
(1957) 03 AP CK 0005
In the Andhra Pradesh High Court
Case No : Appeal No. 401 of 1951

Saith Chandmal Daddha and another	Vs	APPELLANT
Raja Pratapgirji Chela Narsingh		RESPONDENT

Date of Decision : 20-03-1957

Acts Referred:

Citation : AIR 1958 AP 655

Hon'ble Judges : Qamar Hasan, J;Kumarayya, J

Bench : Division Bench

Advocate : D.M. Deshmukh and Kalicharan Asthana, for the Appellant; Thakur Harikishen Singh, for the Respondent

Judgement

Qamar Hasan, J.—This is an appeal in execution on behalf of the judgment-debtor, since deceased and now represented by Narpeth Singh, and it is directed against the order dated 21-3-1951 of Siadat Ali Khan J. on the Original Side of the erstwhile High Court of Judicature at Hyderabad holding the application preferred by the decree-holder Raja Pratapgir, the respondent herein, on 26-9-1950 was not barred by limitation since it was not a fresh application for execution but an application to "revive the proceeding, which was consigned to the record room on 29th Meher 1348F.

2. The facts lie in a short compass and may be briefly stated. Raja Pratapgir obtained a decree on 23rd Azar 1341 P. for Rs. 1,10,726/- on the basis of an award. The decree to the extent of Rs. 80,000/- was transferred to the Sadar Adalat, Medak for execution and for the balance was put in execution in the Court, which passed the decree. The proceeding in the latter Court came up before Khaleluzzaman J. on 29th Meher 1348 F. On that date the following order was passed.

I have appeared as a vakeel in the present case and therefore cannot hear it; but since the applicant desires to have the proceeding recorded it does not appear necessary to order it to be placed before another Bench. The proceeding, as

prayed, may be consigned to the record-room.

The proceedings in the Sajlar Adalut, Medak were pitted against the execution proceeding of Nawab Lutfuddowla, who had a final decree for sale of the house known as "Lake View". The house was ultimately sold and the proceeds of the sale were appropriated towards the satisfaction of the decree of Lutfuddowla, the respondent getting nothing in the rateable distribution. The Nazim, Sadar Adalut through his, letter No. 8563 dated 8th Meher 1349 F. informed the Original" Side of the High Court of the non-satisfaction of the decree transferred to him except to the extent of Rs. 1,491-12-11.

3. It would appear that the sale in execution of Lutfuddowla's decree was set aside. The respondent on 18th Azur 1359F. applied for revival of the proceeding and later filed a regular execution petition on 19-1-1950 for the sale of the aforesaid house subject to the mortgage in favor of Lutfuddowla. This application was rejected on 25-3-1950 on the ground that it was beyond time and that the transferee Court had no jurisdiction to entertain it. The respondent took the matter in appeal and a Bench of the Hyderabad High Court by its judgment of 13-9-1953 dismissed the appeal with the following observations:

Having regard to the facts of this case, we are of opinion that the letter of 8th Meher, 1349 F. s(sic) by the Sadar Adalut to the High Court was a certificate of non-satisfaction of the decree as contemplated by S. 258, Hyderabad CPC and the Sadar Adalut ceased to have jurisdiction after the non-satisfaction certificate was sent. The Sadar Adalut, Medak, had come to the conclusion that it ceased to have jurisdiction. Under these circumstances, the Court need have gone into the question as to whether the execution application of 19th Azur 1359 F. was barred by time. We feel that it is not necessary to go into the question of limitation as regards the application of 19th Azur, 1319F.

The respondent after the pronouncement of the above judgment filed the application, out of which this appeal arises, on 26-9-1950. The prayer therein in effect was for a re-transfer of the decree for execution to the Sadar Adalut, Medak, since the proceeding in that Court had been consigned to the record room for administrative purposes and not rejected or dismissed. The appellant raised the plea of limitation and satisfaction of the decree. The latter plea was not pressed before the Court below. The argument there centred round the question of limitation. The learned Judge held that the order dated 29th Meher, 1348 F., did not amount to an order of dismissal; at the most it effected consignment of the execution proceeding to the record-room. Therefore, the said order and other similar order of the Sadar Adalut cannot be said to be either a judicial determination or a final disposal of the execution petition presented by the respondent. Consequently no question of limitation arose.

4. Shri Deshmukh strenuously contended before us that the order of consignment to the record room passed on 29th Meher, 1348 F. must be judged in the context of the circumstances attending it. Those circumstances he pointed

out were that the "take View" had been sold and the proceeds thereof wholly went in satisfaction of Lutufuddowla's decree. No other property of the judgment-debtor was left to be attached and sold in execution of the respondent's decree. Therefore, the order aforementioned must be deemed to be an order of dismissal of the execution petition. To dispose of this contention, it must be borne in mind that CI. (5) of Art. 160, Hyderabad Limitation Act was different from CI. (5) of Art. 182 of the Indian Limitation Act. According to the latter, the period of three years commenced from the date of the final order on an application made in accordance with law to the proper court for execution or to take some step-in-aid of execution, while under CI. (5) of art. 160 of the former Act, the period of three years ran from the date of dismissal of the previous application for execution. Now if the order of 29th Meher 1348F., is read again, two circumstances stand out, firstly, the presiding Judge was not prepared to proceed with the application because he had once been the vakil of the respondent and secondly, the respondent desired the proceeding to be consigned to the record room.

