

(1945) 11 AHC CK 0003

In the Allahabad High Court

Case No : Execution of Decree Appeal No. 6 of 1941

Raja Yadvendra Dutt Dube

APPELLANT

Vs

Ajodhia Bank Ltd., Fyzabad

RESPONDENT

Date of Decision : 30-11-1945

Acts Referred:

Encumbered Estates Act, 1934 — Section 6, 7

Citation : (1945) 11 AHC CK 0003

Hon'ble Judges : Misra, J;Kaul, J

Bench : Division Bench

Advocate : Niamatullah and Ganesh Prasad, for the Appellant; M.H. Kidwai and M.K. Seth for Respondent, for the Respondent

Final Decision : Allowed

Judgement

Misra and Kaul, JJ.—This execution of decree appeal raises a question of limitation.

2. The material facts are as follows:

On the 22nd of May, 1935, the Ajodhia Bank Ltd., Fyzabad, obtained a decree against Bijai Partap Singh and Raja Sri Krishna Datt Dubey on the basis of a promissory note. The first application for execution of this decree was made on the 11th of July, 1935, and consigned to records on the 2nd of August, 1935. On the 15th of January, 1936, another application was made by the Ajodhia Bank Ltd., for transfer of this decree to another Court. It was consigned to records on the 16th of January, 1936. The next execution application was made on the 20th of March, 1936, and consigned to record on the 5th of August, 1936. In between the last two dates Bijai Partap Singh, one of the judgment-debtors, made an application u/s 4 of the Encumbered Estates Act. An order u/s 6 was passed on this application by the Collector on the 18th of July, 1936. The next application for execution of the decree was made on the 4th of July, 1940. It was contended on behalf of Raja Sri Krishna Datt Dubey that this application having been made

more than three years after the 5th of August, 1936, when the last execution application was consigned to records, was barred by the law of limitation. The Civil Judge of Fyzabad before whom the matter came up for consideration held that in view of the provisions of Section 7 and Section 9(5) of the Encumbered Estates Act, the decree in question could not be executed during the pendency of the Encumbered Estates Act proceedings. Accordingly the application for execution was within time. Dissatisfied with this decision Raja Sri Krishna Datt Dubey filed the present appeal. He died after the appeal was filed and is now represented by Raja Yadvendra Datt Dubey.

3. It was contended on behalf of the Appellant that Clauses (c) and (d) of Section 9(5) were added to the Encumbered Estates Act by the Amending Act XI of 1939 which came into force on the 30th of September, 1939. According to his contention an application for execution of the decree had become time barred before that date. The decree-holder, therefore, could not rely upon the provisions of Section 9 to save limitation. It is true that Clauses (c) and (d) of Sub-section (5) of Section 9 of the Encumbered Estates Act were added by the Amending Act XI of 1939, which came into force on the 30th of September 1939, and the Respondent cannot rely upon them. It appears to us, however, that apart from the provisions of Section 9, Limitation was saved by Section 7 of the Encumbered Estates Act read with Section 15 of the Indian Limitation Act. The last application for execution was made on the 20th of March, 1936. While this application was still pending, Ijai Partap Singh made an application u/s 4 of the Encumbered Estates Act in July, 1936. On the 18th of July, 1936, the Collector passed thereon an order u/s 6 of the Act. u/s 7 of the Encumbered Estates Act when the Collector has passed an order u/s 6, the following consequences shall ensue .

(a) All proceedings pending at the date of the said order in any Civil or Revenue Court in the United Provinces in respect of any public or private debt to which the landlord is subject, or with which his immoveable property is encumbered, except an appeal, review or revision against a decree or order, shall be stayed, all attachments and other execution processes issued by any such Court and then in force in respect of any such debt shall become null and void, and no fresh process in execution shall, except as hereinafter provided, be issued.

4. It is contended on behalf of the Respondent that in view of the order passed by the Collector on the 18th of July, 1936, Section 15 of the Indian Limitation Act came into play. Under that section in computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

5. It was pointed out in reply on behalf of the Appellant that the provisions of Section 15 apply only to injunctions or order passed by Courts and not where the proceeding is stayed as a result of some statutory provision. It was contended that Section 7 of the Encumbered Estates Act contains only a direction to the

Courts in which any proceeding in respect of any public or private debt to which the landlord is subject is pending to stay the same. So long as an order of stay is not passed by the Court in which the proceeding is pending, there is no room for the application of Section 15. It may be conceded that Section 15 of the Indian Limitation Act applies only to cases where proceedings are stayed by an order or injunction issued by a Court, but we are unable to accept the construction put by the Learned Counsel for the Appellant on Section 7 of the Encumbered Estates Act. This section says that when the Collector has passed an order u/s 6, the following consequences shall ensue:

(1) All proceedings pending at the date of the said order in respect of any public or private debt to which the landlord is subject shall be stayed",

and

(2) All attachments and other execution processes issued by any such Court and then in force in respect of any such debt shall become null and

void, and no fresh process in execution shall except as hereinafter provided, be issued.

