
(1952) 01 GAU CK 0001
In the Gauhati High Court
Case No : S.M.A. No. 5 of 1950

Chunilal Patua and Another

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 09-01-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 5
Independence (Rights, Properties and Liabilities) Order, 1947 — Article 4, 4(3), 8(3), 8(4)
Independence Pakistan Courts (Pending Proceedings) Ordinance, 1951 — Section 2(1), 2(3)

Citation : AIR 1953 Guw 113

Hon'ble Judges : Ram Labhaya, J

Bench : Single Bench

Advocate : N.M. Dam, for the Appellant; R.K. Goswami, Government Advocate (Jr.), for the Respondent

Final Decision : Dismissed

Judgement

Ram Labhaya, J.—The facts giving rise to this appeal are as follows : A decree was passed against the province of Assam by the Court of the Munsiff at Habiganj on 21-6-1947. The decree was for the rent of a godown for a period commencing from 1-8-1944 to the 27-7-1945. The amount of Rs. 1000/-, which was claimed in the suit, included a claim for compensation as well. The decree-holder applied for execution of the decree on 5-8-1947--about 10 days before the partition of the country into two Dominions. The application for execution was made to the Court which passed the decree and was pending on 15-8-1947. As a result of the partition of the country, the area over which the Munsiff of Habiganj exercised jurisdiction became part of Pakistan. On 25-5-1948, the Munsiff at Habiganj ordered the transfer of the decree to the Court of the Munsiff at Silchar for execution. A certificate of non-satisfaction under Order 21, Rule 6 was granted to the decree-holder also on 25-5-1948. The effect of the transfer of the decree was that a Munsiff from East Pakistan transferred a decree of his

Court for execution to a Munsiff at Silchar in the Dominion of India. The province of Assam, (now the State), raised objections to the execution of the decree. It was contended on its behalf that the Government of East Bengal was liable for the decretal amount and that the Court at Silchar had no jurisdiction to execute the decree. The objections did not prevail. The learned Munsiff ordered that the execution case shall proceed against the judgment-debtor. On appeal, the learned Additional District Judge, U.A.D., reversed the order of the learned Munsiff holding first that the order of the Munsiff of Habiganj directing the transfer of the decree for execution to the Court of the Munsiff at Silchar was without jurisdiction and secondly that the Court at Silchar had no jurisdiction to execute the decree.

2. The decree-holder has appealed. On his behalf, it has first been contended that notwithstanding the partition, the State of Assam remains liable under the decree under Article 8(4) of the Indian Independence (Rights, Property and Liabilities) Order, 1947. Mr. Dam argues that the Province of East Bengal would be liable for the decree if the liability could be placed on it under Clause (4) of Article 8 and as the case is not covered by that clause, the province of Assam against which the decree was passed would remain liable. This seems to be a sound contention. Under Clause (4) of Article 8 which provides the basis for distribution of liabilities arising out of contracts between the province of Assam and the province of East Bengal, the province of East Bengal would be liable if a contract made before the appointed day on behalf of the province of Assam was a contract for purposes which from that day viz., 15-8-1947 were exclusively purposes of the province of East Bengal. The contract in that case shall, as from that day, be deemed to have been made on behalf of the province of East Bengal instead of the province of Assam and all rights and liabilities which have accrued or may accrue under the contract shall, to the extent to which they would have been rights or liabilities of the Province of Assam, be rights or liabilities of the Province of East Bengal. It is obvious that the East Bengal Government could be made liable only if from the appointed day the contract was exclusively for purposes of East Bengal. In this case, the decree was against the province of Assam for a period which ended before the partition of the country. The decree was passed before partition. Execution too had been taken before that day. There is nothing on the record to show that the contract which formed the basis of the suit in which the decree now sought to be executed was passed was subsisting on the date of partition or was exclusively for the purposes of the province of East Bengal from that date onwards. No such allegation appears to have been made in the Courts below. The learned Government Advocate has not contended even before me that the case is covered by Clause (4) of Article 8 of the Order on facts. It is safe to conclude, in these circumstances, that the province of East Bengal cannot be held to be liable under the decree under Clause (4) of Article 8. No other provision from the Order has been relied on by the learned Government Advocate to show that the province of East Bengal could be made liable under the decree. In fact, he has not at all disputed the contention raised by Mr. Dam

that the province of Assam (now the State of Assam) remains liable under the decree inasmuch as there is no provision in the Indian Independence (Rights, Property and Liabilities) Order by which the liability could be transferred to the province of East Bengal. It is not disputed that the provisions contained in this Order will govern the determination of the dispute as regards liability notwithstanding the repeal of the Indian Independence Act by Article 395 of the Constitution of India.

