

(1944) 08 CAL CK 0005

In the Calcutta High Court

Case No : Appeal from Appellate Order No. 148 of 1942

Prasanna Narayan Chaudhury

APPELLANT

Vs

Kamrup Co-Operative Land Mortgage Bank Ltd.

RESPONDENT

Date of Decision : 14-08-1944

Acts Referred:

Citation : (1944) 08 CAL CK 0005

Final Decision : Dismissed

Judgement

Biswas, J.—The short point raised in this appeal is whether an application for execution is barred by limitation. The Appellant is the judgment-debtor, against whom the Respondent, a Co-operative society, known as the Kamrup Co-operative Land Mortgage Bank, Limited, obtained an award under the Co-operative Societies Act (II of 1912) on the 9th January, 1931, for a total sum of Rs. 2,530-10-3 pies, including principal and interest. Under sec. 43 of the Act, the Provincial Government is empowered to make rules to carry out the purpose of the Act, and cl. (1) of sub-sec. (2) authorizes the framing of rules for the enforcement of the decisions of the Registrar or the awards of arbitrators under the Act. It appears that in exercise of these powers, the Assam Government made a rule under Notification No. 1427, dated the 12th June, 1933, to the effect that such decisions and awards

shall, on application to any Civil Court having local jurisdiction, be enforceable in the same manner as a decree of such court.

2. The award in the present case was, therefore, executable as a decree, and we shall hereinafter refer to it as a decree.

3. Acting presumably on the view that under this rule, as worded, an application for execution could be made to any Civil Court having jurisdiction within the local area in which the society operated, irrespective of the pecuniary limits of its jurisdiction, the decree-holder made his first application in the Court of the Munsif at Gauhati, though he was empowered to try suits up to the value of Rs.

2,000 only. In this execution case (No. 849 of 1931) which was filed on the 13th May, 1931, the decree-holder asked for sale of the mortgaged properties, and these properties were sold, but the decree was thereby satisfied only in part, and the case was accordingly disposed of on part satisfaction on the 1st November, 1932. Within three years thereafter, on the 15th September, 1933, he made a second application (Execution Case No. 2064 of 1933) in the same Court, asking for sale of other properties. This was dismissed for default on the 27th January, 1934. The third execution case (No. 1439 of 1934) was filed before the same Munsif on the 2nd June, 1934, and dismissed on the 20th May, 1935, without any result. The fourth execution case (No. 89 of 1936) followed on the 16th January, 1936, and this also was dismissed for default on the 17th June, 1936. On the 13th October, 1936, the decree-holder presented in the same Court his fifth application for execution. (Execution Case No. 2539 of 1936) in the course of which some lands were attached. Upon this, a claim was lodged by the judgment-debtor's wife under or. 21, r. 58 of the Code of Civil Procedure, objecting to the attachment. The claim was allowed on the 19th June, 1937, in Miscellaneous Case No. 22 of 1937. It appears from the judgment of the First Court in the present appeal that the executing Court nevertheless made an order directing the decree-holder to proceed with the execution and to take steps by the 14th August, 1937. No steps were, however, taken and the case was dismissed for default on the 21st August, 1937. Thereafter, it is stated, on the 11th September, 1937, the decree-holder commenced a title suit (Title Suit No. 135 of 1937) under or. 21, r. 63 of the CPC to set aside the order in the claim case. This title suit was ultimately disposed of in favors of the decree-holder on appeal on the 4th April, 1939. Then followed the sixth application for execution in the same Court of the Munsif at Gauhati. (Execution Case No. 1664 of 1940). This was filed on the 25th September, 1940. For the first time, in the course of this proceeding, it was noticed that the Munsif's Court had no jurisdiction to deal with the case, as the original decree under execution was for an amount in excess of the maximum limit of the pecuniary jurisdiction of that Court. By an order, dated the 21st, March, 1931, the learned Munsif accordingly dismissed the application on the ground of want of jurisdiction, and directed the decree-holder to file a fresh petition before the proper Court. This led to the filing of the present application before the Court of the Special Subordinate Judge, Assam Valley District, on the 10th June, 1941, (Execution Case No. 35 of 1941). It is not disputed that the Special Subordinate Judge has jurisdiction to try cases of any value.

4. The question is whether this application of the 10th June, 1941, is within time. The learned Special Subordinate Judge decided this point in favors of the judgment-debtor, but on appeal, the decision was reversed by the District Judge of Assam Valley Districts. It is against the order of the District Judge that the present appeal has been preferred.

5. The last application for execution is within twelve years from the date of the decree, and no question of limitation arises under sec. 48 of the Code of Civil

Procedure. The question which requires to be considered is whether or not the application has been made within the period prescribed by Art. 182 of the first Schedule of the Limitation Act. This article provides for a period of three years to be reckoned from the date of the decree mentioned in cl. (1) of the third column, or from any of the other dates specified in cls. (2) to (7). Admittedly, the application was presented more than three years from the date on which the decree was made. Cl. (1) cannot, therefore, apply. The only other clause which the decree-holder relies on is cl. (5). This gives a fresh starting point from the date of the final order passed on an application made in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree.