Ensure" according to the Oxford Dictionary means "follow as a consequence". Thus it is clear from the opening words of the section that as soon as the Collector has passed an order u/s 6, "all the proceedings pending at that date shall be stayed" and "all attachments and other execution processes issued by any such Court shall be void

6. It cannot be denied that all attachments and other execution processes in respect of any of the debts to which the landlord is subject become null and void as the effect of the Collector's order u/s 6, and no further order by the Court is necessary to bring about that result. It was not contended that any other order, except that passed by the Collector under" Section 6, was necessary to render the attachment and other execution processes null and void, if that is so, we see no good ground to hold that the second of the consequences of an order u/s 6, to which reference has been made above, does not follow by virtue of that order but depends upon the passing of another order by the Court concerned. As a matter of construction we are therefore of opinion that on the language of Section 7 it is the order u/s 6 passed by the Collector which has the effect of stay of proceedings to which reference is made in Clause (a) of Sub-section (1) of that section.

7. We are fortified in this view by a decision of this Court as well as by one of the Allahabad High Court. We refer to the following observations in Execution of Decree Appeal No. 99 of 1943, decided by a Bench of this Court (of which one of us was a member) on the 14th of August, 1943:

Another objection to validity of the application of 12th February, 1940, which was urged on Appellant's behalf was that it had been presented more than three years after the execution application, dated 80th May, 1936, which preceded it.

We observe, however, that the application of 80th May, 1936, was consigned to records, because the execution proceedings had been stayed by virtue of an order u/s 6 of the Encumbered Estates Act passed on the forth July, 1938

8. It was held by a Bench of the Allahabad High Court, (Iqbal Ahmad C.J. and Dar J.J in *Hulas Singh v. Data Ram Major*, 1943 O.A. 140 : A W R (H C) 140 (1943 O.A., 140) that the period intervening between the date of the Collector's order u/s 6 of the Encumbered Estates Act and the dismissal of the application by the Special Judge u/s 8(3) must be excluded u/s 15 of the Limitation Act in the computation of the period of Limitation for a suit by a creditor. It was pointed out by the Learned Counsel for the Appellant that the decisions of the Patna High Court in *Lalu Mathura Prasad Singh v. Lalu Jageshwar Prasad Singh* (1926) 5 Pat. 404, and *Ttkait Mahabir Prasad Narayan Deo v. Bhupat Singh* (1930) 9 Pat. 485 do not support the proposition for which they were relied upon by the learned Judges of the Allahabad High Court in the decision in *Hulas Singh's* case. We may mention that the conclusion arrived at by the Bench of the Allahabad High Court in that case is not based upon the two Patna cases. All that their Lordships observed was that the conclusion arrived at by them was in conformity with the decisions of the Patna High Court in the two cases to which reference has been made. Their Lordships were careful to point out that the reasons given by the learned Judges of the Patna High Court were not identical with the reasons given by them for their decision. The authority of the Allahabad decision is in no way affected even if the criticism leveled against it by the Learned Counsel for the Appellant be well founded.

9. In our view on a correct construction of Section 7 as soon as the Collector has passed an order u/s 6 of the Encumbered Estates Act, all the proceedings in any Court in the United Provinces in respect of any public or private debt due by the landlord applicant must be ipso facto stayed. It was not disputed that if this is the correct view the application for execution made on the 4th of July, 1940, has well w that time.

10. Our attention was further invited to the provisions of Section 9 of the Encumbered Estates Act under which if all the joint debtors have not applied u/s 4, the creditor shall have a right to recover from the debtors who have not applied only such amount on account of the joint debt as may be determined by the Special Judge to be due by them. It was contended that on the 30th of April, 1943, after the present appeal was filed, the Special Judge, second grade, Jaunpur, gave a decision holding that *Raja Sri Krishna Datt Dubey* was only a surety. This decision was confirmed on appeal by the District Judge of Beaares on the 20th of December, 1943. The learned

Counsel for the Appellant made an application on the 21st of August, 1944, praying for permission to produce copies of two orders to which reference has been made above and argued that inasmuch as, in view of these decisions, *Bijai Partap Singh* the principal debtor, was liable to pay the entire debt, nothing could be recovered from his client, and no execution of decree could be taken out

against him. In reply it was urged on behalf of the Respondent that the decision of the District Judge dated the 20th December, 1943, was the subject of an appeal preferred by Bijai Paitap Singh in the High Court of Judicature at Allahabad, which was still pending. A copy of the memorandum of the grounds of appeal, along with two other documents, was produced before us by the Learned Counsel for the Respondent. It is not disputed that the decision holding that Raja Sri Krishna Datt Dubey was only a surety has not yet been finally decided. Accordingly, we cannot take into consideration the documents on which the Appellant's Learned Counsel relied in support of his contention. The matter must be determined independently of the decision of the Special Judge, second grade, Jaunpur, and of the District Judge, Benares, whereof certified copies were produced before us by the Appellant's Learned Counsel.

11. In view of the conclusion arrived at by us, the appeal fails and is dismissed with costs.

12. We have allowed the Appellant's application dated the 21st of August, 1944, and that made by the Respondent on the 12th of November, 1945, for admission of fresh documents. The documents produced will be kept on the record.