
(1968) 05 OHC CK 0002
In the Orissa High Court
Case No : M.A. No. 109 of 1964

Gobinda Chandra Mohapatra

APPELLANT

Vs

Gouranga Chandra Lenka

RESPONDENT

Date of Decision : 10-05-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 11, Order 20 Rule 11(1), Order 20 Rule 11(2), Order 20 Rule 2(2)
Limitation Act, 1908 — Article 175

Citation : (1968) 34 CLT 1347

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

Bench : Division Bench

Advocate : S.C. Das, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, J.—Title Suit No. 31 of 1960 in the Court of the Subordinate Judge, Balasore, filed by the Appellant (Plaintiff) for partition was compromised on 31-10-1960. By the terms of the compromise Plaintiff gave up an his right, title and interest in the disputed properties on Respondent's (Defendant-1's) agreeing to pay Rs. 3225/- to the Appellant in full satisfaction of his claim. The decree directed that this amount would be paid within six months, failing which Respondent was to pay interest thereon at the rate of six per cent per annum. On the Respondent's failure to pay the amount within the stipulated period, the Appellant filed Execution Case 63/63 in the Court of the Subordinate Judge, Balasore. The Respondent filed a petition under Order 20, Rule 2(2), CPC on 2-12-1903 praying for instalments. The learned Subordinate Judge by his order dated 18-4-1914 allowed the Respondent's prayer. He was directed to pay the decretal dues in four annual instalments. The first instalment of Rs. 1000/- was to be paid on 15-7-1964 and the balance was payable on the 15th of July of the succeeding years at the rate of Rs. 750/- till the entire amount was paid. On failure to pay anyone of the instalments, the entire balance of the decretal dues was at once payable. Against this order the miscellaneous appeal has been filed

by the Plaintiff.

2. Mr. S.C. Das raised three contentions:

(i) That the application under Order 20, Rule 11(2), CPC is barred by limitation under Article 175 of the Indian Limitation Act (Act IX) of 1908.

(ii) The order granting instalments was contrary to the provisions of Order 20, Rule 11(2).

(iii) The application under Order 20, Rule 11(i) was not entertainable in course of execution proceeding and is to be filed only before the original Court passing the decree.

3. The aforesaid contentions require analysis of Order 20 Rule 11, CPC which runs thus with Orissa amendment:

Sub-rule (1) where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest notwithstanding anything contained in the contract under which the money is payable.

Sub-rule (2)-After the passing of any such decree the Court, may, on the application of the judgment-debtor and after notice to the decree-holder, order that payment of the amount decreed shall be postponed or shall- be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

Under Sub-rule (1), the decree for payment of money may Order that toe payment of the amount decreed shall either be postponed or be made by instalments. The present decree comes within the first clause. It merely postponed the payment of the amount decreed for a period of six months. In such a case.

Article 175 of the Limitation Act, 1908 has no application.

Article 175 runs thus Description of appeal Period of Time from which limitation. Period begins to run for payment of the Six months the date of the amount of a decree by decree instalments.

The decree did not direct for the payment of the amount decreed by instalments. The contention of Mr. Das that the application was barred by limitation must accordingly fail.

4. The second contention is that on failure of the judgment-debtor to pay the decretal dues within the stipulated period of six months at directed in the decree, further instalments should not have been granted. A reference to Sub-rule (1) of Order 20, Rule 11 would make it clear that even at the time the decree is passed, there must be sufficient reason for postponing the payment of the

decretal dues or for granting instalments. The expression "sufficient reason" postulates that the Court would take into consideration the amount of the decretal dues and the circumstances of the judgment-debtor. The burden would always be on the judgment-debtor to plead and prove that his circumstances are such that he cannot pay up the decretal dues immediately or without instalments.

Sub-rule (2), before the Orissa Amendment, vested no power in the Court to direct postponement of payment of decretal dues or granting instalments without the consent of the decree-holder. The expression "with the consent of the decree-holder" was substituted by the words "after notice to the decree-holder". By this amendment, the decree-holder is entitled to take objection after notice is served. Sub-rule (2) is silent as to whether the Court would examine the existence of sufficient reason before passing an order for postponement of payment or granting instalments. Nevertheless the absence of such a provision in Sub-rule (2) does not vest a power in the Court to exercise its discretion in the arbitrary manner. The very standard prescribed in Sub-rule (1) regarding sufficient reason is to be adopted while passing order under Sub-rule (sic). The learned Subordinate Judge failed to appreciate this aspect of the matter and without recording any finding that there were sufficient reasons, allowed instalments.

The facts and circumstances are against granting instalments. P.W. 1 admitted that the Respondent got Rs. 3,000/- as compensation from the Compensation Officer about two years before 1964. The Respondent ought to have paid this amount in satisfaction of the decretal dues. Though the learned Subordinate Judge refers to this fact in his judgment, he does not assign any reason why he granted instalments. The learned Subordinate Judge acted contrary to law in allowing instalments. His order must accordingly be set aside.

5. Mr. Das, however, contended that the application under Order 20, Rule 11(2) should have been made to the Court passing the decree and not in course of the execution proceeding though both the original Court and the executing Court was the Subordinate Judge. There is conflict of authority on this point. The majority of the High Courts are of opinion that such an application can be filed even in course of the execution proceedings. It is not necessary to decide this point in this case as the appeal can be disposed of otherwise.

6. In the result, the order of the learned Subordinate Judge is set aside, the application for instalments is dismissed and the appeal is allowed. As Mr. Das did not place the legal position fairly before us both on the question of limitation and on the question to which Court the application under Order 20, Rule 11(2) is to be made, we order no costs, particularly when the appeal was heard ex-parte.