
(1976) 07 PAT CK 0010

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 6 of 1975 (Original)

Sardar Badri Narain Singh and Another

APPELLANT

Vs

Chotanagpur Banking Association (In Liquidation)

RESPONDENT

Date of Decision : 20-07-1976

Acts Referred:

Banking Regulation Act, 1949 — Section 45O, 45O(1)

Citation : (1976) 07 PAT CK 0010

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : Prem Lal and Yogendra Mishra, for the Appellant; S.C. Ghose and G. Sanyal, for the Respondent

Judgement

H.L. Agrawal, J.—The question falling for decision in this application is as to whether the execution proceeding against the properties in question, which were added beyond a period of twelve years from the date of the decree, can proceed or not.

2. The petitioners are claimants under Order 21, Rule 58, of the CPC and claim the properties to belong to petitioner No. 2 and not liable to be proceeded against in the execution proceeding in question. The relevant facts are as follows :

3. The official liquidator of the Chotanagpur Banking Association, a banking company which went into liquidation in the year 1958 (Company Act Case No. 1 of 1958), obtained a decree on December 22, 1961, from the learned company judge of this court in the course of the winding-up proceeding of the said company by settling Raja Bahadur Kamakhya Narain Singh of Ramgarh on the debtors' list in pursuance of the provisions contained in Section 45D of the Banking Regulation Act, 1949, for a sum of about Rs. 15,00,000. Execution of the said decree was levied in the court of the subordinate judge, Hazaribagh, on March 3, 1967, and the official liquidator proceeded against a landed property purporting to belong to the judgment-debtor, commonly known as Padma Palace.

By an order dated April 10, 1970, passed in the aforesaid liquidation proceeding, the execution case was transferred to this court and numbered as M.J.C. No. 2 of 1970 in this court. The wife of the judgment-debtor, namely, Shrimati Lalita Rajya Lakshmi Devi, filed an objection to the execution of the said decree against the said property on the ground that the same belonged to her. The claim application of the Rani was allowed on December 3, 1974. There being no other property against which the execution could proceed, the official liquidator made an application for amendment of the execution petition by adding new properties, and by an order dated May 13, 1975, the amendment was allowed by this court and the execution proceeded against the newly added properties. When attachment was made of these properties, the petitioners filed an application on November 19, 1975, under Order 21, Rule 58, of the Code of Civil Procedure, which has been registered as M.J.C. No. 6 of 1975, claiming the properties in question as the properties of petitioner No. 2 on the ground that much before the passing of the decree against the judgment-debtor, the properties in question were dedicated to a religious and charitable trust (petitioner No. 2) by a registered deed dated September 7, 1950, and since then petitioner No. 2 has been in possession over the same in its own right, the judgment-debtor having been left with no interest whatsoever in the same. After filing of this application, an application was made on their behalf on May 3, 1976, purporting to be under Order 14, Rule 2, of the Code of Civil Procedure, for deciding as a preliminary issue the question as to " whether the amendment petition and the amendment allowed are barred by limitation before the petitioners are asked to lead evidence in support of their case ". It may be stated that in the application under Order 21, Rule 58, of the Code of Civil Procedure, giving rise to M J.C. No. 6 of 1975, no plea of limitation is taken and the objection was confined, as it ought to be, within the four corners of Order 21, Rule 58, of the Code.

4. Mr. Prem Lal, appearing on behalf of the petitioners, contended that addition of the new properties after twelve years from the date of the decree amounted to a fresh application within the meaning of Section 48 of the Code and, therefore, the execution could not proceed. Prima facie, the proposition is unassailable and is fully supported by various authorities. Reference, however, need be made only to a decision of the Supreme Court in the case of Pentapati Chinna Venkanna and Others Vs. Pentapati Bengararaju and Others, , where it has been conclusively laid down that an application made after twelve years from the date of the decree would be a fresh application within the meaning of Section 48 if the previous application was finally disposed of, and that if the application is pending and if it asked for a relief against parties or properties different from those proceeded against in the previous execution, it would also be a fresh application.

