

(1953) 09 CAL CK 0009
In the Calcutta High Court
Case No : Execution Case No. 16 of 1953

A.S. Subba Iyer

APPELLANT

Vs

Metal Corporation of India Ltd.

RESPONDENT

Date of Decision : 04-09-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 9, Order 9 Rule 13, 40, 42
Limitation Act, 1908 — Article 182, 182(2)

Citation : AIR 1954 Cal 169

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : H.N. Ghosh, for the Appellant; S.K. Mukherji, Avs., for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an interesting application in execution. It relates to the execution of the decree of the Madras City Civil Court transferred to this Court for execution. The important point raised is a point of limitation. The judgment-debtor contends that the decree is barred by limitation and cannot be executed.

2. A few facts may be very briefly set out in order to appreciate the point involved. The City Civil Court at Madras passed on the 6th. December, 1948, an ex parte decree for Rs. 4,000/- with interest and costs in favour of the applicant. Towards the end of December, 1948, an application was made by the judgment debtor to the City Civil Court for setting aside the ex parte decree. That was dismissed by the City Civil Court on the 24th August, 1949. As against this order dismissing the application to set aside the ex parte decree, the judgment-debtor appealed to the High Court at Madras on the 15th April, 1952. The High Court at Madras allowed the appeal conditionally on the defendant paying the decretal amount together with the costs of the appeal within two weeks after the date of reopening of the Court for Summer Vacation, i.e., some time in July, 1952, and in default the High Court Ordered that the decree in suit was to be confirmed as per

decree of the City Civil Court dated the 6th December, 1948 and 15th April, 1952.

3. The defendant, however, failed to comply with the order of deposit. The result was that the City Civil Court decree stood confirmed. On the 20th April, 1953 by an order of the City Civil Court a certified copy of the decree of the City Court of Madras was sent to this Court for execution. The matter now comes up before me on a Tabular Statement affirmed on the 23rd June, 1953. It should be recorded that at no stage was there any stay of execution of the decree, obtained by the judgment-debtor.

4. Mr. S. K. Mukherjee, learned Counsel for the judgment-debtor, contends that under Article 182 of the Limitation Act, the City Civil Court decree being more than three years old, is barred.

5. Mr. H. N. Ghosh, learned Counsel appearing for the decree-holder, has very ably argued this matter to save his client from limitation. He has drawn my attention to the decisions of the Judicial Committee reported in --" AIR 1932 165 (Privy Council) and in -- Nanduri Sriramachandra Rao Vs. Chintamanibhatla Venkateswara Rao and Others, (B) on the basis of which he argued that the word "appeal" in the third column of Article 182 of the Limitation Act should be read in its plain meaning without any qualification as pointed out by the Judicial Committee. There is, however, the decision of Mr. Justice B. K. Mukherjee and Mr. Justice Sharpe reported in -- Nanduri Sriramachandra Rao Vs. Chintamanibhatla Venkateswara Rao and Others, (B) and came to the conclusion that the words "the final decree or order of the appellate court" in Article 182 (2) of the Limitation Act meant the I final decree or order passed on appeal from the decree which was sought to be executed and did not include the final decree or order that might be passed on appeal from an order made in a proceeding under Order 9, Rule 13 of the Civil Procedure Code, to have the decree which was sought to be executed set aside. In fact, it was held there that an appeal from an order rejecting an application to set aside an ex parte decree under Order 9, Rule 13 of the CPC did not extend the period of limitation for execution of the decree under Article 182(2) of the Limitation Act.

Being a decision of the Division Bench of this Court, I prefer to follow the Bench decision in AIR 1946 Cal 375 (C). Mr. Ghosh, however, very ably turned the corner on this point by making a distinction. That distinction is subtle. Relying on the provisions of Sections 40 and 42 and Order 21, Rule 9 of the Civil Procedure Code, Mr. Ghosh argued that whatever the Calcutta view may be as the decree in this case is a Madras decree, I as an executing Court should follow the Madras interpretation of Article 182(2) of the Limitation Act and not the Calcutta view on the ground that an executing Court although executes in the "manner" or according to the "Rules" of the place in which the executing Court is, it nevertheless adopts the substantive law of the Court in which the decree was passed. Having regard, therefore, to the decree of origin, Mr. Ghosh argued that I should follow and apply the principles laid down in Nanduri Sriramachandra Rao Vs. Chintamanibhatla Venkateswara Rao and Others, (B)." On this branch of his

argument, he relied on the decisions reported in -- "Tincowrie Dawn v, Debendra Nath" 17 Cal 491 (D) which was approved by a Division Bench of this Court in -- "Jogemaya Dassi v. Thackomoni Dassi" 24 Cal 473 (E).

6. The main difficulty, however, in this case is that the Madras view expressed in Nanduri Sriramachandra Rao Vs. Chintamanibhatla Venkateswara Rao and Others, (B)" is itself under a shadow. While, therefore, I am inclined to agree on the second branch of Mr. Ghosh's argument that the right to execute the decree is a question belonging to the region of substantive law and that the executing court is more concerned with the adjectival law than with substantive law, that does not seem to help him. The recent Supreme Court decision reported in -- Bhawanipore Banking Corporation, Ltd. Vs. Gouri Shankar Sharma, (F) had occasion to observe in a proceeding under Order 9 Rule 9 of the Civil Procedure Code:

"This argument also is a highly far-fetched one, because the expression "where there has been an appeal" must be read with the words in col. 1 of Article 182, viz., "for the execution of a decree or order of any civil court.....," and however broadly we may construe it, it cannot be held to cover an appeal from an order which is passed in a collateral proceeding or which has no direct or immediate connection with the decree under execution."

7. Mr. Ghosh has pointed out that an order under Order 9 Rule 9 is a proceeding which had immediate connection with the decree itself. But I am afraid it is not open any more for this Court to go into that question after that decision of the Supreme Court that is expressed in that language. In fact, this decision of the Supreme Court was also understood in the same sense as I am doing at the present moment in the recent Full Bench decision of the Patna High Court reported in -- Rameshwar Prasad Sahu Vs. Parmeshwar Prasad Sahu and Others, (G). Delivering the Full Bench judgment, Shearer, J., observes at page 5 as follows:

"It is enough for me to say that I respectfully concur in the reasoning contained in the judgment of B. K. Mukherji, J. Mr. Nandall Untwallia, for the respondents, has drawn our attention to a very recent decision of the Supreme Court which, is suggests, is conclusive on the point before us. In Bhawanipore Banking Corporation, Ltd. Vs. Gouri Shankar Sharma, (F), a final decree in a mortgage suit was passed on 22-12-1941. No attempt was made to put the decree into execution until 9-4-1945. Fazal Ali J. expressed the opinion that the application under Order 9, Rule 9 did not involve a review of the judgment thereby negating the argument which commended itself to Courtney-Terrell, C. J. and went on to point out that the word "appeal" in Clause (2) of Article 182 meant an appeal from the decree of which execution was sought, thereby affirming the series of decisions which "Courtney-Terrell, C. J. had taken to have been impliedly overruled. The plea taken by Mr. Nandlal Untwallia for the respondents was, in my opinion, a sound one."

8. Having regard to that position in law, I am afraid I have to hold that this decree is barred by limitation under Article 182 of the Limitation Act. The application should, therefore, be dismissed. But I will make no order as to costs.