
(1961) 10 MP CK 0039
In the Madhya Pradesh High Court
Case No : C.F.A. No. 23 of 1956

Indore Soap Factory, Bombay	Vs	APPELLANT
National Industries Co., Bombay		RESPONDENT

Date of Decision : 12-10-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 5, 40

Citation : (1962) MPLJ 540

Hon'ble Judges : S.P. Bhargava, J; H.R. Krishnan, J

Bench : Division Bench

Advocate : S.T. Malgava and N.R. Newaskar, for the Appellant; N.T. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Krishnan, J.

Though the parties are different, the main question for consideration in both the appeals by the respective judgment-debtors in the execution cases, is identical viz., whether in the absence of rules u/s 40, CPC a decree transferred from a Court in another State can at all be executed by the transferee Court, as the case may be, the District Court itself, receiving the decree on transfer under Order 21, rule 5, CPC or the subordinate Court of competent jurisdiction to which a District Court in its own turn transfers the same under Order 21, rule 5, Civil Procedure Code.

This question has been answered by the judgments of two single Bench judgments of this Court in Chhegalal Ramniwas Vs. Shyamlal Parmatma Swarup Merchants of Delhi, , and following it in the judgment dated 29th July, 1960 in Maganlal v. Mercury Paint and Varnish Co. Ltd. C.S.A. No. 103 of 1957, Gantra Hardware Stores K. Kurbanhussain and Co. C.S.A. No. 142 of 1966 and Sitaram v. Dr. Pratap Singh C.R. No. 515 of 1958. However, the appellants in these appeals have urged that though two signal Benches have taken a concurrent

view, the effect is not that of a judgment of a Divisional Bench, on merits also there are certain aspects of the question, they urge, that have been overlooked in these single Bench decisions.

As a matter of fact, most of the High Courts have not yet framed rules u/s 40 of the Code, so that the execution of decrees transferred from other States should be happening all over the country mostly in Courts in the States where there are no such rules in force. The argument on behalf of the appellants is that till the rules are framed, such decrees may not be executed at all, because the transferee Court has to be such Court as is prescribed by these rules. As against it, it is pointed out that there is nothing in section 40, Civil Procedure Code, indicating that action by the transferee Courts under other provisions is barred and that these rules were intended to be nothing more than the provisions supplementing those that are already in force and can be applied independently of the section. As already mentioned in the judgments referred to, it is the later view that has been commended itself to this Court. In fact, the absence of even a single ruling to the contrary, also shows that the Courts in other States are in practice following the same principles.

The question really is;- Section 40 being dormant for the time being, whether other provisions of the Code enable execution in one or other of the legal methods by one or other of the Courts having jurisdiction. The general principles on which the transferee Courts have to act is given in section 39, which has nothing to do with section 40. Similarly, the powers of the transferee Courts have been given in section 42, which again is not limited by any rules that can be framed u/s 40. The mechanism of such transfer is laid down in Order 21, rule 5, as between the executing Court and the District Court at the transferee's end and by Order 21, rule 8, as between the District Court itself and any subordinate Court of competent jurisdiction. There the provisions on this subject do not come into direct play in this regard, but are not affected by section 40. Order 21, rule 5, speaks of transfer to District Court other than that of the district in which the decree has been passed. It may be either in the same State or outside it; but this rule does not make this difference, as long as the CPC is in force in the district to which the decree is transferred. Actually, the process of transferring the decree does not call for any such distinction. The reason why the transferring Court is called upon to send the decree at the first instance to the District Court and not to a Court subordinate to it, is obvious. It may not be able to choose between the Courts subordinate to the District Court at the other end, and may not be even aware either of their existence, or identity, and if it is another State of the exclusive pecuniary jurisdiction as there are differences in this respect between the Civil Courts Acts in force in different States. So the selection of the Court that has actually to execute the transferred decree is left to the District Court at that end. That Court may either execute it itself or further transfer it to the subordinate Court which has got jurisdiction. It is unnecessary for the purposes of this case to examine whether jurisdiction means territorial jurisdiction or only competency to sell in execution. As far as we are concerned,

action under these provisions can be taken without any reference to section 40 or rules made under it. It is further of interest to note that section 40 itself does not contain either any clause such as "notwithstanding any other provision of the Code" or anything else to the effect that such decrees cannot be executed till the rules are made. The result is that the absence of rules u/s 40, Civil Procedure Code, does not bar execution of such decrees.

It was suggested in appeal No. 23 of 1956 that the certificate of non-satisfaction of the decree at the decreeing end, has not been given by competent authority. Actually, it is common ground that there had been no satisfaction and the certificate itself is practically in the very words of Order 21, rule 6 (b). It is signed by the Registrar of the City Civil Court. Thus it is impossible to find any defect in it.

In the result, both the appeals are dismissed. Costs and pleaders fees, according to rules payable by appellants to respondents.