

(1961) 11 GUJ CK 0009
In the Gujarat High Court

Rabari Khoda Mesur

APPELLANT

Vs

Shri Gajanan Sahkari Pedhi Ltd. and Others

RESPONDENT

Date of Decision : 21-11-1961

Acts Referred:

Bombay Co-operative Societies Act, 1925 — Section 54, 54, 59(1)(a), 59(1)(a), 89(1)(a)

Civil Procedure Code, 1908 (CPC) — Order 20 rule 7, 48, 48

Citation : (1962) 3 GLR 512

Hon'ble Judges : K.T. Desai, C.J.;M.R. Mody, J

Bench : Division Bench

Judgement

K.T. Desai, C.J.—This second appeal raises an important question of law in action with the period of limitation for execution of orders which are to be deemed to be decrees of a Civil Court on a certificate being signed by the Registrar under the provisions of Section 89(1)(a) of the Bombay Co-operative Societies Act 1925 In view of the importance of the matter Justice Bakshi before whom the matter first appeared has referred the same to a Division Bench.

2. The facts giving rise to this second appeal briefly stated are the following: The respondent society is a co-operative society which was registered under the Baroda Co-operative Societies Act. The appellant was a member of that society. Disputes arose between the first respondent and the appellant. The same were referred to the Registrars nominee for decision under the provisions of the aforesaid Act. On 28th April 1942 the Registrars nominee made an award against the appellant as the principal debtor and against respondents 2 and 3 as sureties for the payment of a sum of Rs. 331-12-4 with interest thereon. On 1st August 1949 the territories of the State of Baroda were merged with the territories of the then State of Bombay. It is not disputed that after such merger the award made by the Registrars nominee under the provisions of the Baroda Co-operative Societies Act became effective and enforceable as an order made by the corresponding Registrars nominee under the provisions of the Bombay Co-operative Societies Act 1925 On 7th April 1953 the first respondent society

obtained a certificate from the Registrar within the meaning of Section 59(1)(a) of the Bombay Co-operative Societies Act 1925 Under the provisions of Section 59(1)(a) on the signing of such certificate the award was liable to be deemed to be a decree of a Civil Court and to be executed in the same manner as a decree of such Court. On 18th September 1954 the society filed a darkhast in the Court of the Civil Judge Junior Division Sidhpur for executing such decree. On 19th March 1955 the Civil Judge Junior Division Sidhpur dismissed the application holding that the starting point for calculating the period of limitation for execution was the date of the award. Being aggrieved by the decision of the learned judge, the first respondent society preferred an appeal before the District Judge of Mehsana being appeal No. 64 of 1955. the District Judge allowed the appeal holding that the darkhast was in time and that the stating point for the purpose of limitation commenced from the date of the certificate granted by the Registrar namely 7 April 1953. Being aggrieved by the aforesaid decision the appellant before us has filed this second appeal.

3. The point at issue between the parties is whether the period of limitation for execution runs from the date on which the award was made or the date on which the certificate was signed by the Registrar. In order to appreciate the question it is necessary to refer to the provisions of Section 59(1). That section runs as follows:

Every order passed by the Registrar or his nominee on disputes referred to him u/s 54 shall if not carried out

(a) on a certificate signed by the Registrar be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such court or

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue provided that any application for the recovery in such manner of any such sum shall be made to the Collector and shall be accompanied by a certificate signed by the Registrar or by an Assistant Registrar to whom the said power has been delegated by the Registrar. Such application shall be made within twelve years from the date fixed in the order and if no such date is fixed from the date of the order.

4. In the present case the Registrar having signed the requisite certificate on 7th April 1953 the award dated 28th April 1942 must be deemed to be a decree of a Civil Court and became executable in the same manner as a decree of such Court.

We have next to consider in connection with the execution of decrees of Civil Courts the provisions of Section 48 of the CPC 1908 That section to the extent that is relevant provides as under:

(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.

xx xx xx xx xx. 5. In the present case there being no date provided by the award for payment of the moneys due thereunder no order for the execution of the same can be made upon an application presented after the expiration of twelve years from the date of the decree sought to be executed. It is not disputed in this case that no application for execution prior to the application made by the darkhast dated 15th September 1954 had at any time been made by the society. The question that we have to determine in this case is the date of the decree which is sought to be executed within the meaning of Section 48 of the Civil procedure Code. If the date of the award namely 25 April 1945 is considered to be the date of the decree then the application for execution would be barred inasmuch as the same has been made on 15th September 1954 that is more than twelve years after the date of the award. If on the other hand the date of the certificate granted by the Registrar on 7th April 1953 is regarded as the date of the decree then the application would be in time as the same has been made within the period of twelve years from the aforesaid date of the certificate.

