
(1967) 07 BOM CK 0018
In the Bombay High Court
Case No : Second Appeal No. 1268 of 1962

Champalal Lakhichand

APPELLANT

Vs

Rupchand Supadu Patil and Others

RESPONDENT

Date of Decision : 27-07-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1
Limitation Act, 1908 — Section 20

Citation : AIR 1968 Bom 363 : (1968) 70 BOMLR 151 : (1968) MhLj 352

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Advocate : P.J. Vaidya, for G.N. Vaidya, for the Appellant; G.M. Bhokarikar, for the Respondent

Judgement

1. This is a second appeal by the decree-holder against the appellate order dated July 29, 1962, made by the District Judge, Jalgaon, in Civil Appeal No. 145 of 1962, whereby the learned Judge allowed the 1st respondent-judgment-debtor's appeal against the order dated April 12, 1952, passed by the trial Court and dismissed the decree-holder's darkhast application for execution. He ordered the parties to bear their own costs throughout.

(2) One Lakhichand Chhaganlal, being the father of the appellant-decree-holder obtained a decree for Rs. 2,437-8-0 with interest on Rs. 2,250 and costs amounting to Rs. 346-15-0 in Regular Civil Suit No. 38 of 1954 against the judgment-debtor whose legal representatives are now the respondents in this appeal. The decree was made payable by annual installments of Rs. 1,000 each payable on January 15, 1956 and 15th January of each subsequent year. The installments due on January 15, 1956 and January 15, 1957, were paid off. The balance of the decretal amount became payable on January 15, 1958. On November 18, 1958, the judgment-debtor deposited Rs. 250 in Court for payment to the decree-holder. Notice dated December 8, 1958, under O. 21, R. 1 of the CPC was issued and served on the decree-holder. The sum of Rs. 250 was

withdrawn by the decree-holder on December 26, 1958. On December 18, 1961, the appellant as decree-holder instituted Darkhast No. 226 of 1961 for execution of the decree to recover the balance remaining due under the decree. Now, this darkhast was admittedly filed more than 3 years after the notice dated December 8, 1958, was served on the appellant. It was, however, within 3 years from December 26, 1958, when the appellant had withdrawn the sum of Rs. 250. On behalf of the respondents, it was contended that the darkhast being beyond 3 years from January 15, 1958, when the whole of the decretal balance had become due and in any event beyond 3 years from November 18, 1958, when Rs. 250 were deposited in Court, was barred under Article 182 in the first Schedule to the Limitation Act. In reply, on behalf of the appellant, it was contended that the executing court had paid the sum of Rs. 250 as agent of the judgment-debtors to the appellant on December 26, 1958. The payment was made by the Court on behalf of the judgment-debtors. The Court as agent of the judgment-debtors had acknowledged the payment under its own signature in the proceedings of the notice issued under Order 21, Rule 1 of the Code. The acknowledgment extended the period of limitation of 3 years and that period commenced from December 26, 1958. That was the result of Section 20 of the Limitation Act. The trial Court accepted that contention and by the order dated April 12, 1962, gave directions for issue of process in the darkhast application. The District Judge in Civil Appeal No. 145 of 1962 reversed the findings of the trial Court. The District Judge held that even if the executing court was held to be constituted an agent for payment of Rs. 250 to the appellant, the period of 3 years began to run from December 8, 1958, being the date of notice issued under O. 21. In that connection, the learned Judge observed that after the notice was served interest would cease to run in favour of the appellant. That showed that after the date of the service of the notice the period of limitation could never be held to be extended u/s 20 of the Limitation Act.

(3) Mr. Vaidya for the appellant has strongly relied upon the observations of Sadasiva Ayyar J., in the case of *Govindasami Pillai v. Dasai Goundan*, ILR 44 Mad 971=AIR 1921 Mad 704 and contended that as held in that case, the Judge of the executing court should be deemed to have been an agent duly authorised by the judgment-debtor to make the payment and that the signature of the Judge on the paper showing the payment satisfied the condition that the fact of payment should appear in the handwriting of the person making it, as required by S. 20 of the Limitation Act and that consequently the application for execution was not barred.

