

(2016) 07 KAR CK 0031

In the Karnataka High Court

Case No : Civil Revision Petition No. 404 of 2014

Mariyappa

APPELLANT

Vs

Assistant Commissioner, Land Acquisition Officer, Bangalore

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Limitation Act, 1963 — Article 136

Citation : (2016) 4 AirKarR 690 : (2017) 1 ICC 185 : (2017) 2 KantLJ 179 :
(2016) 4 KCCR 3397

Hon'ble Judges : A.N. Venugopala Gowda, J.

Bench : Single Bench

Advocate : V. F. Kumbar, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J. - This petition was filed to set aside an order dated 14.07.2014 passed in Ex.P.No. 16/2004 by the Senior Civil Judge, Doddaballapur holding the case to be barred by time.

2. Facts of the case in brief are that the land of deceased petitioner was acquired under the provisions of the Land Acquisition Act, 1894. Possession of the acquired land having been taken and the Award passed by the Land Acquisition Officer having not been accepted, a reference made under Section 18 was registered as LAC No. 165/ 1984 on the file of Addl. Civil Judge, Bengaluru Rural District, Bengaluru. After holding enquiry, by a judgment dated 05.02.1992, the Reference was allowed and enhanced compensation along with the statutory benefits was awarded. To enforce the Award, Ex.P. No.84/1992 was filed. However, the case was dismissed for non-prosecution on 23.12.1995. Ex.P.No. 16/2004 was filed on 16.06.2004 to enforce the Award i.e., for recovery of the balance Award amount. The Decree Holder having died, his legal representatives prosecuted the case. The respondent No.2, impleaded as Judgment Debtor No.2 in Ex.P.No. 16/2004 raised objection with regard to the maintainability of the Execution Petition on the ground of bar of limitation. Execution Court having

dismissed the petition as barred by time, this petition was filed.

3. Sri V. F. Kumbar, learned advocate submitted that after dismissal of Ex.P.No.84/1992 for non-prosecution, Ex.P.No. 16/2004 was filed and the same being nothing but a revival of Ex.P.No.84/1992, the Court below has committed error in passing the order and dismissing the case. He submitted that certain payment having been made after dismissal of Ex.P.No.84/1992 and Ex.P.No. 16/2004 having been filed for realisation of the balance award amount, impugned order calls for interference.

4. Perused the record and considered the submissions made by the Sri. V.F. Kumbar. Point for consideration is, whether the court below is justified in dismissing the second Execution Petition as time barred?

5. LAC No. 165/1984 was allowed and an Award dated 05.02.1992 was passed by the Reference Court. To execute the Award, Ex.P.No.84/1992 was filed and the same was dismissed for non-prosecution on 23.12.1995. Long thereafter, Ex.P.No. 16/2004 was filed and the Judgment Debtor No.2 having raised objection with regard to the maintainability, on the ground of bar of limitation, Court below has passed the Order dated 14.07.2014 holding the case as barred by time.

6. Article 136 of the Limitation Act, 1963 (for short "the Act") being relevant is extracted herein below:

Description of application

Period of Limitation

Time from which period begins to run

136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.

Twelve years

When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

7. The Award passed in LAC No. 165/1984 in favour of the claimant being for payment of money for the acquisition of his land, bee. .me enforceable immediately on its passing. Execution Petition therefore was required to be filed within the period of 12 years from the date of judgment, as there was no slay of execution of the Award. Ex.P.No.84/1992 having been filed within 12 years" period but was not diligently prosecuted and was dismissed for non-prosecution on 23.12.1995. Ex.P. No. 16/2004 was filed on 16.06.2004 i.e., after expiry of 12

years" period from the date the Award was passed.

8. In *Prem Raj v. Ram Charan*, (1974) 2 SCC 1 : (AIR 1974 SC 968), Apex Court has held that "an application may be said to be one seeking to continue or to revive the previous execution application, if (1), it is in the eye of law still pending or has been dismissed for no fault of the decree holder, and (2), if the two applications are in substance similar in scope and character." It has been clarified that where the previous application for execution has been properly and finally disposed of by the Execution Court, the subsequent application cannot be said to be in continuation of it or to be a revival application.

9. In the present case, Ex.P. No.84/1992 was dismissed on 23.12.1995 for non-prosecution i.e., on account of the decree holder's failure to prosecute the case. Thus, it is clear that, Ex.P. No. 16/2004 i.e., the second execution application made on 16.06.2004 was not an application for continuing or reviving the first execution application. It is clear from the said order that Ex.P.No.84/1992 was not kept pending. Hence, the contention that Ex.P. No. 16/2004 is nothing but one filed for revival of Ex.P. No.84/1992 is devoid of merit, as the second execution petition was an independent petition filed for enforcement of the Award.

