

(1965) 08 BOM CK 0016
In the Bombay High Court
Case No : Second Appeal No. 1208 of 1964

Rajmal Dagaduram Sheth

APPELLANT

Vs

Kisan Vinayak Gujar and Others

RESPONDENT

Date of Decision : 05-08-1965

Acts Referred:

Limitation (Amendment) Act, 1963 — Article 136
Limitation Act, 1908 — Article 182, 182(5)

Citation : AIR 1967 Bom 326 : (1965) 67 BOMLR 917 : (1966) ILR (Bom) 702 : (1966) MhLj 155

Hon'ble Judges : Tarkunde, J

Bench : Single Bench

Advocate : S.G. Sheth, for the Appellant; M.A. Rane, for the Respondent

Judgement

(1) This second appeal has been filed by a decree-holder whose Darkhast for the execution of his decree was dismissed by the Courts below on the ground of limitation. The decree was passed by the Court of the Civil Judge of Nasik and was transferred for execution to the Court of the civil Judge of Sinnar. The previous Darkhasts were filed by the Decree-holder for the execution of the decree and the last of these Darkhasts was disposed of on 15th April 1958. Then on 16th July 1958 the decree holder filed an application to the Nasik Court in which he stated that a mistake in the name of the third judgment-debtor had occurred in the copy of the decree which the Nasik Court had sent the Sinnar Court along with its transfer certificates, and that the record should be called for from the Sinner-Court and be sent back after correcting the name of the 3rd judgment-debtor in the certified copy. This application was allowed by the Nasik Court on 14th September 1959. The present Darkhast was filed on 19th March 1962, that is, more than three years after the disposal of the third Darkhast but less than three years of the order passed by the Nasik Court on the aforesaid application of the decree-holder. It was the case of the decree-holder that his application to the Nasik Court was for taking a step in aid of execution of the decree and that his Darkhast was within time under Article 182 (5) of the Indian

Limitation Act of 1908. This plea was not accepted by the Courts below in dismissing the Darkhast as barred by limitation.

2. Apart from authority, I have no difficulty in holding that the decree-holder's application to the Nasik Court fell within the scope of Article 182(5) of the Indian Limitation Act of 1908. Article 182 (5) provided a period of three years from an application for execution of a decree 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 or order". The decree-holder's application was in accordance with law and was made to the proper Court. The only disputed question is whether the application was for taking some step in aid of execution of the decree. A reference may be made in this connection to Order 21 Rule 6 of the CPC which lays down that a court which sends its decree for execution to another Court shall send a copy of the decree and certain certificates as specified in that rule. The provisions of the Rules 6 and 7 of Order 21 show that in the normal course of the transferee Court proceeds to execute the decree "without any further proof of the decree". A proper execution of the decree by the transferee Court is likely to be difficult if the copy of the decree sent by the Court which passed it contains material errors such as errors in the name of the judgment-debtor, the amount to be recovered under the decree or the description of any property affected by the decree. When the decree-holder in the present case applied to the Nasik court and prayed that the copy of the decree sent by the Nasik Court to the Sinnar Court should be rectified so as to give the correct name of the third judgment-debtor, he was asking the Nasik Court to take a step which was clearly in furtherance of the execution of the decree. His application, therefore was "to take some step in aid of execution of the decree" and was covered by Article 182(5) of the Indian Limitation Act, 1908.

3. In coming to the contrary conclusion the Courts below raised the wrong question whether the decree-holder's application to the Nasik Court was itself a step in aid of execution and proceeded to answer that question by the test whether it was necessary for the decree-holder to make such an application. In this connection, the learned Appellate Judge observed that there was no reason to suppose that execution of the decree could not have proceeded unless the mistakes in the certified copy of the decree were rectified and that in any case the decree-holder could have executed the decree against two of the judgment debtors even if it could not be executed against the third judgment-debtor on account of the mistake which had occurred in his name in the copy of the decree. The learned Appellate Judge, therefore held that the decree-holder's application to the Nasik Court was "unnecessary and redundant", and that the application "could not serve as a step in aid of execution".