By the provisions of Section 59(1)(a) the legislature has created a fiction. An award given or an order passed on a reference made u/s 54 of the Act which in reality is not a decree of a Civil Court has by reason of this fiction been deemed to be a decree of a Civil Court on a certificate being signed by the Registrar. The question then is whether the date of such decree should be regarded as the date when the award or the order on a reference u/s 54 was made or the date on which the award is deemed to be a decree having regard to the fiction which the legislature has created. In connection with fictions created by the legislature it would not be out of place to refer to the classic passage of Lord Asquith in the case of *East End Dwelling Co. Ltd. v. Finsbury Borough Council* reported in (1952) Appeal Cases page 109 where the learned Judge observes as follows:

If you are bidden to treat an imaginary state of affairs as real, you must surely unless prohibited from doing so also imagine as real the consequences and incidents which if the putative state of affairs had in fact existed must inevitably have flowed from or accompanied it. The statute says that you must mirror a certain state of affairs; it does not say that having done so you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

6. These observations have been quoted with approval by the Supreme Court in *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, *State of Bombay v. Pandurang Vinayak and Ors.* and in several other decisions of the Supreme Court. In dealing with fictions the Supreme Court in the aforesaid case

observes at page 246 as follows:

When a statute enacts that something shall be deemed to have been done which in fact and truth was not done the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.

7. In this case we would be entitled and are bound to ascertain for what purpose is legislative fiction was created and we must give full effect to such fiction and such fiction should be carried to its logical conclusion and our minds must not boggle when it comes to the inevitable corollaries of that state of affairs. The object of the fiction appears to be clear namely to make the award or order on a reference u/s 54 of the Act a decree of a Civil Court. The Registrar or the Registrars nominee when acting on a reference under the provisions of Section 54 is not acting as a Civil Court and cannot be regarded in any sense as constituting a Civil Court. The object of the fiction is to treat the determination of the Registrar or his nominee as a decree of a Civil Court. But before this fiction could be invoked it is pre-requisite that there should be a certificate signed by the Registrar and it is only on such certificate being signed that the award or the order can be deemed to be a decree of a Civil Court. The legislature has provided no time limit for an application for the issue of a certificate by the Registrar. The legislature has not provided for any time limit for the issue of a certificate by the Registrar It is only when the touch-stone of a certificate signed by the Registrar is applied that the award or an order of the Registrar or his nominee on a reference u/s 54 is converted into a decree of a Civil Court. The question then would arise whether such a decree of a Civil Court could be deemed or considered to be a decree of a date earlier than the date on which it is liable to be regarded as a decree At all times prior to the issue of the certificate signed by the Registrar the award or the order remains as an award or an order of the Registrar or his nominee and it could in no sense be regarded as a decree of a Civil Court. Ordinarily when we consider the date of a decree of a Civil Court we apply our minds to the provisions of the CPC contained in Order 20 rule 7 of the Code. Order 20 rule 7 provide as under:

The decree shall bear date the day on which the judgment was pronounced and when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment he shall sign the decree.

8. This provision refers to a judgment being pronounced by a Civil Court and it provides that the decree shall bear the date of such pronouncement. Mr. Sheth the learned advocate for the appellant has strenuously urged before us that in the present case the date of the decision of the Registrars nominee must be regarded as the date when the judgment was pronounced within the meaning of Order 20 rule 7 and that the date which the award would bear when converted into a decree under the provisions of Section 59(1)(a) would be the date when the award was pronounced. Order 20 rule 7 of the CPC refers to the date which a

decree of a Court should bear that is the date which should appear on the decree as drawn up. There is no provision of law which lays down that when by resort to a legislative fiction an award or order of the Registrar or his nominee on a reference u/s 54 is to be deemed to be a decree that it should be deemed to be a decree with retrospective effect. The award or the order is to be deemed to be a decree only on a certificate being signed by the Registrar. It is not provided that it shall be deemed to be a decree of a Civil Court from the date on which the award was given or the order was passed. It is difficult to hold that when the award is converted into a decree on a certificate being signed by the Registrar that it should be deemed to have been so converted even at a time when the certificate had not been signed.

