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**Gujar Mal Vs. Bhagirath Mal**

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**Court** : Rajasthan

**Decided On :** Jul-25-1986

**Reported in** : 1986WLN(UC)437

**Judge** : Mohini Kapoor, J.

**Appeal No.** : S.B. Civil Revision No. 389 of 1985

**Appellant** : Gujar Mal

**Respondent** : Bhagirath Mal

**Disposition** : Petition allowed

**Judgement** :

**Mohini Kapoor, J.**

1. The petitioner before me is a decree holder in whose favour a money decree was passed on 25-1-77 by the Additional Munsif and Judicial Magistrate No. 2, Alwar. The petitioner applied for the execution of this decree and it was transferred for execution to the court of Munsif and Judicial Magistrate, Kotputli. In this execution the decree holder attached three shops belonging to the non-petitioner. During the pendency of this execution application, the non-petitioner moved an application under Section 6 of the Rajasthan Relief of Agricultural Indebtedness Act (here in after referred to as the Act). The Debt Relief Court admitted this

application with the result that the execution proceedings were abated by order dated 23rd March, 1981. Thereafter proceedings under Section 6 of the Act continued before the Debt Relief Court and ultimately this application was dismissed on 16th September, 1982. Then the petitioner moved an application before the executing court for the revival of the execution but this application of the petitioner was rejected by the Court on 9th December, 1983, holding that the execution proceedings once abated could not be revived because abatement under the provisions of the Act had the same meaning as abatement under Order 22 of the Code of Civil Procedure. The learned Munsif in arriving at this conclusion relied upon 1964 RLW 442 Karan See v. Basti Chand. The petitioner moved a review application before the same court on the ground that the decision reported in Karan See v. Basti Chand had been disapproved by a Division Bench of this Court in 1969 WLN (1) 403 Pyare Lal and Ors. v. Rani Raman Kumari and Ors.. In this case, it was held that the civil court can revive the proceedings abated under Section 5(l)(i) or Section 6(6)(ii) of the Act, if the order of admission or the intimation under Section 6 has been set-aside by the Debt Relief Court itself or by any other Court competent to set aside that order. In view of this decision, the petitioner wanted the executing Court to review its decision and revive the execution. However, the executing court by order dated 1st March, 1985 dismissed the application for review. It is this order, passed on the review application, against which the petitioner has preferred this revision.

2. The contention of the learned Counsel for the petitioner is that the learned lower court has placed reliance upon a decision of this court which has been subsequently not followed and as such there was ground for reviewing the order passsed on 9th December, 1983, but the court refused to exercise its jurisdiction and has, therefore, committed a material irregularity which deserves to be set-aside in this revision petition.

3. On the other hand the learned Counsel for the non-petitioner has contended that this revision is not maintainable. According to him petitioner should have come in revision against the order of 9th December, 1983 and now when he has availed of the remedy of review, he can not come in revision before this court. It is also contended that in this revision petition a prayer has been made to quash the

orders dated 9th December, 1983 and 1st March, 1985 but he earlier order had not been challenged therefore, it cannot be set-aside in this revision.

4. I shall first take up the preliminary objection raised about the maintainability of this revision. The learned Counsel for the non-petitioner has drawn my attention to Order 47 CPC which provides for three stages in the hearing of review application. The first stage is when the application is rejected by the court without even issuing notice to the other party. If the Court proceeds to issue a notice to the other party calling it to show cause as to why the review application should not be granted, then, the second stage is reached when the review application may be admitted or rejected. After hearing the other side, if the review application is rejected the matter ends. The third stage is reached when the rule is made absolute and the case is reheard on the merits and may result in repetition of the former decree or the same may be varied. Reference may be made to 1906 ILR (3) Bombay 56 which has been quoted at length in the decision in Parma Lal and Ors. v. Nand Lal and Ors. . At this stage I may also refer to rule 7 of Order 47 CPC. It provides that an order of the Court rejecting the application for review shall not be appealable but an order granting an application may be objected to at once by an appeal from the order granting the same or in an appeal against the decree or order finally passed.

5. In the present case the application for the review moved by the petitioner was rejected after issuing notice to the other party. Thus it can be said that it was not rejected at the first stage. The court did not consider it proper to give the parties an opportunity of re-hearing to get the decision altered. So the stage No. 3 was not reached while rejecting the application. The court did look into the reasons on which review was applied but the order of rejection would still remain one at the second stage because opportunity for re hearing was not given to the parties.

