

(1963) 08 GUJ CK 0011
In the Gujarat High Court
Case No : A.F.O.D. No. 196 of 1962

Prafullavadan Dinkerray Saiyed

APPELLANT

Vs

Chokshi Bhuderbhai Mathurbhai

RESPONDENT

Date of Decision : 01-08-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48(1)

Citation : AIR 1964 Guj 100

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Advocate : K.N. Dosani, for the Appellant; V.U. Patel and S.G. Shah, for the Respondent

Final Decision : Allowed

Judgement

V.B. Raju, J.—The point urged by the learned counsel for the appellant is that the lower Court was wrong in holding that the Darkhast given on 27-10-60 was in time. The original decree was passed on 20-9-48. In 1957 there was a compromise and it was agreed that the decretal amount may be paid in instalments. The Court recorded this compromise below the decree. The lower Court accepted the contention that on account of this fact there is a subsequent order of the Court directing the payment of money in instalments and therefore u/s 48(i)(b) of the Code of Civil Procedure, limitation would run from the date of default in making the payment of any instalment. Section 48, Civil Procedure Code, reads as follows:-

"(1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from

(a) the date of the decree sought to be executed, or,

(b) 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, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed -

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term, of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within 12 years immediately before the date of the application; or

(b) to limit or otherwise affect the operation of Article 183 of the First Schedule of the Indian Limitation Act, 1908."

This is not a case of a decree directing payment by installments. There is also no subsequent order of the Court directing the payment of money in installments. The Court's order that the adjustment should be recorded does not amount to an order directing the payment of money in installments. To do so would be to amend the decree, and the Court has no power to do so. In fact, there is no subsequent order of the Court directing the payment of money by installments. Section 48(1)(b) of the CPC has therefore no application. Limitation would run from the date of the decree i.e., 20-9-48. The Dar-khast would, therefore, clearly be time barred. The lower Court considered a ruling of the Bombay High Court in D.S. Apte Vs. Tirmal Hanmant Savnur, . That was a case where there was a subsequent order of the Court directing the payment of annual installments of Rs. 125/-. That would therefore clearly fall within the wording of Section 48(1)(b) of the Code of Civil Procedure. The case reported in ILR 49 Bom 695 : D.S. Apte Vs. Tirmal Hanmant Savnur, , does not therefore apply to the facts of the present case.

2. The appeal is, therefore, " allowed, the order of the lower Court is set aside and the Darkhast is dismissed. No order as to costs.