6. What is the meaning of "proper Court"? Can it be said that any of the previous applications in this case had been made to the "proper Court" within the meaning of this article? In our opinion, the answer must be in the negative. A Court which has no pecuniary jurisdiction to entertain an application for execution cannot be said to be a "proper Court." We find ourselves unable to restrict the meaning of these words in the way suggested on behalf of the decree-holder, as if they merely meant a Court whose duty it was to execute the decree, having regard to the provisions of sec. 33 of the Code of Civil Procedure, irrespective of the question of the territorial or pecuniary jurisdiction of the Court. It may be that a Court which has pecuniary or territorial jurisdiction may not yet be competent to entertain an application because it is not the proper Court, but it cannot be said that if the Court is lacking in pecuniary or territorial jurisdiction, it will still be regarded as a proper Court. In order to constitute an executing Court the "proper Court" within cl. (5) of Art. 182, it is essential that the Court must possess pecuniary and territorial jurisdiction, apart from being otherwise competent. The plea of the judgment-debtor in so far as it rests on the non-applicability of clause 5 of Art. 182 must, therefore, prevail.

7. But this is not necessarily a complete answer to the application for execution, The Respondent decree-holder, if he fails on this point, nevertheless, claims the benefit of sec. 14 of the Limitation Act, in order to save his application from the bar of limitation. The learned District Judge appears to have accepted the decree-holder's contention in this behalf, though he does not specifically refer to sec. 14 in his judgment.

8. Sec. 14 of the Limitation Act, broadly speaking, provides for exclusion of the time spent in proceeding bona fide in a Court without jurisdiction. Sub-sec. (1) deals with suits, while sub-sec. (2) deals with applications. We are accordingly concerned here with sub-sec. (2), which runs in these terms:

In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other

cause of a like nature, is unable to entertain it.

9. From the facts and dates set out in the earlier portion of this judgment, it will appear that the total period taken by the previous proceedings in the Court of the Munsif at Gauhati is seven years, eight months and eight days, and if this period is deducted, it is not disputed that the last application for execution will be in time. It may be stated that in making the above computation, the fifth and sixth executions have been taken together, and allowance has been made for the full period between the date of filing of the fifth application and the date of disposal of the sixth. In other words, the decree-holder has been given the benefit of the whole of the period due to the interruption caused by the claim case and subsequent title suit occasioned thereby.

10. Sec. 14 (2) of the Limitation Act shows that there are certain conditions which must be satisfied before it can apply. These conditions essentially are that the applicant must have been prosecuting "with due diligence "and " in good faith" another proceeding for the same relief in another Court which had no jurisdiction. So far as due diligence and good faith are concerned, the findings of the Court of first instance were against the decree-holder, but these findings were reversed on appeal. Sitting in second appeal, we are bound by the findings of the lower Appellate Court, and we must accordingly hold that there was good faith as well as due diligence on the part of the decree-holder. The learned Advocate for the judgment-debtor pointed out that the learned Judge though he had found good faith, had not yet recorded a definite finding on the question of due diligence. Reading the judgment as a whole, and also looking at the way in which the matter had been dealt with by the learned Subordinate Judge, we think that the express finding regarding good faith ought to be taken to cover due diligence as well. It is also not disputed by the learned Advocate for the judgment-debtor that the Court of the Munsif at Gauhati, in which all the applications, except the very last, had been presented, had no jurisdiction to entertain the applications. Looking, at substance of the matter, therefore, it seems to us that the decree-holder might fairly claim to be entitled to exclusion of the whole of the time occupied in the proceedings before this wrong Court.

11. It has however, been strenuously argued that the terms of sec. 14 (2) of the Limitation Act do not justify the taking of such a broad view, and particular stress is laid on the use of the words "is unable to entertain" at the end of the sub-section. The contention is that these words clearly imply that in order to get the benefit of this ameliorating provision of the Limitation Act, the applicant will have to show not merely that the Court before which the abortive proceedings were had, had no jurisdiction, but also that it had actually refused to give relief on the grounds of want of jurisdiction. In other words it is said that if the Court assumed jurisdiction, although it had none,-either acting from a wrong view as to the extent or scope of its jurisdiction, or without applying its mind at all to the question of jurisdiction,-there can be no room for applying the sub-section and excluding the" period spent in the proceedings before such Court.

12. On a strict reading of sec. 14 (2), we are not prepared, to say that there is not some force in the contention put forward on be-half of the judgment-debtor. The word "unable" is not the precise equivalent of "incompetent," and it may quite be that the inability to entertain an application can only be effectively shown by actually refusing to do so. It seems to us, however, making all allowance for this point of view, that it would not be right to place such a limited interpretation on the word "unable" used in this sub-section. We do not think that the word "unable" if it does not mean quite the same thing as "incompetent," does nevertheless exclude this meaning. It would, in our opinion, be wrong to hold that though an applicant may in good faith be prosecuting his remedy in a Civil Court,-believing that it has jurisdiction,-he should still suddenly find himself put out of Court at the end of the day on a discovery that the Court had no jurisdiction. That would be denying justice, and the Court ought not to adopt a construction of the statute which would lead to such a result, unless it was constrained to do so by the terms employed. We cannot say that the language used in sub-sec. (2) necessarily compels the construction contended for on behalf of the judgment-debtor.

13. In the result, we must hold that the decree-holder is entitled to exclude the whole of the period which was spent in the previous proceedings before the Court of the Munsif at Gauhati, and as we have said, if this is done, the present application for execution will be within time.

14. This appeal is accordingly dismissed, but in the circumstances of the case, we direct that the parties should bear their own costs in all the Courts.

Sen, J.

I agree.