

(1996) 03 AHC CK 0084
In the Allahabad High Court
Case No : C.M.W.P. No. 7906 of 1995

Karan Singh and Another

APPELLANT

Vs

VIth Addl. District Judge and Others

RESPONDENT

Date of Decision : 13-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 48
Limitation Act, 1963 — Article 135, 15, 15(1)

Citation : (1996) 2 CivCC 589

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : S.A Shah and P.K. Jain, for the Appellant; S.C. and M.D. Singh Shekhar, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—Original Suit No. 11 of 1982 was decreed on 21st August, 1985 ex parte. Execution case No. 55 of 1985 was levied out of the said decree. The Petitioner filed application under Order IX, Rule 13, CPC for setting aside the said ex parte decree wherein by order dated 17th October, 1986, the execution was stayed till further orders. Misc. Case No. 68 of 1986 arising out of the said proceedings under Order IX, Rule 13, CPC in which the above interim order was passed was dismissed on 5th August, 1988, by reason whereof the order of stay granted ceased to be operative. By order dated 21st August, 1988, Execution case No. 55 of 1985 stood dismissed for non-prosecution on 26th September, 1988, an application for execution having been moved. Execution case No. 35 of 1988 was registered. The Petitioner took an objection before the learned trial court that the said execution case is not maintainable because of lapse of three years in between the date of the decree and the levy of execution in view of Article 135 of the Schedule to the Limitation Act where the period for execution of the present decree was prescribed as three years. The learned Munsif, by order dated 20th February, 1991 had allowed the said application and dismissed the execution. Against the said order dated 20th February, 1991, the opposite

party moved Civil Revision No. 87 of 1991 before the Additional District Judge, VIII Court, Ghaziabad who, by order dated 13th March, 1995, allowed the said revision. It is against the said order the present revision has been filed.

2. Mr. Pramod Kumar Jain led by Mr. S. A. Shah, learned counsel for the Petitioner, contends that the revision was allowed on a date when there was a strike by the lawyers ex parte without giving any opportunity to the Petitioner, which according to him, is in clear violation of the principles of equity and natural justice. According to him, the execution could not be maintained beyond three years because of the fact even excluding the period during which the execution remained stayed. Therefore, the impugned order should be set aside.

3. Mr. M. D. Singh, Shekhar, learned counsel for the opposite-party, on the other hand, contends, that in view of Section 15 of the Limitation Act, the period during which the execution could not be proceeded is to be excluded while computing the period of limitation. Therefore, there is no infirmity in the order passed by the revisional court. He further submits that there having been no order of stay of execution after the revisional order was passed, the execution had proceeded with and completed and the decree has been satisfied. Therefore, the present writ petition has become infructuous. Any decision on the question would be an empty formality.

4. From the translation made at the Bar, it appears from the order impugned that the learned revisional court had found on the basis of the record that the execution remained stayed between the period 17.1.1986 and 5.8.1988 during the pendency of Misc. Case No. 68 of 1986 which fact is also not disputed by Mr. Shah. The suit was decreed on 21st February, 1985. Till the execution was stayed, hardly one year had passed and after the stay stood vacated, there was hardly two months gap. Therefore, if the period during which by reason of the operation of the stay order, the decree-holder was prevented from proceeding with the execution is excluded, in that event, it cannot be said that the second execution levied was beyond three years.

5. Section 15 of the Limitation Act is quoted below:

15. Exclusion of time in certain other cases.--(1) In computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.--In excluding the time required for obtaining the consent or

sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

(3) In computing the period of limitation for any suit or application for execution of a decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as an insolvent or any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation for any suit the time during which the Defendant has been absent from India and from the territories outside India under the administration of Central Government shall be excluded.

