(1960) 03 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Ex. First Appeal No. 230 of 1951

Punjab Co-operative Bank Ltd. APPELLANT

Vs

L. Naranjan Dass Budwar RESPONDENT

Date of Decision : 01-03-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 44A
Displaced Persons (Land Acquisition) Act, 1949 — Section 2 , 7
Limitation Act, 1908 — Article 181 , 182(5)

Citation : AIR 1961 P&H 369

Hon'ble Judges : Tek Chand, J;Shamsher Bahadur, J

Bench : Division Bench

Advocate : C.L. Aggarwal, D.N. Awasthy, A.L. Kaul and V.C. Mahajan, for the Appellant; H.L. Sarin, N.N. Goswamy, V.P. Gandhi and S.D. Bahri, for the Respondent

Final Decision : Allowed

Judgement

Tek Chand, J.—The facts giving rise to this execution first appeal are as follows. A suit instituted by the Punjab Co-operative Bank Limited, Lahore, filed on 25th of August, 1939, in the Court of Commercial Sub-Judge at Lahore for the recovery of Rs. 1,73,521/- was decreed on 23rd of December, 1939, as a result of a compromise between the parties. It was decreed that the defendant was to pay into Court on or before 15th of June, 1940, the sum of Rs. l,71,178/5/- and costs amounting to Rs. 2,844/- and interest in the following manner.

2. The first instalment of Rs. 25,000/- was payable on 15th of June, 1940, and the judgment-debtor was to pay a sum of Rs. 50,000/- on 15th of June, 1941, and the balance of the amount with interest was payable on 15th of June, 1942. In case of single default the whole amount would he come due at once, and the plaintiff would have the right to get the properties mortgaged with the Bank, namely, factories at Pattoki, District Lahore, and at Moga, District Ferozcpore, sold in execution of the decree. In case the sale proceeds of the mortgaged

properties were found to be insufficient to meet the decretal claim of the Bank, the decree holder would also have the right to proceed against the person and other properties of the judgment debtor in execution of the decree against him.

The future interest was payable at the rate of six per cent per annum till realisation.

3. The first execution application was made on 4th of February, 1941, in the executing. Court at Lahore and it was dismissed on 10th of July, 1941 as partly satisfied as the judgment-debtor had paid a sum of Rs. 33,397/13/-, vide Ext. D.H. 10.

4. The second execution application was made at Lahore on 28th of February, 1944, which was dismissed on 5th of May, 1944, as partly satisfied vide Exhibit D.H. 11.

5. The third execution application was filed it the same Court on 12th of July, 1946, but it was dismissed on 18th of October, 1946, as the process fee had not been paid by the decree-holder, vide Exhibit D.H. 12.

6. The decree-holder has contended that on or about 12th of July, 1947, he made an application to the executing Court at Lahore for the grant of transfer certificate u/s 38 of the Code of Civil Procedure, to the Court at Ferozepur and the case was fixed for grant of the certificate on 18th of October, 1947. In the meanwhile communal riots had broken out and nobody attended the Court on behalf of the decree-holder on that date and it is not known what, if any, orders were passed.

7. On 23rd of August, 1949, another execution application was made at Lahore, vide Exhibit D.H. 17, in which the decree-holder prayed for the sale of the judgment-debtor''s factory at Pattoki, District Lahore. A sum of Rs. 88,512/3/- was said to be the balance then payable to the decree-holder besides interest at the rate of Six per cent per annum from 1st of July, 1947, till realisation. In this application, it was stated that an application was made previously in 1947 which was fixed for 18th of October, 1947, for transfer certificate for taking out execution in District Ferozepur, but the decree-holder was not aware of the orders passed and no certificate had been obtained so far.

It was mentioned that on account of the formation of Pakistan and India as two separate countries, the Court at Lahore should order sale of the Judgment-debtor''s factory at Pattoki which is in Pakistan. Reference was also made to the ''previous-execution application which was dismissed on 18th of October, 1946, on account of non-payment of process-fee. This execution application made on 23rd of August, 1949, was dismissed by the executing Court, Lahore, on 25th of November, 1949, at the instance of the decree-holder whose counsel made a statement that further proceedings would be taken in the Court of the Custodian under the law which had come into force in Pakistan. The application was dismissed as unsatisfied vide Exhibits D.H. 18 and D.H. 19.

