

(1960) 11 PAT CK 0011
In the Patna High Court
Case No : A.F.O.O. No. 214 of 1957

Prahlad Prasad Mahrotra

APPELLANT

Vs

Thakur Prasad Mehra and Company

RESPONDENT

Date of Decision : 09-11-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 41

Citation : AIR 1961 Patna 149

Hon'ble Judges : V. Ramaswami, C.J.;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Advocate General and T.P. Singh, for the Appellant; Rajeshwar Prasad Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

1. In this case the respondent, Thakur Prasad Mehra and Company, obtained a decree against the appellant, Prahalad Prasad Mahrotra, in Suit No. 3540 of 1949 in the Calcutta High Court in its Ordinary Original Civil Jurisdiction. The decree was transferred to the Muzaffarpur Court for execution on the 24th August, 1955. On the 24th February, 1956, a notice was issued by the Muzaffarpur Court under Order 21, Rule 52, Code of Civil Procedure. On the 15th March, 1956, the execution Case was dismissed for default. But on the 15th January, 1957, the decree-holder again applied to the Muzaffarpur Court for execution of the decree.

It was objected by the Judgment-debtor that the Muzaffarpur Court had no jurisdiction to execute the decree because the Muzaffarpur Court had communicated the result of the previous execution to the Calcutta High Court on the 16th March, 1956. The contention of the Judgment-debtor was that u/s 41 of the CPC the Muzaffarpur Court had sent a certificate to the Calcutta High Court about the result of the execution and hence the Muzaffarpur Court had no jurisdiction to entertain a fresh application for execution of the same decree. The argument of the judgment-debtor was rejected by the Muzaffarpur Court on the 5th June, 1957. Against this order the Judgment-debtor has presented this

appeal to the High Court.

2. On behalf of the appellant the contention of the Advocate General was that there is a note in the remarks column of the suit register as follows: "Result sent on 16-3-56." It was submitted by the Advocate General that the Communication must have been sent to the Calcutta High Court about the result of the execution and this was tantamount to a certificate as contemplated by Section 41 of the Code of Civil Procedure. We do not accept the argument of the Advocate General as correct. All that the entry in the register indicates is that an information was sent to the Calcutta High Court relating to the dismissal of Money Execution Case No. 104 of 1955.

The order sheet of the execution case does not show that the presiding officer directed that a certificate should be sent u/s 41 of the CPC to the Calcutta High Court regarding the dismissal of Money Execution Case No. 104 of 1955 on the 15th March, 1956. There is also no proof adduced on behalf of the appellant that a certificate was sent to the Calcutta High Court u/s 41 of the Code of Civil Procedure. It was submitted by the Advocate General that no formal certificate is necessary to be sent under the provisions of Section 41 of the Code of Civil Procedure, which is in the following terms:

"41. The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure."

In support of this proposition the learned Advocate General relied upon a decision of this High Court in Darsan Singh Vs. Baldeo Das, where there is an observation of Meredith, J., that Section 41 prescribed no particular form of the certificate, and in his judgment, the sending of an intimation that the execution case has been dismissed as infructuous would amount to a sufficient compliance with the provisions of the section. We do not think that this opinion of Meredith, J. can be treated as a ratio decidendi in that case, because the question for decision in that case was whether the transferor court had jurisdiction to execute a decree in the absence of a certificate sent u/s 41 of the CPC by the transferee court.

In the course of his judgment Meredith, J. proceeded to say that even if it be assumed that not certificate was sent u/s 41 of the CPC by the transferee court, still the transferor court would have jurisdiction to execute the decree. Any observation of Meredith, J. therefore, with regard to the construction of Section 41 of the CPC in that case is in the nature of obiter dictum and cannot have binding force.

It should also be noticed that Meredith, J. does not refer to the circumstance that a form has been prescribed by the High Court for Certificates to be issued u/s 41 of the Code of Civil Procedure, namely, form No. (j) 32 at page 186 of the Court's General Rules and Circular Orders, Civil, Volume II. In our opinion the present case is governed by the ratio decidendi of a subsequent decision of a

Division Bench of this High Court in Savitri Devi and Others Vs. Kamal Singh, .

It was held in that case by the Division Bench that the act of sending a certificate u/s 41 of the CPC was something in the nature of a judicial act, and unless there was a formal order of the transferee court to that effect, and unless the transferee court had applied its mind judicially to the matter, a certificate purported to be sent by it u/s 41 of the CPC to the transferor court would be invalid and without jurisdiction. In the present case, as we have already said, there is no order of the transferee court directing that a certificate should be issued u/s 41 of the CPC or that such a certificate should be sent to the Calcutta High Court,

It does not appear from the order sheet that any such certificate was in fact prepared or signed by the transferee Court and sent to the Calcutta High Court. In the circumstances we hold that the provisions of Section 41 of the CPC have not been satisfied in this case and the lower court was justified in holding that it had jurisdiction to proceed with Money Execution Case No. 11 of 1957 and overruling the objection of the judgment-debtor on the point.

3 In our opinion there is no merit in this appeal. It is accordingly dismissed with costs.