
(1947) 07 PAT CK 0004

In the Patna High Court

Governor-General in Council

APPELLANT

Vs

Piramal Marwari

RESPONDENT

Date of Decision : 29-07-1947

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 79, 82, 82(1)

Citation : AIR 1948 Patna 179

Hon'ble Judges : Ray, J

Bench : Division Bench

Judgement

Ray, J.—The petitioner is the Governor-General in Council which means according to the provisions of Section 79, Civil P.C., the Crown, the petition is directed against an order of the executing Court rejecting the petitioner's objection that the decree was not executable.

2. The circumstances under which this contention was raised are that the opposite party obtained a Small Cause Court decree against the Crown in the name of Governor-General in Council and the decree did not comply with the mandatory provisions of Section 82, Civil P.C. The mandatory provisions of the section requires that a time shall be specified in the decree within which it shall be satisfied. The contention was that until all the requisite conditions laid down in Section 82(1) are fulfilled according to the provisions of Sub-section (2) of the section execution shall not be issued.

3. To understand the contention, Section 82 has to be quoted in extenso:

(1) Where the decree is against the Crown or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Provincial Government.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

The submission is that in view of the provisions of the section until expiry of three months computed from the date of a report by the Court to the Provincial Government for its orders execution cannot be levied.

4. As against this, the learned executing Court has said that as an executing Court, he cannot go behind the decree unless it is established to be void. In this view of the matter, he purports to hold that as the decree has not been shown to be void, it must be put into execution. Execution cannot be refused on the assumption that what the Court passing the decree had to do has failed to do.

5. Mr. N.C. Ghosh appearing for the petitioner does not go so far as to say that the decree, as it stands, is void, but all the same he wants to maintain that it is not executable. This contention, however, is not clear to me.

6. But, in my view, the decree, though not void, is incomplete. The Court in passing a decree against the Crown has not only to pronounce that the Crown is liable either to pay some money or to do some act but has also to specify a time within which the decree will have to be satisfied. In case he does comply with that provision, he has a further act to do, namely, to send a report to the Provincial Government in case of non-satisfaction of the decree within the time specified by him in it. Till three months after such a report, the decree must remain in the state of its preliminary stage. It may be likened to a decree subject to certain conditions. Suppose there is a compromise decree in which the parties agreed as to declaration of certain rights and liabilities and at the same time fixed certain conditions before which they agreed that the operative part of the decree should not be put into execution. In that case even though the decree is not void nor erroneous is still not executable until the conditions are fulfilled. We know the distinction between the decrees preliminary and decrees final. I should say that the Court that sat upon judgment in the suit against the Crown has only performed the first part of his duty, namely, adjudication of the respective rights and liabilities of the parties. There are two other parts to be done by him, namely, to specify a time and after the lapse of the time in case of non-satisfaction of the decree, to submit a report; till then the decree is incomplete and not final nor executable. Under the circumstances, however, if the executing Court refuses to execute a decree which is in its preliminary stage, he does not thereby violate the principle that the executing Court should not go behind the decree.

7. I learn that the Court before whom the decree was sought to be executed is the Court that had passed the decree. I should, therefore, direct that he should now proceed to complete the decree in terms of Section 82, Civil P.C., and it is then only that the judgment-debtor will be entitled to put the decree into execution. In this view of the matter, this petition is allowed and the case is sent back to the Court below for compliance with the directions given above. As there is no appearance for the opposite party, there will be no orders as to costs.