8. The present application was made in the Court of District Judge, Ferozepur, on 16th of May, 1950, for execution of the decree u/s 7 of the Displaced Persons (Legal Proceedings) Act, No. 25 of 1949. Under this provision, certain decrees and orders passed before 15th of August, 1947, by any Court situated in an area now forming part of Pakistan in favour of a displaced person or in favour of any "other person who had, before and after the said date, resided in, and continued to re-side in an area now forming part of India, were made executable on application made by the decree-holder as prescribed by Order 21, Rule 11 (2), Civil Procedure Code, by any Court within local limits of whose jurisdiction the person, against whom the decree or order had been passed, actually and voluntarily resided or carried on business, in the same manner and to the same extent as if it were a decree or order passed by that Court.

9. On 21st of August, 1950, the ''judgment-debtor filed his objections to the application and the decree-bolder filed his replication on 15th of November, 1950, and the judgment-debtor was also allowed to submit a second written statement in reply to the replication.

10. On the above pleadings, the trial Court framed the following issues ;

1. Is the execution application within time?

2. Is Shri Ved Paul competent to file execution application on behalf of the decree-holder?

3. Is the Bank, the decree-holder, displaced person as defined in Act No. 25 of 1949?

4. Has the Bank taken out execution proceedings against the judgment-debtor within time and through competent person?

5. Can the decree-holder proceed in this Court without an application under Order 39 and without getting non-satisfaction certificate?

6. What is the effect of the decree-holder having certified the claim before the Custodian (Pakistan)?

7. Cannot the decree-holder take out execution proceedings without accounting for the value of the claim of the decree-holder or assets of the judgment-debtor certified in Pakistan?

8. Is judgment-debtor not a displaced person and, therefore, cannot take advantage of Act No. 25 of 1949?

9. If issue No. 8 is decided in favour of the judgment-debtor, to what relief is he entitled under the said Act?

10. To what amount the decree-holder is now entitled?

11. Can the judgment-debtor object to the decree-holder realising more than twice the amount originally advanced to the judgment-debtor?

12. If issue No. 3 is decided against the decree-holder, has this Court jurisdiction to execute the decree?

11. The first three issues around which the main controversy in appeal centres, were decided in the negative. The fourth issue was decided in the affirmative as to previous execution proceedings. The fifth issue was also decided in the affirmative. The sixth issue was decided in favour of the decree-holder and on the seventh issue it was held that as nothing had been realised as a result of execution taken out in Lahore, after the formation of Pakistan, the decree-holder was at liberty to take out execution in the Court at Ferozepur.

On the eighth issue it was held that the judgment-debtor was not a displaced person and therefore could not take advantage of the provisions of Act No. 25 of 1949. Issue No. 9 consequently did not arise. On issue No. 10, it was held that the decree-holder was entitled to Rs. 96,743/- as the balance of the decretal amount, besides interest. Issue No. 11 was decided against the judgment-debtor and on issue No. 12 it was held that though the Bank was not a displaced person, even then the Court at Ferozepur had jurisdiction to execute the decree in view of the provisions of Section 7 of Act No. 25 of 1949. In the result, the execution application was dismissed as time-barred but the parties were left to bear their own costs. From the above order, the Bank has come up in appeal.

12. On behalf of the decree-holder it is argued that the present application filed on 16th of May, 1950, is within limitation in view of the provisions of Article 182 (5) of the Indian Limitation Act, having been made within three years of the date of the application made at Lahore on or about the 12th of July, 1947, in which the transfer certificate under Sections 38 and 39 of the CPC was sought and in which 18th of October, 1947 had been fixed as the date of hearing but owing to disturbances nobody appeared in Court on behalf of the decree-holder,

If such an application was, in fact, made, then it was contended that it would be a step-in-aid of the execution. An application to have a decree transferred to another Court for execution, though It is by no means an application for execution, is certainly an application to take a step-in-aid of execution within the meaning of Clause (5) of Article 182, vide Akshoy Kumari Debi Vs. Nalini Ranjan Mukherjee and Others, Sheonath Prasad and Another Vs. Bindeshwari Prasad Chaudhury and Another, ; AIR 1948 189 (Nagpur) and AIR 1948 197 (Nagpur) Reference in this connection may also be made to Janardan Govind v. Narayan Krishnaji. AIR 1918 Bom 236 : ILR 42 Bom 420 and Srinivasa lyengar v. Narayana Rao AIR 1923 Mad 72.