10. In *W. B. Essential Commodities Supply Corpn. v. Swadesh Agro Farming & Storage Pvt. Ltd.*, (1999) 8 SCC 315 : (AIR 1999 SC 3421, paras 8, 10, 11, 20 & 21), the material facts are that a suit for recovery of money was decreed on 08.03.1982 and the decree was drawn on 09.08.1983. Execution Petition was filed on 05.06.1995 and Court ordered execution of the decree. But, on appeal by the respondents, High Court set aside the order of Execution Court and held that the Execution Petition was barred by limitation under Article 136 of the Act. The said order having been assailed before the Apex Court, while considering the question, whether the period of limitation under Article 136 of the Limitation Act, 1963 will start from the date of the decree or from the date when the decree is actually drawn up and signed by the Judge, it has been held as follows:

"7 A decree or order is said to be enforceable when it is executable. For a decree to be executable, it must be in existence. A decree would be deemed to come into existence immediately on the pronouncement of the judgment. But it is a fact of which judicial notice may be taken of that drawing up and signing of the decree takes some time after the pronouncement of the judgment; the Code of Civil Procedure, itself enjoins that the decree shall be drawn up expeditiously and in any case within 15 days from the date of the judgment. If the decree were to bear the date when it is actually drawn up and signed then that date will be incompatible with the date of the judgment. This incongruity is taken care of by Order 20, Rule 7 , CPC which, inter alia, provides that the decree shall bear the date and the day on which the judgment was pronounced.

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9. Rule 6-A enjoins that the last paragraph of the judgment shall state in precise

terms the relief which has been granted by such judgment. It has fixed the outer time-limit of 15 days from the date of pronouncement of the judgment within which the decree must be drawn up. In the event of the decree not so drawn up, Clause (a) of sub-rule (2) of Rule 6-A enables a party to make an appeal under Rule 1 Order 41, CPC without filing a copy of the decree appealed against and for that purpose the last paragraph of the judgment shall be treated as a decree. For the purpose of execution also, provision is made in clause (b) of the said sub-rule which says that so long as the decree is not drawn up. the last paragraph of the judgment shall be deemed to be a decree. Clause (b) has thus enabled the party interested in executing the decree be-1 ore it is drawn up to apply for a copy of the last paragraph only, without being required to apply for a copy of the whole of the judgment. It further lays down that the last paragraph of the judgment shall cease to have the effect of the decree for purposes of execution or for any other purposes when the decree has been drawn up.

10. It follows that the decree became enforceable the moment the judgment is delivered and merely because there will be delay in drawing up of the decree, it cannot be said that the decree is not enforceable till it is prepared. This is so because an enforceable decree in one form or the other is available to a decree-holder from the date of the judgment till the expiry of the period of limitation under Article 136 of the Limitation Act.

19. Under the scheme of the Limitation Act, execution applications, like plaints have to be presented in the court within the time prescribed by the Limitation Act. A decree-holder does not have the benefit of exclusion of the time taken for obtaining the certified copy of the decree like the appellant who prefers an appeal, much less can he claim to deduct time taken by the Court in drawing up and signing the decree. In this view of the matter, the High Courts of Patna and Calcutta in *Chandra Mouli Deva v. Kumar Binoya Nand Singh*, AIR 1976 Pal 208 and *Sunderlal & Sons v. Yagendra Nath Singh*, AIR 1976 Cal 471 have correctly laid down the law; the opinion to the contra expressed by the High Court of Calcutta in *Ram Krishna Tarafdar v. Nema Krishna Tarafdar*, AIR 1974 Cal 173 is wrong. Section 5 of the Limitation Act has no application; Section 12(2) of the Limitation Act is also inapplicable to an execution petition. If the time is reckoned not from the date of the decree but from the date when it is prepared, it would amount to doing violence to the provisions of the Limitation Act as well as of Order 20 and Order 21. Rule 11. CPC which is clearly impermissible.

20. In the result, we hold that the period of limitation under Article 136 of the Limitation Act runs from the date of the decree and not from the date when the decree is actually drawn up and signed by the Judge. We, therefore, do not find any illegality in the impugned judgment of the High Court. The appeal fails and it is accordingly dismissed. No costs."

(Emphasis is supplied)

11. In *Raghunath Rai Bareja v. Punjab National Bank*, (2007) 2 SCC 230 : (2006

AIR SCW 6446, Para 8), the material facts are that the Bank filed suit for recovery of money with pendente lite and future interest. A decree was passed in its favour on 15.01.1987. Execution petition having been filed belatedly, Apex Court having considered the matter with reference to Article 136 of the Act, providing for 12 years" period from the date the decree becomes enforceable for applying for execution, observed as follows:

"9. Under Article 136 in the Schedule to the Limitation Act 1963 the period for applying for execution of any decree is 12 years from the date when the decree becomes enforceable. Since in the present case the final decree was passed and became enforceable on 15.1.1987, the period of limitation for filing an execution application expired on 15.1.1999."

(Emphasis is supplied)

12. In the present case, Article 136 being applicable and the same being plain and unambiguous, the literal rule applies and thus, Ex.P No.16/2004 having not been filed within 12 years" period from the date the Award was passed by the Reference Court, the Court below has not committed any error or irregularity much less illegality in holding the second execution petition filed as barred by limitation under Article 136 of the Act.

13. For the foregoing reasons, the petition being devoid of merit is rejected.