9. As against the construction which we are placing upon these words it could be very well suggested and has in fact been suggested by the learned advocate for the appellant that the result of the construction which we are putting is that it would be left to the Sweet will and pleasure of the society to apply for a certificate after the expiry of any length of time from the date of the award and thereafter execute the award as a decree of a Civil Court. We would ordinarily be averse to put any construction which would leave with a party the determination of the question of the starting point of limitation for any application for execution of a decree. We have however to construe the intention of the legislature as expressed by the enactment. The legislature has regarded co-operative societies as favoured persons. We will consider the provisions of law as they existed before this deeming provision came into being. When Section 59 was first enacted by the Bombay Cooperative Societies Act in 1925 it ran as follows:

59 Every order passed by a liquidator u/s 60 or by the Registrar or his nominee or arbitrators on disputes referred to him or them under Clause (g) of section 50 or u/s 54 every order passed in appeal u/s 56 and every order passed by Government in appeal against orders passed under sections 50 and 54 shall if not carried out be executed

(a) on a certificate signed by the Registrar or a liquidator by any Civil Court in the same manner as a decree of such court; or

(b) accordingly to the law and under the rules for the time being in force for the recovery of arrears of land revenue provided that any application for the recovery in such manner of any such sum shall be made to the Collector and shall be accompanied by a certificate signed by the Registrar or by an Assistant Registrar to whom the said power has been delegated by the Registrar.

(2) When the property attached in execution of an order referred to in Sub-section (1) cannot be sold for want of buyers the same may be handed over to a society with the previous consent of the Registrar on such terms and conditions as may be agreed upon between the Collector and the said society.

The provisions of this section were first amended by Bombay Act XVI of 1943 By the amendment the words be executed before Clause (a) were omitted and

instead of Clause (a) a new clause was substituted which ran as under:

(a). On a certificate signed by the Registrar or a liquidator be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court.

10. When these words were inserted there was no period of limitation provided by the legislature in connection with the execution of awards or orders made on reference u/s according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. Further light on the legislative intention can be derived by the amendment made by the legislature by Bombay Act XXVIII of 1948 By that amending Act the legislature has added Section 59AA. That section provides as under:

Any private transfer or delivery of or encumbrance or charge on property made or created after the issue of the certificate of the Registrar liquidator or Assistant Registrar as the case may be u/s 53 shall be null and void as against the society on whose application the said certificate was issued.

11. By this amendment any private transfer or delivery of property or encumbrance or charge on property made or created after the issue of such certificate is rendered null and void as against a society without any limit of time so long as the dues of the society to which the certificate relates have not been satisfied.

12. It is not permissible to construe any enactment by reference to what is stated In the statement of objects and reasons appealing in the Hill which precedes the enactment. The Supreme Court in the case of M.K. Ranganathan and Another Vs. Government of Madras and Others, has held that the statement of objects and reasons could not be referred to as an at to the construction of a statute but it could be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the bill to introduce the same and the extent and urgency of the evil which he sought to remedy. In connection with the amendment sought to be elected by the introduction of the new Section 59AA it is stated in the statement of objects and reasons of the Bill which preceded the amending Act that the amendment was meant to rectify an obvious omission in Section 59(1). The intention of the legislature in enacting Section 54AA is to aid the society in having orders in its favour complied with end to help the society in executing orders in its favour without limit of time.

Thereafter came another amending enactment. That was Bombay Act XII of 1950. By that enactment the words such application shall be made within twelve years from the date fixed in the order and if no such date is fixed from the date of the order were inserted in Clause (b) of Section 59 (1) with the result that the unlimited period for execution under the provisions relating to recovery of arrears of land revenue ceased to exist and a period of twelve years has been provided during which the amount due could be recovered under the provisions

relating to the recovery of arrears of land revenue.

13. We are supported in the conclusion to which we have arrived by a decision of a Division Bench of the Mysore High Court reported in AIR 1954 Mys 54 N. Sreenivasa Murthy v. Sri Vyasrajendra Co-operative Bank Ltd. It is laid down in that case that an award acquires and is invested with the status of a decree only when a certificate is granted by the Registrar and execution proceedings in the Civil Court are not possible without the certificate. It is further stated that the award remained merely an award till the certificate was issued and proceedings other than those in the Civil Court were provided for to enforce it. The certificate being the basis of the jurisdiction of the Civil Court Section 43 of the CPC can be attracted only after it is granted and by virtue of the grant it becomes a decree and not before. In that case as applications for the execution of the award were filed within three years from the grant of the certificate and as subsequent applications were filed within the same time from one another and as the application in question was filed within twelve years from the date of the certificate it was held that the application was in time.