13. The real question, however, is whether it has been satisfactorily proved on the record of this case whether an application as alleged by the decree-holder had in fact been made u/s 39, Civil Procedure Code, to the executing Court at Lahore On Or about 12th of July, 1947, in which 18th of October, 1947, had been ''fixed as the date for grant of the certificate. There is a clear reference to this application in the subsequent application dated 23rd of August, 1949, vide

Exhibit D.H. 17, and there is no reason to suggest that the Bank on 23rd of August, 1949, was interested in making a false averment as that application was admittedly within time even after taking into consideration the date of dismissal of the execution application dated 12th of July, 1946, as it had been dismissed on 18th of October, 1946. The decree-holder, in order to bring his execution application dated 23rd of August, 1949, within time, did not stand in need of the application for a" transfer certificate as a step-in-aid of execution.

14. Furthermore, Ved Paul Suri, who was in the Service of the Bank as D.H.W. 1, has stated that the Bank had filed an application for a transfer certificate for Ferozepur Court and this was done-before 15th of August, 1947, but he did not know what happened to that application and the transfer certificate had not been obtained. Along with this application, an affidavit has been filed of Shri Durga Das, an employee of the Bank, to the same effect and certain other documents have also been filed as annexures in proof of the filing of an application for transfer certificate to Ferozepur Court.

The learned counsel for the judgment-debtor has objected to the admission of these documents in view of the stringent provisions of Order 41, Rule 27, Civil Procedure Code. It is not necessary to consider whether the verbal request of the learned counsel for the appellant-Bank seeking inclusion of the additional evidence under Order 41, Rule 27, Civil Procedure Code, should be allowed in the circumstances of this case. I, however, feel satisfied from the evidence on the record and from the circumstances of this case that an application for grant of a transfer certificate was in fact made by the Bank as alleged, and in my view such an application was a step-in-aid of execution.

15. The next argument advanced on behalf of the decree-holder, in the alternative, is that if Article 182 (5) of the Indian Limitation Act is not applicable, this petition would be competent under Article 181, of the Limitation Act and would be within limitation. This Article provides limitation of three years in case of an application for which no period of limitation is provided elsewhere. This period starts when the right to apply accrues. In this case after 15th of August, 1947, Pakistan vis-a-vis India became a foreign territory and Pakistan was not a reciprocating territory within Section 44A of the Code of Civil Procedure. No execution of a decree passed in territories which later on formed part of Pakistan, could be executed in India in the absence of reciprocal arrangement.

16. It was held in Said-ul-Hamid v. Federal Indian Assurance Co. Ltd., New Delhi AIR 1951 SIMLA 255, that a Court in the Union of India has no jurisdiction to entertain an application for execution after 15th of August, 1947, of a decree passed by a Court in Pakistan before that date.

17. In N.P.A.K. Muthiah Chettiar (died) and Others Vs. K.S. Rm. Firm Shwebo, Burma and Others, it was held that any judgment or decree obtained in a Burmese Court cannot be executed in the Courts of the Indian Union under the provisions of Section 44A, Civil Procedure Code, after Burma became a republic

and ceased to be a reciprocating country.

18. Reference may also be made to Krishna Das and Another Vs. Krishna Bageria and Others,

19. The effect of the partition of the country, therefore, was that this decree became inexecutable in India. The result was that subsequent events effectively nullified the execution of the decree of Lahore Court in India and the obstacle put to execution in the way of the decree-holder was beyond his control. This obstacle was later on removed after the passing of the Displaced Persons (Legal Proceedings) Act, No. 25 of 1949, which became law in the Punjab on 4th of June, 1949, and section 7 of this Act opened the way to the execution of certain decrees and orders passed before the 15th of August, 1947, in the territories now forming part of Pakistan.

This section enabled the execution of a decree to be taken out in Courts in India in favour of a "displaced person" or any other person who before and after the said date, has resided in and continues to reside in an area now forming part of India. This application made to the executing Court on 16th of May, 1950, after the bar to execution had been removed by section 7 of Act No. 25 of 1949, falls within the provisions of Article 181 of the Limitation Act and the period of limitation thereunder runs from 4th of June, 1949, the date when the Act became law in the Punjab. This application having been made within three years from the date when the right to apply accrued is within limitation.

20. On behalf of the judgment-debtor it was argued that the decree-holder could not avail himself of the provisions of Section 7, as the Bank was neither a "displaced person" nor "a person who before and after the 15th of August, 1947, has resided in and has continued to reside in India". It was contended that "displaced person" as defined in Section 2 of the Act --meaning any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of the civil disturbances in any area now forming part of Pakistan, has been displaced from, or has left, his place of residence in such area after the 1st day of March, 1947, and who has been subsequently residing in India --would not include a juristic person like the decree-hoIder-Bank.