6. The learned Counsel for the non-petitioner has placed reliance on : AIR1979 All274 Sakal Singh and Ors. v. Smt. Devi and Anr., and Panna Lal's case cited above. These decisions have been cited in support of the contention that a revision against order passed on a review application is not maintainable but in my opinion these decisions do not lay down this proposition. In the Allahabad case the

matter had been decided at the stage of second appeal, when a review application was moved. At that time the U.P. Consolidation of Holdings Act was brought into operation and by virtue of Section 5(ii) of this Act it was prayed that the proceedings should be abated Referring to the provisions of this Act, it was held that the pendency of a review application was not contemplated by Section 5 of this Act so as to abate the proceedings. It was held to be applicable only if the review application was allowed and the matter was ordered to be re-heard. Only then it could be said that the second appeal was a pending litigation at that time the U.P. Consolidation of Holdings Act came into operation. In Panna Lal v. Nand Lal (supra) an order was passed on 26th July, 1973 calling upon the defendant to pay court fees. This order was sought to be reviewed but the review application was rejected on 29th July, 1973 after hearing the opposite party. The defendant preferred a revision against the order dated 26th July, 1973 and an objection was raised that this order merged into the order dated 29th July, 1973 and a revision against it was not competent. Upon this it was held that the order dated 26th July, 1973 can not be said to have merged in the order dated 29th July, 1973 and could be challenged. A plea in the alternative was that if a revision against the earlier order was not maintainable then it may be taken to be a revision against the subsequent order. The question of maintainability of a revision against the subsequent order on the review application did not arise.

7. The learned Counsel for the petitioner has contended that this application of review has been rejected at the second stage and no appeal is provided against an order rejecting the review application. As such this becomes an order against which no appeal lies and if he can satisfy the other conditions laid down under Section 115 CPC, he is entitled to come in revision against it. He has placed reliance on : [1977]2SCR182 Smt. Vidya Vati v. Devi Das. Referring to the words, in which no appeal lies' it was held that to maintain a revision no appeal from an order made by the subordinate court should lie to the High Court, if the order is sought to be revised under Section 115 CPC. In this case the order against which a revision was preferred was appealable to the District Court but not appealable to the High Court, even then a revision application was entertained.

8. The learned Counsel for the non-petitioner has placed reliance on 1977 WLN 96 Sohan Singh v. State of Rajasthan and Ors.. In this case a writ petition was dismissed after hearing the opposite party on merits and in the absence of the petitioner. The petitioner moved an application for the re-hearing of the Writ Petition. This application was dismissed as the petitioner was not able to show a reasonable cause for his absence. Thereafter he presented a special appeal, but by this time, the appeal had become barred by time. In these circumstances it was held that the when concurrent remedies were available and the party availed of only one remedy on legal advice, theu the delay in seeking the other remedy cannot be condoned. On basis of this it is contended that the original order can not be challenged after the expiry of the period of limitation. If the petitioner wanted, he could have preferred an appeal against the order by which his application for re-hearing was dismissed. The order in this case could be said to be in the nature of order refusing to set-aside an order passed in the absence of the petitioner. As this was not challenged by him but the earlier order passed in the writ petition had been challenged the appeal had to be within time. In the case before me the petitioner has challenged the subsequent decision by which his application has been refused. This is last order passed against him which he wants to challenge, and the revision is within time from the date of this order. Another case cited by the learned Counsel for the respondents is AIR 1922 Oudh 148 in which it was held that the refusal of an application for review would not give a fresh starting point for preferring an appeal. In such circumstances, the appeal was held to be barred by time. The question of the maintainability of a revision against the subsequent order on the review application did not arise at all.

9. In the maintainability of a revision against an order of the Subordinate Court the matters enumerated in Section 115 CPC are to be looked into and if they are present then a revision lies. The relevant consideration is that the order should be one against which no appeal lies and if it is so, this court can entertain the revision in order to see whether the Subordinate Court has exercised jurisdiction not vested in it or has failed to exercise its jurisdiction or has acted in the exercise of its jurisdiction illegally or with material irregularity. The two conditions laid down in the provision are also to be looked into. The revision lies as no appeal lies and whether it should be accepted could depend upon the other factors.