14. There is a decision of the Madras High Court reported in AIR 1946 Mad 352 in the case of F.P.S. Albuquerque v. Catholic Bank Ltd. which was cited before us. In that case a Division Bench of the Madras High Court had to deal with the provisions contained in Section 15 of the Indian Arbitration Act 1899 That section ran as follows:

An award on a submission being filed in the Court in accordance with the foregoing provisions shall (unless the Court remits it to the reconsideration of the arbitrators or umpire or sets it aside) be enforceable as if it were a decree of the Court.

Dealing with the provisions of this section the learned Judges in that case stated that it seemed to them that the words on being filed indicated a point of time from which the award was deemed to be enforceable as if it were a decree, thereafter they proceed to observe as under:

The verb in the clause as if it were a decree is clearly in the present tense of the subjunctive mood. If the legislature had intended that the award should be deemed to have been a decree with effect from the date on which it was originally passed by the arbitrator instead of the word were we should expect to find the words "had been". It is pointed out that the result of this construction is that there can be no limitation whatever for the filing of an award in Court and that it might be possible to file in Court an award which was twenty years old without leaving open an objection to the parties on the ground of limitation provided that execution is taken within three years of the date of filing That may be an anomalous result But we are not concerned with the consequences of a statutory provision when the language of it is plain and its meaning clear. It is the business of the Legislature and not of the Judges to amend defective statutes. To our minds it is quite clear that the award only acquires the incidents

of a decree when it is filed in Court and in applying Article 182 Schedule 1 Limitation Act the date of the decree or order cannot be any earlier than the date on which by being filed into Court that which was a non judicial decision becomes clothed with a judicial character as if it were a decree.

15. The Judges had to consider the provisions of a deferent enactment where the language used was slightly different. It tends to support the construction which we are placing on the words used in the present case.

A decision of a single Judge of the Calcutta High Court reported in 62 Calcutta page 833 Udaychand Pannalal v. Bhagirathlal Ghasiprasad was also referred to in this connection. That also was a case under the Indian Arbitration Act 1899 The learned Judge in that case came to the conclusion that the period of limitation for the execution of an award ran from the date when the award was filed and not from the date when the award was made.

A reference was also made to a case reported in 38 Bom. L.R. page 927 Raghavendra Hanmentrao Bonnur v. Industrial Bank. In that case an award had been made on a reference u/s 54 of the Bombay Co-operative Societies Act on September 16 1926 A certificate had been issued u/s 59 (1)(a) of the Act on April 22 1931 and the creditor had filed a darkhast in the Civil Court on March 12 1932 to recover the moneys due under the award. In dealing with the point of limitation Chief Justice Beaumont in that case observed as follows:

It may perhaps be said that when a certificate is granted by the Registrar the award of the arbitrator should be treated as a decree of a civil Court but this does not help the appellant as the darkhast proceedings were filed within three years of the date of the certificate.

16. Mr. Sheth the learned advocate for the appellant very strenuously contended that by adding the words be deemed to be a decree of a Civil Court in Section 59 (1)(a) the legislature had made no change in the law as it stood before such amendment. He urged that even before the date of the amendment on a certificate being signed by the Registrar the award was executable in the same manner as a decree of a Civil Court. In his submission a decree being an adjudication of disputes between parties it is the date of that adjudication which alone could be regarded as the date of the decree. According to him the date of the decree forms part of the decree and that when the legislature laid down that on a certificate being signed by the Registrar the award was to be deemed to be a decree of a Civil Court it must be held that the award was to be deemed to be a decree of a Civil Court bearing the date which the award bore. We are unable to accede to this submission. The date which an award bears is merely indicative of the point of time when the adjudication took place. It is indicative of the point of time when the award was made. When we have to consider the point of time when such award became a decree that point of time would be the date on which the certificate is signed by the Registrar. It is only when the award became converted into a decree of a Civil Court by the deeming provision enacted by the

legislature that it became executable as a decree of a Civil Court. The date of this decree could not be earlier than the date on which it could be regarded as a decree. The date on which the award is to be deemed to be a decree could only be the date when for the first time it could be regarded as A decree.

