

(1973) 08 AHC CK 0033
In the Allahabad High Court
Case No : Civil Revision No. 1023 of 1969

Gopal Lal and Another

APPELLANT

Vs

Ram Karan Singh

RESPONDENT

Date of Decision : 10-08-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 103
Limitation Act, 1963 — Article 98

Citation : AIR 1974 All 44

Hon'ble Judges : S. Malik, J

Bench : Single Bench

Advocate : Babu Ram Awasthi, for the Appellant;

Final Decision : Dismissed

Judgement

S. Malik, J.—This is an application in revision against the finding recorded by the 4th Additional Munsif, Varanasi, in a suit filed under Order XXI, Rule 103 of the CPC of issue No. 2 relating to limitation.

2. In short, the relevant facts are that the applicants-decree-holders sought to execute their decree in respect of a house. The opposite-party, Ram Karan Singh obstructed execution of the decree whereupon the decree-holders filed an application before the execution Court under Order XXI, Rule 97, C. P. C. and Ram Karan Singh filed objections under Clause (2) of Rule 97. The executing Court allowed the application under Rule 98 of Order XXI, C. P. C. rejecting the objections raised by Ram Karan Singh claiming that in accordance with Rule 99 of Order XXI of the CPC the application should be rejected. The said order was passed by the execution Court on the 24th of October, 1964. The present applicants came up to this Court against that order by filing a revision u/s 115, C. P. C. which was admitted and later dismissed on merits after hearing the parties on 3-5-1967. The suit under Order XXI, Rule 103, C. P. C. was filed thereafter on the 11th of May, 1967.

3. The only question involved in this application is whether the suit under Order XXI, Rule 103, C. P. C. should have been filed within a year from 24-10-1964 i.e., the date of the order passed by the execution Court allowing the decree-holder's application filed under Rule 97 of Order XXI, C. P. C. and refusing to dismiss it in accordance with Rule 99 or within one year from the date on which the revision application filed by the applicants was rejected. If it is held that the suit under Order XXI, Rule 103, C. P. C. should have been filed within a year from 24-10-1964, the suit obviously was time-barred. On the other hand, if the period of limitation should be deemed to have started running with effect from the date of the dismissal of the revision application i.e. 3-5-1967, then the suit was filed obviously within the period of limitation.

4. The learned counsel for the parties were heard at length and my attention was drawn not only to the provisions of Article 98 of the Limitation Act, specially, the words "final order" but also to the observations made by the Travancore-Cochin High Court in the case reported in AIR 1955 Trav Co 51 (Govinda Menon Raman Menon v. Krishna Pillai Kesuva Pillai) Meghmala Debi Chakravarti Vs. Saday Parhya and Others, and also by the opposite party to AIR 1943 Mad 633 (Venkataswami v. Sara Bai) and two decisions of the Supreme Court reported in State of Madras Vs. Madurai Mills Co., Ltd., and Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, .

5. The Calcutta High Court while considering the provisions of Article 11-A of the old Limitation Act of 1908 held:

"Suit under Order XXI, Rule 103 is governed by Article 11-A, Limitation Act and the word "order" in Article 11-A should be construed as meaning the final or subsisting order in the case. The period of one year runs from the time when the appellate Court passed its order. A somewhat different consideration would apply if a revision petition presented by an unsuccessful party in a claim proceeding is rejected by the superior Court. If the High Court in exercise of its powers u/s 115, Civil P. C. refuses to interfere in a claim case, it merely amounts to an abstention from exercising jurisdiction and the final order that remains subsisting is the order passed by the trial Court. It may be otherwise where the High Court interferes in revision with the original decision."

6. Similarly, it was held by a Full Bench of the Travancore-Cochin High Court that for a suit under Article 11-A, Limitation Act, time runs from the date of the order of the execution Court rejecting objection to delivery and not from the date of the order passed on an infructuous and incompetent appeal or revision against the order.