3. Mr. Dam has relied on-- Union of India (UOI) Vs. Loke Nath Saha, and-- Protap Kumar Sen and Another Vs. Nagendra Nath Mazumdar, in support of his contention. These cases are distinguishable on facts but the "ratio decidendi" adopted in these cases would lend support to his contention. In these circumstances, I see no reason why the contention raised by the learned counsel should not prevail. The decree being against the province of Assam, the State of Assam would remain liable for the satisfaction of the decree for reasons given above.

4. Mr. Dam next contended that the decree had been validly transferred to the Court of the Munsiff at Silchar and he, therefore, had jurisdiction to execute it. In support of this contention, he has placed reliance on Clause (3) of Article 3 and Article 4 of the Indian Independence (Legal Proceedings) Order, 1947. He has also relied on Protap Kumar Sen and Another Vs. Nagendra Nath Mazumdar, in support of this contention. Article 3 has no application to this case. It deals with proceedings pending immediately before the appointed day in any of the Special Tribunals specified in the Schedule to the Order. The case is covered by Article 4, which provides that notwithstanding the creation of certain new Provinces and the transfer of certain territories from the province of Assam to the Province of East Bengal by the Indian Independence Act, 1947 all proceedings pending immediately before the appointed day in any civil or criminal court (other than a High Court) in the province of Bengal, the Punjab or Assam shall be continued in that court as, if the said Act had not been passed, and that the court shall continue to have for the purposes of the said proceedings all the jurisdiction and powers which it had immediately before the appointed day. Clause (3) of Article 4 further provides that effect shall be given within the territories of either of the two Dominions to any judgment, decree, order or sentence of any such court in the said proceedings, as if it had been passed by a Court of competent jurisdiction within that Dominion.

Mr. Dam contends that the execution proceedings which were pending on the appointed day in the Court of the Munsiff at Habiganj could continue in that Court by virtue of the provisions contained in Article 4, Clause (1) of the Indian Independence (Legal Proceedings) Order, 1947. That Court was to continue to have for the purposes of the said proceedings all the jurisdiction and powers which it had immediately before the appointed day. In other words, the independence of the country and the subsequent partition did not derogate from the powers and the jurisdiction of the Court for purposes of the proceeding

pending in that Court on that day and by virtue of Clause (3), he further points out, effect has to be given to any judgment decree, order or sentence as if it had been passed by a Court of competent jurisdiction within this Dominion. Clause (3) of Article 4, no doubt distinctly provides that effect shall be given within the territories of either of the two Dominions to any order or sentence of any such Court as if the order or sentence had been passed by a Court of competent jurisdiction in that Dominion. The effect of the application of this clause to the facts of the case he argues is that the Court at Habiganj will be treated for the purposes of the execution proceeding in question as a Court of competent jurisdiction within the Dominion of India notwithstanding that as a result of partition the area over which the Court exercised jurisdiction became part of Pakistan. If that Court is to be treated as a Court of competent jurisdiction within the Dominion, it will certainly have the power to transfer the decree for execution to a court within the Dominion of India. His argument is supported by the view which prevailed in *Protap Kumar Sen and Another Vs. Nagendra Nath Mazumdar*,

In that case, the plaintiff instituted a suit in the Court of the Subordinate Judge at Jessore on 30-5-1947. Jessore was then a part of undivided Bengal. Certain properties belonging to the defendant and situated within the district of 24-Parganas were attached before judgment on 28-6-1947 through the District Judge at Alipore. While the suit was pending, the two new Dominions came into existence under the Indian Independence Act, 1947. The Province of Bengal was also partitioned. The suit was decreed "ex parte" on 9-12-1948. On 3-8-1949, the decree-holders applied to the Subordinate Judge at Jessore, then situated within the Dominion of Pakistan, for a certificate of non-satisfaction under Order 21, Rule 6, Civil P.C. The certificate was issued on 18-8-1949 and was received by the District Judge at Alipore, within the district of 24-Parganas, West Bengal, situated within the Dominion of India. On 22-5-1950, the District Judge at Alipore directed the return of the certificate of non-satisfaction to the Court of the Subordinate Judge at Jessore on the ground that the decree passed by the Jessore Court was not capable of execution by the Alipore Court in another Dominion.

It was this order which the decree-holder challenged by a petition of revision. The learned Judges constituting the Division Bench held that a certificate of non-satisfaction issued by the Subordinate Judge, Jessore (in Pakistan) on 18-8-1949 and received by the District Judge of 24-Parganas in West Bengal, in respect of a decree obtained in a suit pending at the appointed day in Jessore and decreed "ex parte" after the appointed day, cannot be directed to be returned by the District Judge of 24-Parganas, in view of the provisions contained in Article 1 of the Legal Proceedings Order, 1947. They held that the Jessore Court continued even after the appointed day to have for the purposes of the proceeding which was pending before that Court immediately before that day, all the jurisdiction and powers which it had immediately before the appointed day. Before the appointed day, the Jessore Court had jurisdiction to forward a certificate of non-satisfaction to any other Court within the Province of Bengal. In respect of the

suit which was pending on the appointed day in the Jessore Court, that Court would be treated as if there had been no partition of Bengal and the district of Jessore had not become a part of a separate independent Dominion. Reading Sub-clauses (1) and (3) of Clause 4 of the Order the two Courts at Jessore and Alipore in two different Dominions were treated as Court within the same Dominion for the purposes of the proceeding in question.

