
(1958) 04 CAL CK 0010
In the Calcutta High Court
Case No : Civil Revn. Case No. 3549 of 1956

Kasi Prosad Khaitan

APPELLANT

Vs

Moti Lall and Others

RESPONDENT

Date of Decision : 29-04-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11, Order 21 Rule 11(2), 73

Citation : AIR 1959 Cal 566 : 63 CWN 983

Hon'ble Judges : U.C. Law, J;K.C. Das Gupta, J

Bench : Division Bench

Advocate : Praphulla Kumar Chatterjee and R.K. Khitan, for the Appellant;Siti Kantha Lahiri and Prasanta Kumar Ghose, for the Respondent

Judgement

K.C. Das Gupta, J.—The question for consideration in this case is whether an application for execution, in which the mode in which the assistance of the court is required does not mention attachment or sale of the property but says that the decree-holder prays for realisation of the decretal dues by rateable distribution of the money that will be realised in Money Execution Case No. 26 of 1955 of this Court and other means, can be considered to be an application for execution validly made within the meaning of the section 73 of the Code of Civil Procedure. If such an application can be considered to have been validly made the orders for rateable distribution made by the executing court must prevail. If, however, the mention of the mode in which the assistance of the Court is required in the manner set out above is a defect which makes the application one on which the execution cannot proceed, the court had no jurisdiction to make an order for rateable distribution. Rule 11, Sub-rule (2) of Order 21 of the Code of Civil Procedure, sets out the particulars which every application for the execution of a decree shall contain. Item (j) in that list of particulars is in these words:

"The mode in which the assistance of the Court is required, whether-

(i) by the delivery of any property specifically decreed;

- (ii) by the attachment and sale or by the sale without attachment of any property;
- (iii) by the arrest and detention in prison of any person;
- (iv) by the appointment of a receiver;
- (v) otherwise, as the nature of the relief granted may require."

Quite clearly, the application for execution made by the opposite parties did not mention the mode in which the assistance of the Court is required, as under clause (i), (ii), (iii) or (iv) of item (j). The question remains whether what was stated namely that, the decretal amount be realised by rateable distribution of the money that will be realised in the Money Execution Case, can be held to be within particular (v) of item (j), namely, "otherwise, as the nature of the relief granted may require". The petitioner's contention is that particular (v) must be confined to the mention of a mode which is analogous to the modes (i), (ii), (iii) or (iv). If there was scope for the application of the rule of interpretation known as ejusdem generis, there might be much force in what is stated. Clearly, however, no genus is formed by Clause (i), (ii), (iii) and (iv). While Clause (i) speaks of delivery of any property specifically decreed, Clause (iv) speaks of appointment of a receiver; clause (iii) speaks of the arrest and detention in prison of any person while clause (ii) is in a class of different from all these three speaking as it does of attachment and sale or sale without attachment of any property. There is, thus no one genus formed by these four clauses. Each of these forms a separate genus. There is in my opinion, therefore, no scope for the conclusion that Clause (v) must be analogous to one of the four modes mentioned under Clauses (i), (ii), (iii) and (iv).

2. If one looks at the scheme of the legislation, it is clear that what the written application is required to contain are particulars which are necessary to have a successful execution. That is why, the number of the suit is required, the names of the parties are required, the date of the decree is required and also the other items mentioned in (d), (e), (f), (g), (h) and (i), the last one being the name of the person against whom execution of the decree is sought. It is obvious that unless the application further mentions the modes in which the assistance of the court is required, the matter will be entirely at large and the court or the judgment-debtor will not be in a position to know what steps are proposed to be taken against him for the execution of the decree. It is for this purpose that the legislature included as one of the particulars to be mentioned in such an application, the mode in which the assistance of the court is required in item (j), Sub-rule (2), Rule 11 of Order 21 of the Code of Civil Procedure. The legislature in its wisdom further used very wide language in clause (v). In Clause (v), after mentioning in the other four clauses the usual modes of execution with which we are familiar, it used the words "Otherwise, as the nature of the relief granted may require". I can see no reason why the court should, under the guise of interpreting the law, cut down the wide scope given by the legislature to the

decree-holder in accomplishing what is often a difficult task, sometimes even more difficult than obtaining a decree--namely, execution of the decree. It is undoubtedly true that the court has sometimes in order to avoid an absurd result, to restrict the meaning of words and phrases in spite of the generality of the language used. I cannot see any reason why that should be attempted here. I can see nothing absurd in the result that though other modes of execution such as attachment and sale or arrest and detention or appointment of a receiver have not been mentioned, the decree-holder should still be able to execute part of his decree by means of rateable distribution from the amount which will be received. It may be true that even after the attachment made in the execution case started by the present petitioners, the opposite parties could in their application have again asked for attachment of the judgment-debtor's salary; to say, however, that because that has not been done, the application is not in accordance with law, is, in my opinion, to ignore the provisions of clause (v) of item (j) of the sub-rule,

3. I find that a contrary view has been taken by the Nagpur High Court in AIR 1929 148 (Nagpur) . In that case, it was stated that an application that only prays for rateable distribution is not a valid application for execution within the meaning of Sub-rule (2), Rule 11 of Order 21 of the Code of Civil Procedure. While I entirely agree that a mere application for rateable distribution which does not contain the particulars mentioned in Sub-rule (2), is not an application for execution, I am unable to agree with the view that where there is an application which is in all other respects a proper application for execution under Order 21, Rule 11(2), it ceases to be a valid application merely because the mode in which the assistance of the court required is mentioned as rateable distribution. The learned Judges of the Nagpur High Court were of the opinion that rateable distribution cannot be included in item (j), Clause (v), "Otherwise, as the nature of the relief granted may require". For the reasons I have mentioned earlier, I am unable, in spite of my utmost respect for the learned Judges who took the opposite view, to agree with this.

4. I have, therefore, reached the conclusion that the applications made by the opposite parties for execution were proper and valid applications for execution. The Rule is, therefore, discharged with costs. The hearing fee is assessed at three gold mohurs.

Law, J.

5. I agree.