

(1969) 11 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Revision No. 516 of 1969

Gordhanlal

APPELLANT

Vs

C.P. Industries Pvt. Ltd., Khandwa and Another

RESPONDENT

Date of Decision : 25-11-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 38, 39, 39(1), 6

Citation : AIR 1971 Raj 254 : (1971) RLW 198 : (1970) RLW 231

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Advocate : M.C. Bhandari, for the Appellant; R.C. Mehashwari, for the Respondent

Final Decision : Dismissed

Judgement

Jagat Narayan, J.—This is a revision application by the judgment-debtor against an order of the executing Court (Civil Judge, Dungarpur) holding that it has jurisdiction to execute the decree.

2. The facts are these. A suit was instituted for the recovery of a sum of Rs. 6200/- in the Court of Civil Judge, Khandwa, A decree for Rs. 4783.75 as principal was passed along with pendente lite and future interest and costs. The total amount of the decree for which the present execution application has been filed in the Court of Civil Judge, Khandwa is Rs. 10024.42. On the application of the decree-holder, the execution was transferred by the Civil Judge Khandwa to the Court of District Judge, Udaipur, who in turn transferred it to the Court of Civil Judge, Doongarpur. Before the executing Court (Civil Judge, Doongarpur), an objection was taken that it was not competent to execute the decree as the amount of it exceeded its pecuniary jurisdiction which extends to Rs. 10000/- only. This objection was overruled by the executing Court.

3. I have heard learned counsel for the parties and am of the opinion that the order of the executing Court is correct.

4. The opening part of Section 39(1). Civil P. C. runs as follows :--

"The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court."

It is not laid down, in Sub-section (1) expressly that it can only be sent to a Court of competent jurisdiction as laid down in, Sub-section (2) which runs:--

"The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction."

5. As regards the transfers under Sub-section (1), some High Courts have taken the view that the sub-section creates special jurisdiction and permits the transfer of a decree for execution to another Court irrespective of its pecuniary jurisdiction. Other High Courts have taken the view that the provisions of this section are controlled by Section 6, Civil P. C. and a decree cannot be transferred under Sub-section (1) for execution to another Court if the amount or the value of the decree exceeds its pecuniary jurisdiction. With all respect, Section 6 only applies to suits. Section 141, Civil P. C. lays down that--

"The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable in all proceedings in any Court of Civil jurisdiction."

and it was held by their Lordships of the Privy Council in *Thakur Pershad v. Sheikh Fakirullah* (1895) 22 Ind ADD 44 (PC), that the procedure provided in the Code for suits is not applicable to execution proceedings.

6. The Madras High Court in *Abdulla Sahib v. Ahmad Hussain Sahib* AIR 1914 Mad 206 (1), has taken the view that u/s 39(1) the Court which passed the decree can transfer it for execution to any Court irrespective of its pecuniary jurisdiction. That view can be supported by a technical interpretation of Section 39(1). But the view taken by the Allahabad High Court in *Kedar Nath Jai Prakash Vs. Chhajju Mal Sumerchand*, is that the execution proceedings can be transferred to a Court which has pecuniary jurisdiction extending to the amount of the decree. With all respect, I am unable to understand the reasoning on which this view is based.

7. However, in the present case this difficulty does not arise at all because the Court which passed the decree transferred it to a Court of competent jurisdiction, namely, the District Judge. Udaipur. That Court transferred it to Civil Judge Doongarpur under Order 21, Rule 8, Civil P. C. which is in the following terms :--

Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Judge, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction."

8. The District Judge was thus competent to transfer the decree to a Court of competent jurisdiction. Now that Court alone is a Court of competent jurisdiction for executing a decree which has pecuniary jurisdiction to try the suit in which

the decree was passed as was held in Sita Ram Rai and Another Vs. Madho Prasad,

9. u/s 38, the primary Court which is competent to execute a decree is the Court which passed it. That Court remains competent to execute the decree even if the amount of the decree at the time of execution goes up beyond the limits of pecuniary jurisdiction. The same principle should in my opinion, apply in considering what Court is competent to execute a decree.

10. I accordingly hold that the Civil Judge Doongarpur is competent to execute the decree and dismiss the revision application. In the circumstances of the case, I leave the parties to bear their own costs of this revision application.