21. In the case of Steel and General Mills Co. Ltd. Vs. General Accident, Fire and Life Assurance Corporation Ltd. and Another, it was held by Soni J. that "displaced person" includes an artificial person such as corporation. In that case it was held that the plaintiff-Company which had its administrative office at Delhi, was a "displaced per-son" within section 3 of the Displaced Persons (Institution of Suits) Act No, 47 of 1948, and was treated as a resident of Delhi. In New Hindustan Bank Ltd, in liquidation, Civil Original No. 91 of .1949, Chief Justice Weston said-

"I think there is no difficulty in accepting the residence of a company for the purposes of the Indian Income Tax Act as the place where its registered office was situate."

22. In De Beers Consolidated Mines, Ltd. v. Howe (1906) AC 455, Lord Lorebura, L. C. said at page 458-

"In applying the conception of residence to a company, we ought, I think, to proceed as nearly as we can upon the analogy of an individual. A Company cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see where it really keeps house and does business,"

23. This decision was followed in Swedish Central Rly. Co. Ltd. v. Thompson 1925 AC 495 and in Egyptian Delta Land and Investment Co. Ltd. v. Todd 1929 AC 1.

24. Mr. Sarin, learned counsel for the judgment-debtor, has relied upon the following observations of Kapur J. in The Northern India Matches Ltd., Himachal Pradesh Vs. Krishan Lal Sundar Dass,

"I hold that if a corporation which was carrying on a business in Pakistan and had its registered office there chooses to transfer its business from a place in what is now Pakistan to a place in what is now India, it would be covered by Section 3 of the Act. But if its administrative office and principal place of business was already in India it cannot be said for the purposes of this Act and in the circumstances such as exist in this case that it is a displaced person."

25. Mr. Sarin then submitted that the decree-holder-Bank had already its registered office in Amritsar and had only a Branch office in Lahore and, therefore, should not be deemed to be a displaced person. Reference has been made at the Bar to the case of New York Life Insurance Co. v. Public Trustee (1924) 2 Ch. 101 (111). In that case, Pollock M. R. said-

"* *there is clear evidence that the plaintiffs in this case are resident both in New York, and in London, in both places they carry on a business, and in both places they are subject to the jurisdiction of the Courts."

The plaintiffs in this case were New York Life Insurance Company. At page 120, Atkin, L. J., said-

"It appears to me that the true view is that the corporation resides for the purposes of suit in as many places as it carries on business."

26. In this connection, reference may also be made to Dunlop Pneumatic Tyre Co. Ltd. v. Act Fur Motor Und Motorfahrzeugbau Vorm, Cudell and Co. (1902) 1 KB 342.

27. To the argument that the decree-holder had its registered office in Amritsar and, therefore, when as a result of disturbances the Lahore office, which was a Branch office, ceased to function, could not be treated as a displaced person, the learned counsel for the decree-holder has referred to Exhibits D.H. 2 and D.H. 3. The first document is a letter from the State Bank of Pakistan, Lahore, dated 21st of June, 1949, addressed to the Manager of the decree-holder-Bank, Lahore, stating that before the Bank could be permitted to function normally in Pakistan, it had to fulfil certain conditions which had been laid down. It then said-

"At present we however allow you to re-open your office only for the purpose of meeting the outstanding claims of Pakistan Nationals and realising your assets in Pakistan."

28. The other document is a balance-sheet of the Bank ending 31st of December, 1947, in which it was mentioned in the report that the Bank had suffered great loss and it had to close its Branches in Rawalpindi, Abbotabad, Peshawar and Lahore, and that its. Branch office at Bajaj Hatta, Lahore, was burnt on 13th of August, 1947. It was also mentioned that there was no use in maintaining Branches in West Punjab as a large number of customers had migrated and there were difficulties experienced by the Bank''s employees in living in West Punjab

29. Reference may also be made to Exhibit D.H. 8 showing that the decree-account of the judgment-debtor was transferred to the Bank''s Branch in Jullundur City from Lahore.

30. I am satisfied that Section 7 of the Displaced Persons (Legal Proceedings) Act No. 25 of 1949 is applicable to the decree-holder-Bank. I am inclined to the view that the Bank falls within the definition of a "displaced person" and in any case it was "a person who before and after the said date (15th of August, 1947) has resided in and continues to reside in an area forming part of India. The execution could only be taken in view of the provisions of Section 44A, Civil Procedure Code, after the obstacle was removed by the passing of the Displaced Persons (Legal Proceedings) Act.