The court acceded to that request. The question is whether such an order can be said to be an order of dismissal so as to make the limitation run. In Venkappa v. Lachmi Kant Rao, 32 Dec. LR 370 (A) and Kulsum Bi v. Chunnilal, 32 Dec. LR 580 "(B) it has been held that the order consigning the execution proceeding to the record-room is tant amount to its dismissal. These authorities a(sic) unanimous in the view and we agree with them that an order consigning the execution proceeding (sic) the record room is not a disposal within the meaning of CI. (5) of Art. 182 of the Indian Limitation Act, or Article 160 of the Hyderabad Limitation (sic)

5. The learned advocate for the appellant re(sic) (sic)ed on Kadiresan Chettyar v. Maung San Ya, AIR 19(sic) Rang 87 (C) Mohammad Taqi Khan Vs. Raja Ram and Others, and Penumetcha Annapurnamma Vs. Polisetti Jagannadham, . None these authorities is on all fours with the pres(sic) case. In the first case a decree-holder applied execution asking for an issue of notice against judgment-debtor and the Judge ordered the not to issue and on the date when it was returnable case was closed at the request of the decree-hole.

Baguley J. held that the final order passed the application within the meaning of Article 182(sic) of the Limitation Act was the order closing the (sic) and subsequent application within three years (sic) that date was not barred by time. It was also (sic) that the fact that the application for execution withdrawn or struck off at the request of the dec(sic) holder does not prevent it from giving rise to a (sic) starting point for the period of limitation. Mob(sic) (sic)mad Taqui Khan's case is a Full Bench deci(sic) In that case an order was passed in the following terms without notice to the parties.

"Execution struck off for partial satisfaction the decree; costs on the judgment-debtors" It was held that the order could not be construed as a provisional order suspending the applic(sic) for execution but it should be considered as a order

because the question whether an executory case is still pending and has not been terminated must depend on an interpretation of the order made by the Court and the inference to be drawn to the Court's intention. If the Court intends the matter should be shelved for the time being the record be merely consigned to the record and be taken up later on suo motu or at that instance of the decree-holder, then obviously the case is still pending and is in a state of animation. Where the Court intends to dispose of the matter completely and no longer keeps it open on its file and does not merely suspend the execution or consign the record to the record room the time being, the order must be deemed a final order which will give a fresh start for purposes of limitation and that the proceeding not pending, there would, in such a case, be no question of revival.

6. In the fifth case cited the decree filed an execution application for issue of a writ for the arrest of the judgment-debtor. An order of arrest was passed but the arrest could not be effected as the judgment-debtor was not found. Thereupon the Court passed an order saying judgment-debtor not found for arrest. Struck off seven years after this order was passed, the plaintiff filed another application for execution. Before Swami Nayudu J. held that whether an order or not, one has to consider the substance of the order and not the mere form. The mere use of the word "struck off" or "dismissed" would not determine the nature of the order.

7. It may be noticed that all these authorities were dealing with the expression "final order" of Art 182 of the Indian Limitation Act. Secondly, they decide nothing which may militate against what has been held by our brother Siadat Ali Khan J. The case of Mohammad Taqui Khan on the other hand fully supports him in the conclusion he arrived at. If Khaleeluzzaman J. had intended to terminate the proceeding he would have certainly transferred the case to another Bench, but since the respondent intended to keep the execution proceeding in a state of suspended animation, the learned Judge preferred to consign the file to the record room. That order we agree, cannot be said to be a dismissal within the meaning of Cl. (5) of article 160 of the Hyderabad Limitation Act.

8. The other argument was that the application on filed by the respondent in the Sadar Adalat on 2nd February 1958 F. shows that he had been in possession of "Lake View" and he was dispossessed in the result of the sale in Lutfuddowla's decree; it must, therefore, be held that in so far as the appeal was concerned, the decree has been satisfied. The respondent had not been able to follow the learned advocate on this part of the argument. The decree obtained by the respondent was a money-decree. It is not the case of the appellant that there was an adjustment under Section 249 of the Hyderabad Civil Procedure Code.

If the respondent had been in possession of the property and claimed restitution, it would not show that the respondent's decree was satisfied. It was next contended that inasmuch as the decree transferred to the Sadar Adalat had not been received, the Court below had no jurisdiction to

enter(sic)-(sic)n the application We know of no law which (sic)vides that where the execution proceeding has;n transferred to another Court, the transferor irt ceased to have control over the execution pro-idings, and cannot entertain an application for re(sic) (sic)al of proceedings or accede to the request that (sic) proceedings be suspended.

On the other hand, a reference to Section 250, (sic)derabad CPC would show that (sic)cution proceedings can be taken at the same time different courts. The provisions of the said sec(sic) (sic) are a complete answer to the objection raised the advocate for the appellant.

9. In the last resort it was taintly attempted to (sic)ue that the application was barred under Seo(sic)(sic)i 262 of the Hyderabad Civil Procedure Cade not having been presented within 12 years from date of the decree. There is no material on record to show that the provisions of the said (sic)ion can successfully be invoked at the present (sic)e of the proceeding.

10. The result is that the appeal fails and is by dismissed with costs.