(4) In reply Mr. Bhokariker for the 1st respondent has relied upon the provisions in O. 21, R. 1 of the Code. He has pointed out that under that rule it is directed that moneys payable under a decree may be paid into the court whose duty it is to execute the decree. The result, according to him, is that in receiving the payment from the judgment-debtor the court is the agent of the decree-holder. The payment made by the judgment-debtor into the court completely satisfies the decretal debt to the extent of the payment, as has been held in the case of

Wana Ravji Vs. Natu Murha, . He has also pointed out that it is well established that upon notice under O. 21, R. 1 being served on the judgment-creditor, to the extent of the payment made interest ceases to run on the decretal debt. On these facts, he has argued that even if the executing court may be held to be an agent of the judgment-debtor for making payment to the decree-holder, the date of such payment should be held to be the day on which the executing court receives payment as common agent of the parties. In the result, under S. 20 of the Indian Limitation Act the time would commence to run from that date.

(5) In the case of ILR 44 Mad 971=AIR 1921 Mad 704 it is first observed that the "the law of limitation is partly intended to promote diligence on the part of creditors in the matter of recovery of their debts. The concessions made in favour of creditors by the provisions of Sections 19 and 20 of the Limitation Act are intended to express the view of the legislature that a creditor will not be considered wanting in such diligence if he has been diligent enough to get the handwriting of the debtor to evidence an acknowledgment or the fact of part-payment within the period of limitation." It is next observed that the authorisation (the signature evidencing payment) need not be a voluntary authorisation. The Court then referred to cases in which an acknowledgment of a debt made by a receiver appointed by Court on behalf of a firm was held to save limitation under S. 19 in favour of the creditors of such firm. Courts-Trotter J observed that the principle deducible was that "if a debtor's assets are so placed either by his own act or by operation of law, that, if some one other than he alone can release them for the purpose of making payments due from him, then the act of that other in operating upon the debtor's assets must be treated as the act of the debtor himself, the violation of the debtor in such a case being neither requisite nor relevant. If that be so, it appears to me that the words "his agent duly authorised in that behalf" in S. 20 of the Limitation Act are satisfied by the act of the Judge of the Court which authorises the payment; and that his handwriting is rightly described as that of the person making the payment" There is, therefore, strong authority in favour of Mr. Vaidya for the proposition that the executing court would be an agent of the judgment-debtor and signature of the Judge of the executing court would be signature of an agent of the judgment-debtor in respect of part payment which may be recognised under S. 20 of the Limitation Act.

(6) Now, it has appeared to me that having regard to the provisions in O. 21, R. 1 the Court whose duty it is to execute the decree is constituted an agent of the creditor to receive from the judgment-debtor the decretal debt. The payment made into Court by the judgment-debtor in accordance with O. 21, R. 1 has been held in the case Wana Ravji Vs. Natu Murha, as valid compliance with directions in the decree for payment of the decretal debt to the judgment-creditor.

(7) In the case of Mahomed Rahimtulla v. Esmail Allarakhia, 51 Ind App 236=AIR 1924 PC 133 the mortgagee of a judgment-debtor made certain payment into Court under O. 21, R. 1 of the Code to protect his own rights under the mortgage

and thus vicariously to protect the interest of the judgment-debtor. At a subsequent stage, the mortgagee being not interested applied that he should be allowed to withdraw the deposit made into court. That application was opposed by the parties who were interested in withdrawing the amount deposited. The Privy Council held that the mortgagee was not entitled to withdraw the money "as the payment inured to the benefit of other persons, including the respondent interested in the performance of the condition." This finding of the Privy Council goes to show that the deposits made into Court whose duty it is to execute the decree inure for the benefit of the judgment-creditors. It is now well established that after notice of the deposit made under above rule is served on a judgment-creditor, interest ceases to run on the decretal debt to the extent of the deposit made. The authorities on this line are also numerous. I am, therefore, in spite of the observations of the Madras High Court in the above case, inclined to accept Mr. Bhokariker's contention that the executing Court is constituted under O. 21, R. 1 a common agent of the parties i.e., an agent of the judgment-debtor to make payment but also an agent of the judgment-creditor to receive payment. The payment is thus in fact received by the judgment-creditor at the date when deposit is made into court. That date is not further extended merely because, for the purpose of record of payment subsequently made to the judgment-creditor, the judge for maintaining record signs the fact respecting payment on the proceedings under Order 21 Rule 1. The time under S. 20, if extended, cannot be extended beyond the date when deposit is made into court by the judgment-debtor to be paid over to the judgment-creditor. This is so, because in receiving the deposit, the court acts as agent of the judgment-creditor.

(8) In the result, the darkhast application of the appellant was barred by the Law of Limitation and was liable to be dismissed. The order of the lower Appellate Court is confirmed. The appeal is dismissed with costs.

(9) Appeal dismissed.