4. Now, the correct question which arose for the decision of the Courts below on the wording of Article 182(5) was, not whether the decree-holder's application was itself a step in aid of execution, but whether the step which the decree-

holder had requested the Nasik Court to take a step in aid of execution. In other words, the question was whether the rectification of the copy of the decree as prayed for by the decree-holder amounted to a step in aid of execution. If that question had been raised by the Courts below, they could hardly have answered it by holding that the application did not request the Court to take a step in aid of execution of the decree. The wording of Article 182(5) makes it clear that it covers two types of applications - applications for execution of a decree or order, and applications to take some step in aid of execution of a decree or order. Both the types of applications are connected with the execution of a decree or order. In the former, the Court is approached for adopting any one or more of the modes of execution specified in the Civil Procedure Code, such as delivery of property attachment and sale, arrest and detention, etc. In the latter, the Court is approached to take some step which is ancillary to execution and in furtherance thereof.

5. On behalf of the judgment debtors Mr. Rane, defended the decisions of the Courts below by relying on two cases decided by this Court. In *Rajaram v. Banaji* ILR (1898) 23 Bom 311, a Division Bench held that an application to the Court by a decree-holder asking for the return of the copy of a decree filed with a former Darkhast is not a step in aid of execution of the decree. It will be noticed that what the decree-holder had asked the Court in that case to do was merely to return the copy of a decree which had been filed with former Darkhast. It was noted by the learned Judges who decided that case that, according to the rules of the Court, it was necessary for the decree-holder to file a certified copy of the decree along with his Darkhast. Hence the step which the decree-holder had taken in applying to the Court to return the copy of decree which he had filed with the former Darkhast might have been a step taken for the purpose of further execution of his decree. What the Court, however, was concerned with was not whether in making the application the decree-holder took a step in aid of the execution of the decree, but whether the decree-holder had asked the Court to take some step in aid of execution of the decree. After referring to the terms of the corresponding Article 179(4) of the Limitation Act of 1877 which governed that case. Parsons J. observed in the course of his judgment. "The words of the enactment seem clear. They require an application to be made to the Court for it to take some step in aid of execution of the decree. The return by it of a copy of a document cannot, in my opinion, be held to be a step in execution taken by the Court". Thus what was held by the Court in that case to do was merely to return the copy of a decree to the decree-holder was not so connected with the execution of the decree that it could be regarded as a step in aid of execution.

6. The other case on which reliance was placed by Mr. Rane was *Bapu Appa Hakke Vs. Kashinath Balu Bhoj*, where a single Judge of this Court held that an application to reconstruct a decree which had been destroyed was not a step in aid of execution of the decree within the meaning of Article 182 (5) of the Indian Limitation Act, 1908. In support of his decision the learned Judge observed that it was not necessary to have the decree or a copy of the decree in order to apply

in execution, that in any case the decree-holders in that case had not stated that they did not have a copy of the decree with them and further that it did not follow from the fact that the decree-holders had applied for a copy of the decree that they would necessarily have taken proceedings in execution. It will be noticed that here also that the mere re-construction of the decree which had been prayed for by the decree-holders was not so connected with the execution of the decree as to constitute a step in aid of execution.

7. As observed above, the prayer which the decree-holder in the present case had made to the Nasik Court for rectifying the copy of the decree sent to the Sinnar Court amounted to a prayer that a step in aid of execution of the decree should be taken by the Nasik Court. The decree-holder's application to the Nasik Court was, therefore, covered by Article 182(5) of the Limitation Act, 1908. It must follow that the Courts below were wrong in holding that the decree-holder's Darkhast was barred by limitation.

8. This second appeal is, therefore, allowed, the orders of the trial Court and the Appellate Court dismissing the Darkhast are set aside, the Darkhast is restored and the trial Court is directed to proceed with it in accordance with law. The judgment-debtors will pay the costs of the decree-holder throughout.

(9) Appeal allowed.