
(1958) 02 GAU CK 0004
In the Gauhati High Court
Case No : Misc. Appeal (F) 30 of 1956

Gauhati Bank Ltd.

APPELLANT

Vs

Santiramjan Das Gupta

RESPONDENT

Date of Decision : 18-02-1958

Acts Referred:

Banking Companies (Amendment) Act, 1953 — Section 45D, 45D(6), 45T, 45T(2)
Civil Procedure Code, 1908 (CPC) — Section 38
Companies Act, 1956 — Section 153

Citation : AIR 1958 Guw 79

Hon'ble Judges : Haliram Deka, J;G. Mehrotra, J

Bench : Division Bench

Advocate : S.D. Das, for the Appellant; P.L. Shome and P. Chowdhury, for the Respondent

Judgement

H. Deka, J.—This appeal is from an order of the Subordinate Judge at Nowgong covering Money Execution Cases Nos. 31, 32, 33 and 60 of 1955 of that court. The main point that arose for consideration is whether a decree could be executed in any of Subordinate Courts on the basis of a certificate u/s 45D of the Banking Companies (Amendment) Act, 1953.

The learned Subordinate Judge has not in any way elaborately treated with the facts of this case but it is admitted that it arose out of a petition for allotment of dues to the bank by a credit and the decree was sought to be executed on the basis of a certificate issued u/s 45D(6) which is in the following terms:

(6) In respect of every such order, the High Court shall issue a certificate specifying clearly the reliefs granted and the names and descriptions of the parties against whom such reliefs have been granted, the amount of costs awarded and by whom, and out of what funds and in what proportions, such costs are to be paid; and every such certificate shall be deemed to be a certified copy of the decree for all purposes including execution.

The learned Subordinate Judge however finally passed an order rejecting the

execution of the decree in connection with all the execution cases and passed one order dated 7-7-1956 covering all the cases. The decree-holder bank being dissatisfied with that order has come up to this Court in appeal and the argument on behalf of the Appellant bank is that it was competent for the bank to execute the decree in a subordinate Court without having the execution proceeding Instituted in the High Court or transferred therefrom, as contended by the judgment-debtor.

In support of the argument thus advanced Mr. Das appearing for the Appellant bank relies on Clauses (1) and (2) of Section 45T of the Banking Companies (Amendment) Act, 1953. The two clauses aforesaid run as follows:

45T. Enforcement of orders and decisions of High Court.- (1) All orders made in any civil proceeding by a High Court may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced.

(2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (Act V of 1908), a liquidator may apply for the execution of a decree by a court other than the one which made it on production of a certificate granted under Sub-section (6) of Section 45D and on his certifying to such other court in writing the amount remaining due or relief remaining unenforced under the decree.

Clause (1) is sufficiently clear to indicate that an order passed u/s 45D or a certificate issued thereunder comes within the scope of a decree of this Court and it can be executed as a decree of this Court and therefore read with Section 38 of the CPC which provides that "a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution" - the decree could be executed by this Court on the basis of the certificate if there be sufficient arrangement for the same.

Since there is no provision for executing a decree by this Court, the party can have a transfer of the decree for execution to any other Court where the property is situate or where the Defendant lives or to any other Court to which a transfer would be justified under the Code of Civil Procedure. The contention of Mr. Das for the Appellant is that it is Section 45T(2) which gives the decree-holder bank a right to execute the decree in any other court, apart from the High Court itself which admittedly enjoys the power under the 1st clause of this section.

This contention has been negated by the lower court and Mr. Shome who opposes this prayer for execution in any other court than High Court except on transfer, argues that Clause (2), refers only to a liquidator and not to any other bank which is working u/s 153 of the Companies Act, as in the case of the present Appellant. He contends that the privilege as in paragraph (2) has not been extended to a bank which is not wound up or has not a liquidator for that purpose.

In this case evidently no liquidator has applied & the bank is not under liquidation. Therefore obviously apart from any other consideration, Section 45T(2) has patently no application to the facts and circumstances of this case the application for execution not being made by a liquidator.

2. In this view the contention of the judgment-debtor must prevail and the decree or decrees cannot proceed in the lower court without a valid transfer by an order of this Court.

3. Mr. Das has urged that it depends on the beneficial construction of a statute to give, this relief to the bank and has relied on some passage from "Maxwell on Interpretation of Statutes", but in the circumstances of the case we need not look to the principles of interpretation when the statute itself is clear and the privilege as defined in Section 45T(2) is confined only to the case of a liquidator.

We see no reason to accept this argument of Mr. Das as in our opinion this clause applies only in case of a bank which is under liquidation. In these circumstances we hold that the learned Sub-ordinate Judge was substantially right in refusing to proceed with the execution in the court below without a valid order of transfer of the decree from this Court. The appeal must therefore fail and is dismissed but as this is a case of first instance, we propose to award no cost.

G. Mehrotra, J.

4. I agree.