10. In the present case it can be said that the decision in Karan See's case (supra) upon which the learned Munsif relied in holding that the execution application cannot be revived after dismissal of an application under Section 6 of the Act was no longer good law, in view of the decision in 1969 (1) WLN 403 Pyare Lal and Ors. v. Rani Raman Kumari and Ors.. The previous decision in the case of Karan See v. Bastichand was considered and the meaning of the word 'abate' was gone into the provisions of Order 22, rule 3 and rule 9 CPC were taken into consideration and it was held that abatement is not a final dismissal of the suit in the sense that there can be no continuation of the proceedings in any contingency thereafter. When proceedings under Order 22, Rule 3, could be set-aside under Order 22 Rule 9 then it was held that a similar meaning to the expression 'abate' could be adopted while dealing with Sections 5 and 6 of the Act. It may be quoted from this decision:

Section 5(l)(i) says that the court shall abate the suit if it is satisfied on affidavit or otherwise that an application made to that Debt Relief Court under Section 6 or Section 6-A has been made and admitted and is pending. This section gives effect to the general rule of law that if two courts of concurrent jurisdiction are seized of the matter, the legislature may prohibit the other court from taking any proceedings in the matter. When it is said in Section 5(l)(i) that the court shall abate the suit, it means that the court will stop taking all further proceedings in the suit and may consign it to the record room. In Section 6(6) of the Act, such abatement is to be ordered in the suit in which the proceedings may have been stayed under Clause (ii) of Sub-section (1) of Section 5 if no such application as is referred to in Sub-section (4) is filed, or if such application is admitted and notice of such admission has been received by the court concerned. In all the cases before us, the abatement has taken place under Section 6(l)(ii). Now, it may turn out that the application filed by a person claiming himself to be a debtor within the meaning of Section 2(cc) of the Act may be dismissed on the objection taken by his creditor that he is not a debtor within the meaning of the Act or the court in which the application is filed is not competent to entertain the application or that the application does not comply with the provisions of Section 6(3). What is to be done after such abatement? The Debt Relief Court dismissing or rejecting the application must withdraw the notice of the admission of the application which it

had sent to the court concerned and even if it does not expressly withdraw such notice, it must be deemed to have done so by dismissing or rejecting the application of that person. What is the effect then on the abatement of the suit after such notice of admission has been withdrawn by the Debt Relief Court? Will the order of abatement remain in force even after the notice is withdrawn or deemed to be withdrawn? Such cannot be consequences. In effect the Debt Relief Court informs the court in which the suit is pending that it was not right in sending the notice of admission to the court in which the suit is filed and it further informs that court of the rectification of that mistake. Even if no express information is sent, then by rejecting the application of that person who has filed the application of under Section 6(1) of the Act, the Court must be deemed to have sent such notice. Obviously the order of abatement could not have been operative had this mistake been not made by the Debt Relief Court. As soon as the Court rectifies this mistake by rejecting the application, it means to convey to the court that so far as it is concerned, it places no hurdle in the progress of the suit. The court, in which the suit is pending, is therefore, duty bound to to revive the proceedings either suo moto or at the instance of the plaintiff who has filed the suit.

11. These findings make it clear that on the dismissal of the proceedings under Section 6 of the Act the abatement of the suit is set-aside and the suit is revived.

12. The learned Munsif has not followed this decision on the ground that it is not applicable to execution proceedings. In arriving at this conclusion he has simply said that this decision was taken in a suit and not execution. He has not cared to appreciate the meaning of the word 'abate', which is the relevant part. Even if examinined on the facts it can be said that in the reference made to a larger Bench, one of the order arose out of an execution petition which was challenged in revision. 'Abate' as used in Sections 5, or 5, 6 of the Act will not assume different meaning for purposes of suit and execution.

13. The answer to the question whether the proceedings in a suit can be revived on the rejection of the application of under Section 6 of the Act will be the same when the question is raised in execution proceedings. Both cannot be treated on different footings. When the decision of this court in Pyarelal v. Rani Raman

Kumari and Ors. (supra) was brought to the notice of the learned Munsif then he should have accepted the review application and revived the execution proceedings. One has to correct itself if the mistake is pointed.

14. In view of the above conclusion this revision petition deserves to be accepted because the learned trial court failed to exercise jurisdiction vested in it and at the same time committed illegality in the exercise of its jurisdiction. The order dated 9th December, 1983 is set-aside and the review application is allowed the order of 16-9-1981 stands reviewed. The result is that the execution proceedings will revive and will continue from the stage of abatement. Parties will bear their on costs. A copy of this order be sent to the trial court.

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