6. A plain reading of the said section indicates that while computing the period of limitation for execution of a decree, the period during which the execution is stayed, shall be excluded. The said section has been dealt with in the case of *Anandilal and Another Vs. Ram Narain and Others*, wherein it has been observed:

9. In *Lala Baijnath Prosad and Others Vs. Nursingdas Guzrati*, the Calcutta High Court appears to have adopted a middle course. Chakravarti, C. J. delivering the judgment of the court observed:

If the decree-holder is prevented altogether from executing his decree, it is but reasonable that time should not run against him so long as he remains disabled and the section says so. But there seems to be no reason why the section should be construed as meaning that even when the injunction or order is limited to one or some of several judgment-debtors or to one or some of their properties or to some particular mode of execution and even when the decree-holder is left free to proceed against the other judgment-debtors or other properties or in other ways, he will be entitled to the benefit of the section.

The learned Chief Justice observed that in such a case the execution of the decree is not stayed but only execution in certain ways and against certain persons or properties is prevented, and then added:

But assuming "stayed" includes "stayed in part" the utmost that can be claimed under the terms of the section is that if a decree-holder is restrained for a time from proceeding against some particular judgment-debtor or some particular property or in some particular way, and when the bar is lifted, he applies for execution against the same judgment-debtor or the same property or in the same way, he will be entitled to exclude the period during which he remained

restrained.

10. We feel that there is no Justification for placing a rigid construction on a beneficial provision like Section 15(1) of the Limitation Act. It is not necessary for us to go into the history of the legislation which has been dealt with at length in many of the decisions laying down that Section 48 of the Code is controlled by Section 15(1) of the Limitation Act. All that we need say is that both the enactments have throughout been treated as supplementary to each other, and concern with procedural law. It is also true that in construing statutes of limitation consideration of hardships and anomaly are out of place. Nevertheless, it is, we think, permissible to adopt a beneficial construction of a rule of limitation if alternative constructions are possible. It is plain on the terms of Section 15(1) that the word "execution" appearing in the collocation of words "The execution of which has been stayed" must be construed in a liberal and broad sense. As observed by the Calcutta High Court in Sreenath Roy's case ILR(1983) Cal 773 (supra), the words "execution of the decree" means the enforcement of the decree by what is known as "process of execution".

11. Agreeing with the Full Bench, we are inclined to the view that the word "Execution" in Section 15(1) embraces all the appropriate means by which a decree is enforced. It includes all processes and proceedings in aid of, or supplemental to, execution. We find no rational basis for adopting a narrow and restricted construction on a beneficial provision like the one contained in Section 15(1). There is no reason why Section 15(1) should be given a restricted meaning as allowing the benefit to a decree-holder where there is a complete or absolute stay of execution and not a partial stay i.e., a stay which makes the decree altogether inexecutable. Nor can we subscribe to the proposition that in cases of partial stay, the benefit u/s 15(1) can be had only where an execution application is directed against the same judgment-debtor or the same property, as against whom an execution was previously stayed. Stay of any process of execution is therefore, stay of execution within the meaning of the section. Where an injunction or order has prevented the decree-holder from executing the decree, then irrespective of the particular stage of execution or the particular property against which, or the particular judgment debtor against whom execution was stayed, the effect of such injunction or order is to prolong the life of the decree itself by the period during which the injunction or order remained in force. The majority view to the contrary taken by some of the High Courts overlooks the well-settled principle that when the law prescribes more than one modes of execution, it is for the decree-holder to choose which of them he will pursue.

7. Therefore, I do not find any infirmity in the view taken by the revisional court in the impugned order. Even if the order is set aside and the Petitioner is given opportunity of hearing, the same would amount to mere empty formality inasmuch as on the facts and circumstances of the case, and the interpretation of Section 15 of the Limitation Act, no different order could be passed on the basis

of the materials on record even if opportunity is given to the learned counsel for the Petitioner who argued the case. On the basis of the materials. it does not appear that by reason of the said order, the Petitioner would suffer any prejudice in view of the fact that there is no infirmity in the order impugned, particularly when the execution has already ended in its completion and satisfaction.

8. In that view of the matter, I do not find any reason to interfere with the said order. Since I have not been able to find out any violation of fundamental principles of law as has been enunciated in the case of Ganga Saran v. District Judge, Hapur, this writ petition is, therefore, dismissed. There will, however, be no order as to costs.