
(1927) 02 PAT CK 0029
In the Patna High Court

Firm Lakhiram Baldeo Das

APPELLANT

Vs

Mahabir Bhagat and Others

RESPONDENT

Date of Decision : 09-02-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 73

Citation : AIR 1927 Patna 252

Hon'ble Judges : Scroope, J

Bench : Division Bench

Judgement

Scroope, J.—In the execution matter out of which Civil Revision No. 366 arises the facts are these: the petitioners had got a decree for Rs. 2,746-14-0 against the firm Mahabir Bhagat and had filed Execution Case No. 758 of 1925 in the Court of the Subordinate Judge of Bhagalpur. Damodar Prasad, the opposite party, had also a decree against the same firm, had put it into execution in Case No. 166 of 1925 in the same Court and had got the property of the judgment-debtor attached and proclaimed for sale; the petitioners had put in an application in Damodar Prasad's execution case praying for rateable distribution when the properties of the judgment-debtor were sold on 16-12-25 for Rs. 8,950 and the date for confirmation of sale was fixed for 22-1-26.

2. Then there were proceedings under Order 21, Rule 90 for setting aside the sale. Whilst the sale matter was pending the execution case of the petitioners was transferred by the District Judge to the Munsifs' Second Court of Bhagalpur as it fell within his pecuniary jurisdiction and was dismissed for default on 26-4-26; the petitioners' case is that they had no information about the order of transfer; but this cannot be gone into now. On the 6th May 1926, they put in another petition for execution in the Court of the Second Munsif which was registered on 11-5-26 as case No. 626 of 1926. The sale matter was disposed of on 17-5-26, the application of the judgment-debtors being rejected, and the sale was confirmed on that date. Meanwhile the petitioners' application for rateable distribution which had been filed on 14-12-25 before the Subordinate Judge had

been lying in abeyance and they put in a second petition to the same effect on 7-5-26.

3. After the disposal of the sale matter the Subordinate Judge heard the petitioners' application for rateable distribution and disallowed it, holding that as their application for execution was filed on the 11-5-26, that is, long after and not before the assets were realised, the requirements of Section 73 of the Civil P.C. had not been complied with and he accordingly disallowed it.

4. The petitioners have accordingly come up in revision now and their contention is that as the application for rateable distribution filed on 14-12-25 had not been disposed of up to the date of confirmation of sale it, along with the original execution case, should have been treated as pending and that the petitioners were accordingly entitled to rateable distribution. The learned vakil for the petitioners has been unable to show me any authority for his contention that this petition kept alive his original execution case. That was dismissed for default on 24-4-26 and that dismissal had the effect of putting an end to those execution proceedings for the time being. Moreover, the case had been transferred to the Munsif, Second Court. If the execution proceedings had been kept alive by the fact that the petition for rateable distribution had not been disposed of, then I fail to understand why a fresh petition for execution was put in on 11-5-26. Moreover, there is another defect which is fatal to the petitioners succeeding and that is that this second execution case was filed, as pointed out by the learned Subordinate Judge, in the Court of the Second Munsif, where the original execution case had also been transferred as stated above. So, at the time when the Subordinate Judge decided the matter of rateable distribution, there was no execution case before him at all, either directly or indirectly. His order calling for the records of this second execution proceeding is not tantamount to a transfer of that execution case to his file; u/s 24 of the CPC he had no power to order such a transfer. I fail to see how in any aspect of the case the petitioners can succeed, seeing that the application for execution on which their demand must be based had been filed long after and not before the assets were realised. I think then that the learned Subordinate Judge was quite correct in rejecting their prayer for rateable distribution.

5. In this view of the case it is unnecessary to discuss the further difficulty in the petitioner's case, that the judgment-debtors in Damodar's decree are five persons individually while the petitioner's decree is against a firm of two only. This petition is dismissed with costs which I assess at two gold mohurs.

6. The facts of the other two revisional cases, Nos. 364 and 365, are very much the same. The petitioners in these cases obtained a money decree against the same judgment debtors in the Court of the First Munsif and had put their decrees into execution in Oases Nos. 1544 of 1925 and 1551 of 1925. The opposite party is the same in these cases and there was his decree in the Court of the Subordinate Judge in which he got the property put up for sale and then followed the Order 21, Rule 90 proceedings referred to in civil Revision No. 366 of 1926.

The petitioners on 15-12-25 filed a petition for rateable distribution in the Court of the Subordinate Judge, and on 21-12-25, they filed an application in the Munsif's Court where the execution case was pending for the transfer of the execution case to the Subordinate Judge's Court. But this was rejected on the ground that this could not be done without an order from the Court concerned.

7. Then, on 23-12-25, the petitioners asked the Subordinate Judge of Bhagaipur to transfer these two execution cases to his own Court. His order was: "Put up these petitions after the sale is confirmed and let the record be called for." The assets came into the Subordinate Judge's hands on 2-1-26, and on 3-7-26 the learned Subordinate-Judge rejected the petitioner's application for rateable distribution on the ground that no application for execution had been made in his Court at all and they have filed these revision applications in this Court.

8. It is contended in revision that at the date of the realisation of the assets the petitioners' application for rateable distribution was pending before the Subordinate Judge and that being so, they were entitled to rateable distribution.. But Section 73 clearly requires that there" must be an application for execution to the Court which holds the assets and prior to the receipt thereof, and this was not the case in the two petitions-before me.

9. As regards the application of 21-12-251 before the Munsif for transferring the execution case, he obviously had no power to transfer it to the Subordinate Judge and he rightly declined to do so. As regards the application of 23-12-25 made to the Subordinate Judge, on which the petitioners strongly relied, and the order thereon, this does not amount to a transfer of the execution, case. I think the learned Vakil for the respondents is quite correct in his contention that Section 24 of the Civil P.C., governs the case and that the proper course for the petitioners was to move the District Judge to transfer the execution cases. The Subordinate Judge had no power to take them away from the file of the Munsif and his order calling for the records does not amount to a transfer of the execution cases. The opposite party, Damodar Prasad, had been vigilant in the matter of executing his decree.

10. He had put the property up for sale and had vigorously contested the judgment-debtors' application under Order 21, Rule 90, and I think that he is entitled to reap the fruits of his vigilance in the matter, and in none of the cases can the petitioners be entitled to any equitable relief.

11. The requirements of Section 73 had not been complied with inasmuch as no execution cases were pending in the Court, of the Subordinate Judge either by transfer or otherwise at the time when the assets came into his hand and for these reasons these petitions: also fail and must be dismissed with costs which I assess at three gold mohurs.