
(1937) 08 AHC CK 0030
In the Allahabad High Court

Firm Shiva Dayal Mal Suraj Bhan

APPELLANT

Vs

Rajeshwar Prasad and Others

RESPONDENT

Date of Decision : 02-08-1937

Acts Referred:

Citation : (1937) 08 AHC CK 0030

Final Decision : Allowed

Judgement

1. This execution first appeal is connected with Nos. 491 of 1935, 226 of 1935 and 401 of 1935. The appellant in this appeal and in No. 491 is the firm Shiva Dayal Mal Suraj Bhan. In the other two appeals the appellants are different parsons. It appears that all the appellants had decrees against the same party and that these decrees were transferred for execution to the Court of the Second Subordinate Judge of Meerut. While the decrees were in execution in that Court, there were compromises between the parties by which it was decided that a certain period would be allowed to the judgment-debtor for the payment of a certain sum and that if he paid that sum within the specified period, the decrees should be considered to have been satisfied. On the other hand, if he did not pay the sum, then the full amounts of the decrees which were considerably larger should be recovered by execution. Pro-parties had been attached in execution of all the decrees and it was arranged in the compromise that the attachments should1 subsist. The money was not paid and the? applications were made that executions should proceed.

2. In the meanwhile, it appears that the Court of the Second Subordinate Judge of Meerut had made a report or sent a certificate purporting to be u/s 41, Civil P.C., to the High Court of Bombay. We do not know what the terms of the certificate were, because the certificate itself or the copy of it is not upon any record which is before us. We presume therefore that this certificate or report represented the true facts to the Bombay High Court. The Court of the Second Subordinate-Judge after the compromises had been put in, had passed orders that the applications, for execution should be filed but that the attachments

should subsist.

3. We have no doubt that these were the facts which were reported to the Bombay High Court and they are not facts which would lead to the conclusion that it was the intention of the Court to which the decree had been transferred to report to the Court which passed the decree that the latter might consider itself again seised of the matter of execution. The Second Subordinate Judge of Meerut had neither executed the decree nor had-he failed to execute it. When executions-proceeded, applications were made by other decree-holders and by the appellants among themselves for rateable distribution of the assets. There was one application for execution by Mst. Kailashvati, No. 47 of 1934 in the course of which the appellants Shiva Dayal Mal Suraj Bhan made an application for distribution. When this application was made, the decree-holder Rajeshwar Prasad, minor, who in the respondent in three of the appeals before us, made an objection that the applications for execution by the appellants were not in order as the Court of the Second Subordinate Judge at Meerut. had ceased to have jurisdiction for execution of the decrees as soon as it had sent a certificate purporting to be u/s 41 to the High Court at Bombay. This objection was upheld with the result that the applications for execution, and the applications for rateable distribution in the case of Mt. Kailashvati made by the-appellants, were all dismissed.

4. Of the appeals by Shiva Dayal Mal Suraj Bhan, one is against the order dismissing their application for execution and the other against the order refusing rateable distribution. The other two appeals are by Messrs. Madho Prasad & Co. and Messrs. Hira Lal & Co. In both these appeals, both the orders dismissing the applications for execution and the orders refusing rateable distribution are questioned. What we have to decide is whether the learned Judge of the Court below was right in holding that the Court of the Second Subordinate Judge at Meerut had ceased to have jurisdiction to execute the decrees as soon as it had sent a certificate to the High Court in Bombay stating the facts of the case. A reference has been made to the decision in *Shiam Lal Vs. Koerpal and Another*, This is a ruling by a single Judge of this Court With respect to the opinion of the learned Judge, we think that the question whether a Court to whom a decree has been transferred for execution ceases to have jurisdiction depends upon the nature of the circumstances. If such circumstances as are referred to in Section 41, Civil P.C. exist and a certificate is sent relating those circumstances, we have no doubt that the Court does cease to have jurisdiction. On the other hand, where the Court executing the decree has neither executed it nor finally failed to execute it, we do not think that it can be said that the Court has ceased to have jurisdiction, especially in a case such as that before us in which it was obviously the intention of the parties and of the Court that the application for execution should not be finally dismissed. The result of dismissal of the application for execution is under the provisions of Order 21, Rule 57 that the attachment of property ceases. The parties did not intend that the attachment should cease and the Court passed an order that the attachment should subsist. This appears to us

to be one of those cases where the order of the Court was intended merely to be a ministerial order that the record of the case should be kept in the record room until proceedings were continued. It was not a case where the application for execution was dismissed. There was no necessity for the Court to make any report to the Bombay High Court, but if the report it had made was a report of the true facts, as we must suppose that it was, then it was not properly a certificate u/s 41, Civil P.C. which would operate to re-transfer the jurisdiction for execution of the decree from the Second Subordinate Judge of Meerut to the Bombay High Court. In our opinion the decision of the Court below cannot be upheld. We consider that all the applications for execution were properly in existence and that the execution of all the decrees on these applications should proceed. We also hold that the parties are not debarred from rateable distribution merely upon the grounds taken in the objection.

5. The result is that the appeals succeed and are hereby allowed. The appellant's costs in No. 204 of 1935, No. 226 of 1935 and No. 401 of 1935 shall be paid by the respondent Rajeshwar Prasad. In First Appeal No. 491 of 1935, the appellant will pay his own costs. In that appeal the respondent is the judgment debtor who has not appeared and who did not question the right of the appellant to execute the decree in the Court below. The costs of the appellant in the Court below in so far as they relate to the objections now before us shall be paid by the respondent Rajeshwar Prasad. The record shall be returned to the Court below which will proceed with execution.