
(1968) 09 OHC CK 0017
In the Orissa High Court
Case No : Misc. Appeal No. 64 of 1966

G. Pannalal Sowcar	Vs	APPELLANT
Appalabhukatala Sanyasayya Achary		RESPONDENT

Date of Decision : 11-09-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 39(1), 41, 42, 48
Limitation Act, 1908 — Article 182

Citation : AIR 1969 Ori 147 : (1969) 35 CLT 181

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : P.V.B. Rao, for the Appellant; N.V. Ramdas and N.B.K. Murty, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, J.—The decree-holder obtained a money decree in the Court of the Munsif, Vizianagaram on 4-10-52. It was confirmed in appeal on 31-8-53. On 20-4-54, E. P. No. 480 of 1954 was filed in the Court of the Munsif, Vizianagram. On 28-6-54 a non-satisfaction certificate was issued by the Munsif, Vizianagram to the Munsif, Jeypore, through the District Judge. On 23-9-54, E. P. No. 147 of 1954 was filed before the Munsif, Jeypore. On 17-4-58 the execution proceeding was closed on part satisfaction. This result was communicated to the Munsif, Vizianagram on 25-4-1958. On 17-10-60, E. P. No. 105 of 1960 was filed in the Munsifs Court, Jeypore. On 11-11-60 the execution proceeding was dismissed as not maintainable. On 16-7-1963, E. P. No. 1179 of 1963 was filed in the Munsif's Court, Vizianagram. That Court sent a non-satisfaction certificate to the Munsif, Jeypore on 3-1-1964. The certificate was received on 8-1-64. E. P. No. 74/94 of 1964/65 was filed on 8-7-64. Two objections were raised by the judgment-debtor that the decretal dues had been completely paid and that the execution was barred by limitation. The executing Court overruled both the objections. Before the appellate Court the judgment-debtor abandoned the plea of payment. The appellate Court however, held that the execution proceeding was barred by

limitation. Against the reversing order of the appellate Court this Miscellaneous Appeal has been filed by the decree-holder.

2. The following questions arise for consideration:

(1) Whether the order dated 25-4-58 communicating the result that the execution proceeding was closed on part satisfaction is a non-satisfaction certificate u/s 41, Civil P. C.

(2) Whether E. P. No. 105 of 1960 pending in the Court of the Munsif, Jeypore, from 17-10-60 to 11-11-60 constitutes a step in aid of execution.

(3) Whether the failure on the part of the decree-holder to object to the dismissal of E. P. No. 105 of 1960 as not maintainable constitutes *res judicata* in respect of an objection that a non-satisfaction certificate was despatched by the transferee Court to the transferrer Court.

(4) Whether E. P. No. 1179 of 1963 in the Vizianagaram Court was not in a proper Court as no non-satisfaction certificate had been sent by the Jeypore Court to the Vizianagaram Court.

3. It is to be noted that E. P. No. 147 of 1954 in the Court of the Munsif, Jeypore was closed on 17-4-58 and this result was communicated to the Vizianagaram Court on 25-4-58. The question is whether mere communication or the order constitutes a non-satisfaction certificate u/s 41, Civil P. C. which runs thus:--

"The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure".

There is some conflict of authority on this point. The matter is fully discussed in *Prahlad Prasad Mahotra Vs. Thakur Prasad Mehra and Company*, . Their Lordships observed that the act of sending a certificate u/s 41 is something in the nature of a judicial act and a formal order of the transferee Court to that effect would be necessary to satisfy the requirements of Section 41. Where there is no order of the transferee Court directing that a certificate should be issued u/s 41 and where it did not appear from the order sheet that any such certificate was in fact prepared and signed by the transferee Court and sent to the transferrer Court, but the entry in the suit register indicated that an information was sent to the transferrer Court relating to the dismissal of the execution case, there is no non-satisfaction certificate as required by law. With respect I am inclined to accept the view as laying down the correct law. The communication made on 25-4-58 cannot be construed as constituting a non-satisfaction certificate.

4. If a non-satisfaction certificate was not despatched by the transferee Court to the transferrer Court, as has already been held, E. P. No. 105 of 1960 was properly filed before the Munsif, Jeypore. It had complete jurisdiction over the matter. Unfortunately the Munsif, Jeypore dismissed E. P. No. 105 of 1960 as not

maintainable on the erroneous view that the communication made on 25-4-58 constituted a non-satisfaction certificate. The decree-holder became satisfied with the order passed on 11-11-60. The discussion would therefore, proceed on the assumption that the order was correct, though it was contrary to law. The question, therefore, arises whether this execution would constitute a step in aid so as to save limitation. On identical facts it was held in *Sheshaiyer Rajamanner Aiyer Vs. Madanmohan Patnaik*, , that it would constitute a step in aid. Their Lordships said that if the Court to which a decree is sent for execution while retaining jurisdiction to execute the decree returns an application for execution which was properly made to it under a misapprehension, that will not prevent the making of the application from being tantamount at least to a step in aid of execution.

5. The further question for consideration is whether the order of the executing Court on 11-11-60 that a non-satisfaction certificate had been sent to the Vizianagram Court and as such the execution before the Munsif, Jeypore was not maintainable constitutes constructive *res judicata*. It is well settled that an objection which ought to and might have been taken at an earlier stage of the execution constitutes *res judicata* at a later stage. That principle would have full application to this case and accordingly the decree-holder is precluded from raising the objection that a non-satisfaction certificate was not sent to the Vizianagram Court, despite the real position it had not been sent.

If *res judicata* operates, the assumption would be that a non-satisfaction certificate was sent to the Vizianagram Court. Law is well settled that despite the despatch (Non-despatch?) of a non-satisfaction certificate by the transferrer (transferee?) Court to the transferee (transferrer?) Court the transferee (transferrer?) Court retains jurisdiction to execute the decree in respect of all matters other than those which have been transferred to the transferee Court. This has been fully discussed in *Giridhari Lal and Others Vs. Thakurdas*, . The question, however, becomes academic in this case as it has to be assumed that a non-satisfaction certificate had been despatched to the Vizianagram Court and accordingly the Vizianagram Court had jurisdiction to entertain E. P. No. 1179 of 1963 even though the relief might have covered properties situated within the jurisdiction of the Munsif, Jeypore. In this view of the matter the fourth question raised by Mr. Ramdas does not arise for consideration.

6. In view of the aforesaid conclusions, the execution application is within limitation and the judgment-debtor's objection must be overruled. The order of the lower appellate Court is set aside and the Misc. Appeal is allowed. In the circumstances parties to bear their own costs throughout.