17. Mr. Sheth relied upon a decision of the Bombay High Court reported in 49 Bom. L.R page 160 in the case of Bhimsen Hanmant v. The Urban Bank. In that case an award had been made on 23rd September 1930 on a reference u/s 54 of the Bombay Co-operative Societies Act 1925 The certificate u/s 59(1)(a) was issued by the Registrar on 25th October 1930 and the darkhast for execution of the award was filed on 19th February 1932. That darkhast was dismissed on 19th September 1933 for non-payment of the requisite process fees. A fresh darkhast was filed on 18th September 1934. Thereupon it was contended that article 181 of the limitation Act applied. In reply it was urged that it was not article 181 but article 182 which would apply. The question which Justice Gajendragadkar who delivered the judgment of the Division Bench had to consider in that case only was whether article 181 applied which would result in the application being barred or whether article 182 of the Indian Limitation Act applied. He held that it was article 187 which applied and that the application was in time. This decision does not assist the appellant in establishing that in the present case the application is barred by the law of limitation. In that case, the learned Judge has made observations in passing in connection with the amendment made in Section 59 (1)(a) where under words were added to the effect that on a certificate being signed by the Registrar the order was to be deemed to be a decree of a Civil Court. In that connection he has observed that the amendment did not make any change in the provisions of the section. Mr. Sheath seems to place some reliance upon these words. The words in the judgment must be read in the context in which they are used and in the context of the point with which the learned Judge was dealing. They cannot be read to imply that the amendment did not make any difference in the section as it stood before and as it stood after the amendment. There are various reasons which the legislature may have taken into account for making this change. On a certificate being issued an award made before the amendment was executable as if it was a decree of a civil Court but it was not liable to be executed in the former Native States in India which by virtue of treaty agreements were executing decrees of civil Courts passed by Courts in British India. The effect of this deeming provision would be to convert the awards into decrees so that the awards which became decrees became executable in such Native States. The awards have been clothed until the incidents of decrees and it cannot be said that by the amendment the legislature did not intend to make any change whatsoever. Read in its proper context the judgment in that case is not of much assistance to the appellant.

Another decision referred to by Mr. Sheth was the one reported in 40 Bom L.R. 889 in the case of The Maratha Co-operative Credit Bank of Dharwar v. Keshav Trimbak Nunde. The Court there was dealing with the provisions of Section 16 of the Indian Arbitration Act 1899 It is there laid down that an application to

enforce an award made to the Collector u/s 59 (1)(a) of the Bombay Co-operative Societies Act 1925 could not be treated as an application made to a Court for execution and that any proceedings taken thereunder cannot be taken as steps in aid of execution within the meaning of Article 182 (5) of the Indian Limitation Act. That decision hardly throws any light on the points which have come up for consideration before us. It may be mentioned that in that case a reference has been made to a decision in 12 Bom. L.R.860 where it has been laid down that an award filed in Court u/s 11 of the Indian Arbitration Act 1899 was not a decree though it was enforceable as provided by Section 15 of the Act as if it were a decree.

18. One more decision of the Bombay High Court referred to by Mr. Sheth was the one reported in 43 Bom. L.R. 1006 in the case of Nadirshaw N. Contractor v. Gajraj Sheekarandas. In that case Chief Justice Beaumont who delivered the judgment of the Division Bench has observed as under:

The expression enforceable as if it were a decree of the Court used in Section 15 of the Indian Arbitration Act 1899 includes both the manner of execution and the time within which execution must take place.

He has stated that an award filed in the High Court could by virtue of Section 15 of the Indian Arbitration Act 1899 be executed as a decree of the High Court at any time within twelve years from its date under article 183 of the Indian Limitation Act 1908 In that case an award was made on July 27 1929 and was filed in Court on August 16 1929 and the application was made on January 6 1941 The point that arises for determination in the present case was not required to be considered in that case.

19. Reliance was also placed upon a decision of the Madras High Court reported in AIR 1940 Mad 635 in the case of S.V. Subba Rao v. Calicut Cooperative Urban Bank Ltd. It was held in that case that an award under the Cooperative Societies Act when it was filed in court had to be executed as a decree of the Court and in effect it became a decree of the Court. They held that as Section 48 applied it followed that the proper article in that case was article 182 and not article 181 One further decision referred to by the learned advocate was the one reported in M. Banerjee Vs. Emperor, Belvedere Jute Mills Ltd. v. Hardwarimull and Co. In that case the Court held that for the purposes of limitation an application for execution would be governed by article 182 or article 183 according to whether it was filed in a Chartered High Court or not.

20. Having duly considered all the cases cited by the learned advocate for the appellant we consider that the better view to take is that the date of the decree for the purpose of limitation u/s 48 of the CPC 1908 in cases where awards or orders have been passed on a reference u/s 54 of the Bombay Co-operative Societies Act 1925 and where a certificate has been granted as provided by Section 59 (1)(a) of that Act is the date when the certificate is signed and not the date when the award was made or the order was passed and we hold

accordingly.

In the result the appeal fails and is dismissed with costs.