7. It was argued that the matter would have been different, had the revision application been allowed by this Court. As the revision application was rejected, it was argued, it is apparent that this Court refused to exercise its jurisdiction and, therefore, the only final order which remained, was that of the execution Court passed on 24-10-1964, it would follow from the contention put forward

that an applicant who comes to this Court by filing a revision application against an order of the execution Court passed under Rule 98 or 99 of Order XXI of the CPC would remain in the dark as to whether the period of limitation would have run out or not till the revision application has been decided as in most cases it takes more than a year to dispose of a Revision Application and in case ultimately the revision application is rejected and more than a year has passed, it would mean that a suit under Order XXI, Rule 103 of the Code of Civil Procedure, if filed, would have become time-barred. On the other hand, if the applicant succeeds in the revision application, the other party would get a fresh period of limitation of one year for filing the suit. It is doubtful if the Legislature really intended such uncertainty in case the aggrieved party came up in revision to this Court.

8. On behalf of the opposite party it was argued that the words "final order" appearing in Article 98 of the Limitation Act (new) would mean either the order passed by the execution Court in case it was not challenged before the High Court or the order passed by the High Court, as in this case, in a revision application whether the revision application was dismissed or not as the order of the execution Court must be deemed to have merged in the order of the High Court whether dismissing or allowing the revision application. In support of this contention the learned counsel for the opposite-party relied on the decisions of the Supreme Court and of the Madras High Court as already mentioned. In the case cited it was observed by the Madras High Court at page 637 as under :--

"It will be noted that even in a civil revision petition, it is clear that if the High Court passed an order allowing the revision and held against the respondents in the revision petition, the party who was unsuccessful before the High Court would have to file a suit within one year from the date of the High Court's order. Therefore, if the real reason for holding that in the case of an appeal, the starting point should be the date of the appellate order is that the appeal is a continuation of the proceedings of the trial Court, the same reasoning should apply in the case of a civil revision petition and there is no reason why a different construction, should be applied in the case of a civil revision petition. I am aware that a different view has been expressed in some judgments and I would say, speaking for myself, that there is much to be said in favour of the view that under Article 11, Limitation Act, the starting point should be taken to be the date of the final order, whether that order was passed on an appeal from that order of whether it was passed in a civil revision petition from that order."

9. In *State of Madras Vs. Madurai Mills Co., Ltd.*, it was observed in paragraph 6 as follows:--

"But the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior Tribunal and the other by a superior Tribunal, passed in an appeal or revision, there is a fusion of merger of two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision

contemplated by the particular statute it was observed by this Court that the order of registration made by the Income Tax Officer did not merge in the appellate order of the Appellate Commissioner, because the order of registration was not the subject-matter of appeal before the appellate authority."

10. It is clear from the observations quoted and a perusal of the ruling cited that it was held by the Supreme Court that the order of an inferior Court or Tribunal would merge in the order or judgment of a superior Court or Tribunal where the question decided by the first Court or the inferior Tribunal was decided in an appeal or revision by the superior Court or Tribunal.

11. Similarly, in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, it has been observed as under:--

"Where, on its revisional jurisdiction being invoked against the order of the appellate Court..... High Court dismisses the revision, after hearing both the parties, the order of the appellate Court becomes merged with the order made in revision....."

It was also observed in that case by the Supreme Court as follows:--

"The right of appeal is one of entering a superior Court and invoking its aid and interposition to redress the error of the Court below. Two things which are required to constitute appellate jurisdiction are the existence of the relation of superior and inferior Court and the power on the part of the former to review decisions of the latter. When the aid of the High Court is invoked on the revisional side it is done because it is a superior Court and it can interfere for the purpose of rectifying the error of the Court below. Section 115 of the CPC circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court."

12. As has already been pointed out, the questions raised in the revision application before this Court which was dismissed on 3-5-1967, were the same as were disposed of by the execution Court by its order dated 24-10-1964 against which the revision application was filed. It has also been pointed out that the revision application had been admitted and was finally decided after hearing both the parties. Under the circumstances, in view of what has been discussed, it is apparent that the order passed by the execution Court must be deemed to have merged with the order passed by this Court disposing of the revision application and the period of limitation, therefore, must be deemed to have started running from the date the revision application was decided by this Court. I am, therefore, of the view that the lower Court rightly held that the suit under Order XXI, Rule 103 of the CPC was filed within the period of limitation under Article 98 of the Limitation Act.

13. The revision application is dismissed with costs.