Chandmal Vs. Baburmal

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Court : Rajasthan

Decided On : Apr-27-1951

Reported in : AIR1951Raj150

Judge : Nawalkishore, J.

Acts : Limitation Act, 1908 - Schedule - Articles 29, 182 and 182(2)

Appeal No. : Civil Misc. Appeal No. 19 of 1950

Appellant : Chandmal

Respondent : Baburmal

Advocate for Def. : Akshaisingh, Adv.

Advocate for Pet/Ap. : M.M. Seth, Adv.

Disposition : Appeal dismissed

Judgement :

Nawalkishore, J.

1. This is an appeal by the D. H. against the order of the learned Dist. J. holding that the petition for execution preferred by him in the court of the Munsif was barred by time.

2. It seems that on 6-2-1942 Chandmal appellant obtained an ex parte decree against Baburmal. No appeal was preferred from this decree by the J. D. & instead he filed an application for having it set aside but it was dismissed. On appeal to the High Court, there was a compromise & an order was passed on 11-11-1943 that if Baburmal paid Rs. 40/- as costs to the D. H. within fifteen days & gave security for due performance of the decree that may be passed against him within one month, the ex parte decree will be set aside otherwise it will stand. The J. D. did not comply with this order & when an application for execution of the decree was filed on 8-4-1945, he objected on the ground that since limitation ran from the date of the decree, it was barred by time. The learned Munsif repelled this objection & held that limitation ran from the date of the order of the H. C. & accordingly, execution was not barred by time. The learned Dist. J. on appeal disagreed with this view & set aside the order passed by the learned Munsif & held that the petition for execution was barred by time as limitation ran from the date of the decree.

3. Learned counsel for the appellant urged that according to Article 29, Mewar Limitation Act, the period of limitation was provided as below:

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4. The word 'tajveej' is not defined & the learned counsel urges that if there is an appeal, limitation should be deemed to run from the 'tajveej' of the appellate court. He has also referred to 'Sriramchandra Rao v. Venkateswara Rao' AIR (26) 1939 Mad. 157 which is based on 'Koya Kutti v. Veerankutti', AIR (24) 1937 Mad. 421. This judgment relates to the meaning to be attached to the words 'where there has been an appeal' occurring in Clause 2 Col. 3 of Article 182, Limitation Act. A number of authorities were cited in this case in support of the proposition that these words must be taken in their context, that is, with reference to the words in Col. 1 of Article 182 & interpreted to mean that the appeal must be against the decree or order itself. It was, however, held that it was equally logical to say that it must be something which affected that decree or order, & the reason assigned for this view was that if the legislature had a different intention, it could have expressed with ease by saying 'where there has been an appeal against that

decree or order.' The exact question which calls for a determination is whether the word 'appeal' referred to in Col. 3 of Clause 2 of Article 182 includes an appeal preferred against an order refusing to set aside an ex parte decree or, must be confined to an appeal only from the decree or order sought to be executed. In an elaborate judgment, reported as 'Bahadursingh v. Sheo Shankar, AIR (37) 1950 All. 327 it was held on a review of a large number of authorities of different courts that appeal in Article 182 (2) means an appeal from the decree sought to be executed & no other appeal. It was further held that where an application to set aside an ex parte decree was dismissed & an appeal preferred against the order dismissing such application was also dismissed, limitation for the execution of the ex parte decree ran from the date of the ex parte decree & not from the date of the appellate decree. Reference was made to AIR (26) 1939 Mad. 157 & it was not followed. Rameshwar Prasad v. Parmeshwar Prasad', AIR (38) 1951 Pat 1 is another authority where view similar to the one taken in AIR (37) 1950 All. 327 prevailed. This view appears to be so well established now that it is hardly necessary to multiply authorities on the point but reference may be made to Khimji Poonja & Co. v. Baldeodas', AIR (37) 1950 SC7, where it was contended on behalf of the appellant that the words 'where there has been an appeal' were comprehensive enough to include the appeal from an order dismissing the application under Order 9, Rule 9, Civil P.C. This argument was, however, held to be a far-fetched one, & it was observed that these words must be read with the words in Col. 1 of Article 182 viz., 'for the execution of a decree or order of any court' & however broadly the article may be construed, it could not be held to cover an appeal from an order which was passed in a collateral proceeding or which had no direct or immediate connection with the decree under execution. In this view of the matter the word 'tajveej' in Article 29 of the Mewar Limitation Act must be confined to the 'tajveej' which resulted in the ex parte decree against Baburmal. The result is that this appeal fails & is hereby dismissed with costs.