
(2007) 01 JH CK 0005
In the Jharkhand High Court
Case No : WPC No. 5349 of 2004

Pranip Kumar Roy and Another

APPELLANT

Vs

Tata Iron and Steel Company (TISCO)

RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48 , 50
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Article 136

Citation : (2007) 1 BLJR 837 : (2007) 1 JCR 593

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Rahul Das, for the Appellant; Manjul Prasad and G.M. Mishra, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this application under Article 227 of the Constitution of India is directed against the order dated 28.8.2004 passed by 2nd Additional Munsif at Jamshedpur in Execution Case No. 28 of 1998 whereby he has allowed the application filed by the respondent-decree holder for substitution of legal representatives in place of the deceased judgment-debtor.

2. The facts of the lie in a narrow compass:

Respondent-Tata Iron and Steel Company Ltd. (in short Decree Holder) obtained a decree against the father of the petitioner in Title Suit No. 171 of 1980. During pendency of the suit, petitioners' father died and the mother of the petitioners was substituted. The suit was decreed on 20.2.1989. Mother of the petitioners however, died on 13.10.1996. After the death of defendant-Judgment debtor respondent-decree holder filed execution case in 1998 being Execution Case No. 28 of 1998 against the deceased mother of the petitioners. The execution case remained pending for a long time. It was only in 2004 the decree- holder filed application for substitution of petitioners as legal representatives in place of

deceased mother in the said execution proceeding. Notices were issued and the petitioners appeared and opposed the substitution petition on the ground inter alia that execution proceeding which was filed against a dead person, there cannot be any substitution after 12 years from the date of the decree. Learned Munsif after hearing the parties by the impugned order held that for the ends of justice, petitioners is to be substituted in the said execution case. Hence, this application.

3. I have heard Mr. Rahul Das, learned Counsel for the petitioner and Mr. Manjul Prasad, learned Counsel for the respondent.

4. Admittedly, the suit was decreed on 20.2.1989 and the execution case was filed in 1998 being Execution Case No. 28 of 1998 against a dead person. After the expiry of 12 years from the date of the decree, application for substitution was filed. Now the only question that falls for consideration is as to whether application for substitution is maintainable?

5. It is well settled that decree passed against a dead person is a nullity. Similarly, execution proceeding against a dead person (judgment debtor) is also a nullity and such execution petition is not at all maintainable and nonest in the eyes of law. If in such proceeding any application for substitution is made then that shall be deemed to be a fresh execution proceeding in the event legal representatives are substituted. Section 48 of the CPC which prescribed limitation for filing execution case has been repealed by the Limitation Act, 1963 and period of limitation for filing execution petition has been mentioned under Article 136 of the Limitation Act. Article 136 reads as under:

Description of application

Period of limitation

Time from which period begins to run

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.

6. Section 50 of the CPC provides that where judgment debtor dies before the decree has been fully satisfied; the holder of the decree may apply to the court, which passed it to execute the same against the legal representatives of the deceased.

7. From perusal of the aforesaid schedule of the Limitation Act, it is, therefore, clear that period prescribed for execution of the decree is 12 years from the date of the decree, other than a decree granting mandatory injunction. Application for enforcement of execution of decree granting perpetual injunction is not subject to any period of limitation. The question as to when decree becomes enforceable and the period of limitation will run has been fully discussed by a Full Bench of the Patna High Court in the case of *Jokhan Rai Vs. Baikunth Singh*, . Their Lordships observed:

8. Yet another matter which is axiomatic in our civil jurisprudence is that an appeal under the CPC is a continuation of the suit. Now once this unchallengeable dictum is accepted, it necessarily follows that the moment an appeal is filed, the finality of the judgment and decree is automatically put in a flux and the appeal must be taken as part and parcel of the continuing trial. In essence where an appeal has been preferred, the suit is disposed of truly and finally by the appellate decree and not by the original one.

11. Now once it is held as above, it follows that the time must necessarily run from the date of the decree, which is enforceable one. It is incongruous to hold that though the enforceable decree is the appellate one, time and limitation must run from the date of the original decree alone.

8. In the instant case, admittedly, the execution case was filed against a dead person in 1998. In 2004 application for substitution was filed i.e. after expiry of about 15 years from the date of the decree. In such situation, the execution proceeding against a dead person being nonest in the eyes of law, any application for substitution of legal representatives filed beyond the period of 12 years from the date of the decree cannot and shall not be entertained. The court below, therefore, committed serious error of law in allowing the substitution petition.

9. For the aforesaid reasons, this writ application is allowed and the impugned order is set aside. It is held that execution case cannot proceed and is liable to be dismissed.