31. I am also satisfied that the present application of the decree-holder is within limitation under Article 181 of the Limitation Act. The learned counsel for the decree-holder has also supported the argument as to limitation not having run out, on the ground that u/s 19 of the-Limitation Act, the judgment-debtor has acknowledged his liability and has referred inter alia to letters of the judgment-debtor to the Bank, Exhibits D.H. 21, dated 13th of October, 1948, and D.H. 22, dated 6th of June, 1950. I am, however, not satisfied that these letters comply with the requirements of Section 19. On issue No, 1, I feel satisfied that the execution application was within time,

32. The second issue, which has been depicted against the decree-holder, is "whether Shri Paul Was competent to file execution application on behalf of the decree-holder." On behalf of the Bank reliance has been placed upon the power of attorney by the Bank in favour of its Manager, Shri Ved PauI Sun. In para 1 of the power of attorney, Exhibit D. H. 1, it is stated-

"Whereas the said Bank is desirous of empowering the said Ved Pal Suri to act as its attorney at aforesaid or any other Branch of the said Bank to which he may be appointed for all and singular, the purposes hereinafter mentioned. Now therefore these presents nominate, constitute, and appoint the said Ved Pal Suri to be and to act as the true and lawful attorney of the said Bank at Jullundur City er at any other Branch of the said Bank aforesaid te which he may be appointed Manager for the said Bank and in the name and on behalf of the Said Bank."

33. The above words have been construed by the executing Court to mean that Ved Paul Suri was constituted lawful attorney at Jullundur City and to another Branch of the Bank to which he might be appointed a Manager but he could not be a lawful attorney for the Bank at a place where he was not the Manager, and as the Bank had admittedly no Branch at Ferozepur, he could not be a Manager for Ferozepur. This construction to my mind is patently erroneous. Shri Ved Paul Suri was to be the lawful attorney of the Bank at Jullundur City or at any other Branch to which he might he appointed :as Manager. As Manager of Jullundur City Branch, be was competent to take out execution. So long as he occupied the position of Manager of any Branch he had the power to act as the attorney.

At the time the present execution was filed at Ferozepur, he was undoubtedly the Manager of the Bank, Jullundur City Branch. The learned counsel for the judgment-debtor contends that he could not function outside Jullundur City even "if there was Branch at Ferozepur. This to my mind is an entirely wrong interpretation which is being placed on the language of the power of attorney. Even if there be a lurking doubt as to the above interpretation, para 9 completely dispels any such doubt; it recites-

"The said Ved Pal Suri in virtue of these presents will have the power to demand, collect, receive and give effectual bona fide discharge- of, the name and on behalf of the said Bank, all debts, advances and claim due to the said Bank, he shall have further the power to take and use all lawful proceedings and means for recovering and receiving the said debts and advances and also to commence and prosecute and to defend at law all actions, suits, claims, demands and disputes and to refer to arbitration; and to adjust and settle and to compromise all accounts, suits, claims and demands, and to appoint lawyers to conduct cases for all or any of the purposes aforesaid to execute and do such instruments and things as shall be thought accessary or expedient."

34. He has been given complete power to commence and prosecute and to defend all actions, claims, demand etc. on behalf of the Bank. The language is wide enough to include making of execution applications like the present. I am, there fore, of the view that Shri Ved Paul Suri was competent to file the execution application on behalf of the Bank.

35. From what has been discussed above, it follows that the third issue should also have been decided in Bank''s favour and the decree-holder should have been treated as a displaced person as defined in Act No. 25 of 1949. In any case, if for the sake of argument it be held that the decree-holder-Bank was not a displaced person, the provisions of Section 7 are nevertheless applicable to the decree-holder in so far as it is a person who before and after the said date, has resided in and continues to reside in India.

36. Shri Ved Paul Suri as D.H.W. 1 has stated that Lahore City Office of the Bank was burnt on 13th of August, 1947, and he shifted to Jullundur. Taking judicial notice of unprecedented riots in Lahore, endangering life and property of the non-

Muslims during August, 1947, it cannot be gainsaid that the Bank''s employees and management shifted from Lahore to Jullundur on account of disturbances, The findings of the executing Court on the first three issues being erroneous, are reversed, and these issues are decided in favour of the decree-holder-appellant,

37. In the result, the execution first appeal succeeds and is allowed with costs throughout. The executing Court is directed to execute the decree in accordance with law. Parties are directed to appear before the executing Court on 18-4-1960.

Shamsher Bahadur, J.

38. I agree.

