

Ramchandra Vs. Gopal Singh

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Court : Madhya Pradesh

Decided On : Dec-18-1957

Reported in : AIR1958MP347

Judge : A.H. Khan, J.

Acts : Limitation Act, 1908 - Sections 14 and 14(2) - Schedule - Article 182(5)

Appeal No. : Small Cause Revn. No. 34 of 1957

Appellant : Ramchandra

Respondent : Gopal Singh

Advocate for Pet/Ap. : Karkare, Adv.

Disposition : Revision allowed

Judgement :

ORDER

A.H. Khan, J.

1. This revision is directed against an order of the Small Cause Court of Shajapur, dismissing the execution application of the decree-holder as time-barred.
2. The facts of the case are that the Judge, Small Cause Court, Shajapur, passed a decree in favour of the plaintiff on 27-6-52. On 20-12-53, an execution

application was filed before the Civil Judge, Second Class, Shajapur. It remained pending there till 7-5-54, when it was dismissed because the decree-holder did not file the address of the judgment-debtor and the process fee.

After the dismissal of this execution by the Civil Judge, the decree-holder realised that since the decree was passed by the Judge, Small Cause Court, his application for execution should have been presented before the Small Cause Court and not before the Civil Judge Second Class. After realising his mistake, on 5-12-55 the decree-holder filed an application for execution before the Small Cause Court, Shajapur.

It is admitted that this application is presented more than three years after the passing of the decree. But it is contended by the learned counsel for the applicant that the decree-holder was entitled to exclude the period during which his execution petition remained pending before the wrong court, namely, Civil Judge Second Class, Shajapur. He invokes the aid of Section 14 of the Limitation Act for the purpose. The trial Court has not considered this aspect of the matter and has held the execution to be time-barred under Article 182(5) of the Limitation Act.

3. Article 182 (5) and Section 14 of the Limitation Act deal with two separate matters. The former prescribes the period during which an application should be presented and Indicates the point from which limitation shall begin to run, Section 14 of the Limitation Act, serves a totally different purpose. It contains the method which is to be adopted in calculating the time after the starting point has been fixed. Thus Article 182 (5) and section 14 of the Limitation Act are not to be mixed together.

4. The words 'any application' occurring in Section 14(2) of the Limitation Act include an application for execution as well and it follows that a decree-holder is entitled to exclude the time during which he has been prosecuting his execution bona fide and with due diligence before a court which he believes, though erroneously so, to have jurisdiction. In excluding time under Section 14 of the Limitation Act, there is no question of the bar under Article 182 (5) of the Limitation Act. I find support for this in *Bishundeo Narain v. Raghunath Prasad*, AIR 1940 Pat 677 (A), in which a Division Bench of the Patna High Court has taken a similar

view.

5. In the instant case it has been urged that the Civil Judge before whom the first application for execution was filed was also a Judge of Small Cause Court, Shajapur and this has caused a mistake which is a bona fide one. In the circumstances, I think it is a fit case in which the decree-holder should get the benefit of Section 14 of the Limitation Act. After excluding the period during which the application was pending in a wrong court, there is no doubt the present application is within time.

6. For reasons stated above I allow the revision and set aside the order of the Court below and! direct it to execute the decree.

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