The learned Government Advocate contends relying on-- Dominion of India Vs. Hiralal Bothra, that the Court of the Munsiff at Habiganj became a foreign court from 15-8-1947 and therefore Pakistan, not being a reciprocating territory, the Court at Habiganj became a foreign Court and therefore the provisions of Section 13, Civil P.C. were attracted and the Munsiff at Silchar could not entertain any application for execution of the decree. The decree in this case Dominion of India Vs. Hiralal Bothra, was obtained on 15-5-1947 from the Court of the Munsiff at Jamalpur within the district of Mymensingh against the Governor-General of India in Council, New Delhi and B. A. Railway, having its Head Office at 3, Koilaghat Street, Calcutta. On 8-12-1947, the decree-holder applied to the Court of the Munsiff, Jamalpur under Order 21, Rule 6, Civil P.C. for a certificate of non-satisfaction. The certificate was issued and a copy of the order was, as applied for by the decree-holder, directed by the Munsiff at Jamalpur to be sent to the Registrar, Court of Small Causes, Calcutta, with a copy of the decree. On 13-3-1948, the decree-holder filed an application for execution of the decree so transferred in the Court of Small Causes at Calcutta. The Dominion of India resisted the execution. It would be noticed that no proceedings were pending on 15-8-1947. in the Jamalpur Court or in the Court of Small Causes at Calcutta. Therefore the only question to which the learned Judges in that case addressed themselves was whether after the appointed day, viz., 15-8-1947, it was competed for the Calcutta Court to entertain an application for starting proceedings in execution of a decree which had been passed by the Jamalpur Court before the appointed day. Their answer to this question was that the Court of Small Causes at Calcutta had no such jurisdiction. They further observed that had there been proceedings pending either in the Court at Jamalpur or in the Court of Small Causes at Calcutta on 15-8-1947, the legal position would have been altogether different.

In the case before me it is admitted that the execution proceeding was pending in the Court at Habiganj on 15-8-1947. The case relied on by the learned Government advocate is clearly distinguishable and is of no assistance to him. It is not based on any view of the law which conflicts with or militates against the view which prevailed with the Division Bench of the same Court in Protap Kumar Sen and Another Vs. Nagendra Nath Mazumdar, I am in respectful agreement with the view taken therein and hold that the Court of the Munsiff at Habiganj ought to be treated as a Court within the Dominion of India for purposes of the execution case pending in that Court against the Province of Assam on the appointed day. That Court, therefore, will have jurisdiction to transfer its decree under Civil P. C. to any other Court in the Dominion of India as being a Court

within the Dominion of India for the purposes of the particular proceeding by virtue of the provision contained in Clause (3) of Article 4 of the Indian Independence (Legal Proceedings) Order 1947, though the Court at Habiganj would be bound by the provision of Civil P. C. contained in Order 21, Rule 5 regulating the manner of transfer.

5. The petition of revision, however, cannot succeed as Clause (3) of Article 4 on the strength of which the learned counsel for the petitioner claims jurisdiction in the Court at Habiganj to transfer the unsatisfied decree for execution at Silchar has been abrogated by Section 3 of the Indian Independence Pakistan Courts (Pending Proceedings) Ordinance (V) of 1951. This section forbids effects being given to any decree to which this Ordinance applies. It provides that no decree to which the Ordinance has been made applicable should be given effect to by any Court or authority in India in so far as such decree imposes any liability or obligation on any Government in India. The Ordinance applies to the decree in question. By virtue of the provision contained in Section 2, Clause 1 of the Ordinance "decree to which this Ordinance applies" includes a judgment, decree or order as is referred to in Clause (3) of Article 4 of the Indian Independence (Legal Proceedings) Order 1947. This is not disputed. The result is that the Ordinance expressly prevents effect being given to the decree in question by any Court in India. Clause (3) of Article 4 of the Indian Independence (Legal Proceedings) Order 1947 permitted a procedural facility for giving effect to such decree if their execution was pending in Pakistan on the date of the partition. That facility has been withdrawn and instead the decree-holders of such decrees even if they have been transferred under Order 21. Rule 6 to the Dominion of India for execution, have been given a remedy by institution of fresh proceedings on the basis of their decrees. Effect cannot be given to such unsatisfied decrees by execution. Mr. Dam concedes that the alteration in law introduced by the promulgation of the Ordinance is procedural in character and would apply to decrees transferred before the Ordinance came into force if they have not been executed so far. In view of this development, the order of the learned Subordinate Judge holding that the Court of the Munsiff has no jurisdiction to execute the decree must stand. The petition is dismissed. I make no order as to costs in this Court.