
(1952) 08 AP CK 0002
In the Andhra Pradesh High Court
Case No : Appeal No. 18 of 1951

Dyna Craft Machine Co. and Others	Vs	APPELLANT
Syed Jahangir Ali and Another		RESPONDENT

Date of Decision : 01-08-1952

Acts Referred:

Civil Procedure Code Amendment Act, 1951 — Section 4
Civil Procedure Code, 1908 (CPC) — Section 2(5), 3, 47
Constitution of India, 1950 — Article 1, 261(3), 5

Citation : (1952) 08 AP CK 0002

Hon'ble Judges : Palnitkar, C.J.; Srinivasachari, J

Bench : Division Bench

Advocate : Narasimha Iyengar and Ramkishan Rao Nimbalkar, for the Appellant;
Irshad Husain, for the Respondent

Judgement

Srinivasachari, J.

1. This is an appeal u/s 47 of the CPC against, the order of the City Civil Judge, dismissing the execution petition of the Appellant.

2. The brief facts relating to this case are that the Appellant obtained a decree against the Respondent in the Bombay High Court on the 8th December 1949 for a sum of rupees fourteen thousand and odd. This decree was an ex-parte decree. Later, the Appellant filed a suit in the City Civil Court based on the foreign judgment of the Bombay High Court. He based his suit alternatively on the original cause of action as well. While the suit was pending in the lower Court, the Constitution came into force and after the coming into force of the Constitution, the Appellant filed an execution application seeking to execute the decree that he obtained in the Bombay High Court. Two objections were raised by the Respondent: firstly, that the application was barred by limitation, and secondly, that the decree of the Bombay High Court could not be executed. So far as the first objection was concerned, the lower Court negatived the contention and held that the application was within time. As regards the second

objection, the Court gave the order that the decree of the Bombay High Court could not be executed for the reason that it was not a decree passed by a Court established in the State.

3. We heard the learned Advocate for the Appellant and the Respondent appeared in person.

4. Reliance is placed by the learned Advocate for the Appellant on Article 261, Clause (3) of the Constitution of India, which is to the following effect:

Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

As the words show, Article 261 (3) clearly allows the execution of a decree passed by any Court in any State within the territory of India in any other State in India. There are no words restricting the operation of the decree in any State within the territory of India. We are one with the learned Judges of the Bombay High Court in that we are of the opinion that a decree passed by the Bombay High Court can no longer be regarded as a nullity and therefore incapable of execution. The idea of an "ex-parte" decree as against a non-resident foreigner having no operative force according to international law cannot, in our opinion, apply to the facts of this case.

5. The Bombay High Court was a foreign Court within the meaning of Section 3 of the Hyderabad Code of Civil Procedure. No doubt, according to the decision of the Privy Council in the leading case of *Gurdayal Singh v. The Raja of Faridkot* 21 Ind App. 171 (P.C.) an "ex-parte" decree passed by the Bombay High Court against a resident of a native State could not be regarded as a decree passed by a court of competent jurisdiction, capable of being executed by a Court situated in a native State. The question arises whether, by reason of Hyderabad having become part of the territory of India after the Constitution, the impediment, that was subsisting to a decree of a Court situated in erstwhile British India being executed in Hyderabad as a decree of its own Court, has ceased to exist. As was held in the Full Bench case of *Bhagwan Shankar Vs. Rajaram Bapu Vithal*, , the impediment, if any, that was in the execution of a decree of a Court that was once in British territory in a native State, had been removed by the provisions of Article 261(3) of the Constitution and once the impediment had been removed, there was nothing to prevent the execution of the decree of one State in another State within the territory of India. The same view has been held in the Full Bench case of *Ramdayal v. Shankarlal* reported in ILR (1952) Hyd 193, which followed an unreported case of a Division Bench. *J. H. Subbiah v. Revachand* No. 6 of 1351 F., D/-24-7-51 (Hyd). The Bombay High Court has ceased to be a foreign Court; if it has ceased to be a foreign Court its decrees are capable of execution as any other decree passed by any Court in this State.

6. It may be that prior to the Constitution the judgment-debtor as a citizen of Hyderabad, a native State under the rule of the Nizam, was entitled to resist the

execution of a decree that was passed by a court of territory to which he did not owe allegiance. But after the advent of the Constitution Hyderabad became a part of the territory of India, vide Article 1 of the Constitution & the judgment-debtor automatically became a citizen of India under Article 5 of the Constitution of India. When he became a citizen of India and his status changed, it would no longer be open to him to regard the Bombay High Court as a foreign Court. Further by virtue of the provisions of the CPC Amendment Act, No. II of 1951, Bombay High Court cannot be regarded as a foreign Court for in Section 4(I) of the above Act, "foreign court" has been defined as "a court situate outside India and not established or continued by the authority of the Central Government". It is well accepted that a Court can take notice of subsequent events and grant proper relief, vide *Priyambada Debee Vs. Bholanath Basu*, & on the day when we are called upon to adjudicate, certain events have happened, which disentitle the judgment-debtor from resisting execution on the ground of the decree of the foreign Court, we can over-rule the objection and order execution.

7. We, therefore, hold that the decision of the lower Court that the decree is not executable, is erroneous. We allow the appeal, set aside the order and remand the case for disposal according to law.

8. In view of this order of ours in the appeal, the learned Advocate for the Appellant states that he does not press the revision petition that he has filed against an interlocutory order in the suit itself. The revision petition is, therefore, dismissed.

9. This judgment will govern the revision petition as well.

Shriatrao, C.J.

10. I agree. The question to be decided is whether the Bombay High Court is a foreign Court as defined in Section 2(5) of the Code of Civil Procedure, as amended by Act No. II of 1951, after the establishment of the Republic of India and integration of Hyderabad State and the commencement of the Constitution. In this connection, the provisions of Article 261, Clause (3) of the Constitution must also be considered. It is clear that as a question of international law, the Bombay High Court's decree cannot be considered to be a decree of a foreign Court, vis-a-vis the Hyderabad State courts, as this State and the State of Bombay are parts of the same Republic of India. Thus, the rulings, which declare that a decree passed by a foreign Court is a nullity, can no longer be applicable. I have held in the Full Bench case of *Ramdayal v. Shankerlal* ILR (1952) Hyd 193 (F.B.) that in such cases the provisions of Article 261(3) will be applicable and I have discussed the question in detail in that case, giving reference to various Indian and other rulings. It is not necessary to repeat the reasonings given therein. I, therefore, agree with the order proposed by my learned colleague.