whether the application for execution made to him is in continuance of an existing execution proceeding, he has to recognise the proceeding before the Additional Collector, Banaras, as a proceeding in execution under the Code for it is so under the Act. In doing this, for the reasons earlier mentioned, he would not be giving any extra-territorial operation to the Act. It seems to us therefore that the execution of the decree by the Collector must be deemed to be execution of a decree for all purposes and therefore an application made to the Subordinate Judge, Purnea, for execution of the same decree while an execution proceeding was pending before the Collector, must be a continuation of the execution last mentioned. No question of limitation can arise in regard to such an application.'

Clearly, therefore, the view of the Supreme Court is contrary to the view taken by this Court in Ramesh Chandra's case (supra). In Ramesh Chandra's case (supra), the learned single Judge, without noticing the judgment of the Supreme Court in S.K. Sahgal's case (AIR 1959 SC 809) (supra), has held as under :-

'.....I am of opinion that a fresh application for execution of a decree has to be filed in the Court to which the decree is transferred for execution and such an application filed in the transferee Court cannot be deemed to be the continuation of any earlier execution application filed in the Court which passed the decree. This will be so even if the execution application in the Court which passed the decree is kept pending in that Court because the transferring Court would still retain jurisdiction over that execution though for certain specific purposes only. I am not inclined to hold that this execution application filed in the transferee Court has only to be treated as a continuation of the execution application filed for the purpose before the Court which passed the decree.'

Since the Supreme Court judgment has the effect of law because of Article 141 of the Constitution, it must be held that the view taken by this Court in Ramesh Chandra's case (supra), is not the correct view. It must, consequently, be held that no question of limitation arises in the instant case, as the application filed in the Court at Jagdalpur, was in a pending execution proceeding which was admittedly started within the period of limitation.

8. The view of this Court that unless a fresh application is filed in the Court to which the decree had been transferred for execution, is based on the view that an application for transfer of a decree to another Court, does not amount to an application for execution of the decree. In those cases where no application for execution has been made to the Court which passed the decree, and only an application for transfer has been made, the decree-holder may be required to file an application for execution of the decree in the Court to which the decree has been transferred. The position would, however, be different where a transfer application has been made in a pending execution proceeding. In such cases, fresh application for execution of the decree is not required to be made. Even if such an application is made, it is only a formality to put the process of the Court in motion. This view is supported by the Division Bench judgment of Calcutta High Court in Amarendra Nath v. Balai Chand, AIR 1936 Cal 267 and the reasoning gets full support from the Supreme Court judgment in S.K. Sahgal's case (AIR 1959 SC 809) (supra).

9. Then, it has been the view of this Court, as is apparent from the decision in Sheolal Ramlal v. Ranirao Balasaheb, AIR 1948 Nag 197 and Abdul Sattar v. Masuryadin, AIR 1961 Madh Pra 158 that an application for transfer of a decree is in itself a step-in-aid and would be sufficient to save the period of limitation. In the instant case, the application for transfer was made in the year 1962, when the Limitation Act of 1908 was in force. If the transfer application is to be taken to be a step-in-aid for the purpose, the application filed in the Court at Jagdalpur, even if treated to be a fresh application, would be within the period of limitation.

10. In view of the discussion aforesaid the revision succeeds and is allowed. The impugned order dated 28-1-1980, is set aside. The learned Civil Judge is directed

to proceed with the execution of the decree in accordance with law. No order as to costs.

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