5. Mr. S.C. Ghose, appearing for the official liquidator, placed strong reliance upon the provisions contained in Section 450 of the Banking Regulation Act, and contended that, in view of the said provisions, the execution could well proceed against the newly added properties inasmuch as the period of limitation would be

deemed to have been suspended. Section 450(1) reads as follows :

" Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force, in computing the period of limitation prescribed for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded."

6. In support of this contention reliance was placed upon the decision of the Supreme Court in *Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co.*, . This decision and the relevant provision contained in Section 450, quoted above, have got to be considered in some detail, inasmuch as learned counsel for both the parties endeavoured to interpret the decision of the Supreme Court in their own favour. Whereas, according to the contention of Mr. Prem Lal, the provision of Section 450(1) applied only to those suits or applications by a banking company (being wound up) where the cause of action for such suits or applications had already accrued and time had started to run, and not in those cases where the cause of action arises after the winding-up order is made. On this assumption learned counsel contended that inasmuch as in this case the decree was passed against the judgment-debtor in the course of the winding-up proceeding itself, the official liquidator was not entitled to the benefit of suspension of the period of limitation. The contention of Mr. S. C. Ghose, appearing for the official liquidator, however, was that the Supreme Court authority did not lay down the above proposition and the official liquidator was entitled for the exclusion of the period of limitation in both types of cases. In view of the conflicting arguments advanced with some emphasis before me by the learned counsel appearing on behalf of the parties, I examined the decision of the Supreme Court a little more deeply and have reached the conclusion that the contention of Mr. Prem Lal is not correct. The three learned judges of the Supreme Court constituting the Bench have given their judgments separately. There is some observation in the judgment of Wanchoo J., no doubt, in support of the proposition of Mr. Prem Lal, but the two other learned judges, namely, A. K. Sarkar and Raghubar Dayal JJ., have taken a different view than that of Wanchoo J. In the case before the Supreme Court, the appellant-bank had obtained a compromise decree on the 1st May, 1947, for a sum of Rs. 31,000. A sum of Rs. 2,115 was paid by the judgment-debtor on that very day and Rs. 6,885 were to be paid on the 9th May, 1947, and the balance of Rs. 22,000 in seven instalments, the first being payable on 30th May, 1947, and the other six instalments on the 30th December each year beginning from 1947 and ending in 1952. The decree provided that if the respondent failed to pay any of the instalments mentioned in it from the date of its becoming due, the appellant-bank "shall deem all.....instalments in default and shall be entitled to realize all the said amounts by execution". None of these instalments was paid and an application for realising them by execution was made on 26th August, 1957, In the meantime, the decree-holder-bank went into liquidation and an order for winding up was made on 3rd August, 1948. Since then the bank had

been in the course of winding-up till the application for execution was made. Section 450 was introduced in the Banking Companies Act, 1949, by the Banking Companies (Amendment) Act, 1953. One of the questions that arose in that case was as to whether the provision of Section 450(1) was retrospective in nature and would apply to the appellant-bank which had gone into liquidation in the year 1948, because if it applied, then the decree was saved; otherwise, it would certainly be barred by limitation. Considering the scheme of the Amendment Act with reference to the report of the committee, all the three learned judges took the same view that the provision was retrospective and, accordingly, the application for execution for realisation of instalments, in payment of which the respondent-judgment-debtor had made defaults, was maintainable and was not time barred.

7. A question, however, was discussed as to what was the intention of the legislature by this provision and what would be the result of this provision, that is, whether it meant stoppage of all limitation from the date of presentation of the winding-up application. Sarkar J. observed as follows *Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co.*, :

" Therefore, there is no reason to think that it was not intended to give the benefit of the Act to a debt accruing due to a banking company after the presentation of a petition for its winding-up..... There is no reason to make a distinction between the two classes of debts."

8. Raghubar Dayal J., while answering this question, made the following observations *Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co.*, :

" It would be anomalous to hold that action can be taken with the help of the provisions of Sub-section (1) of Section 450 with respect to causes of action which had arisen much earlier than the date of the presentation of the petition for winding-up but action cannot be taken with respect to causes of action arising subsequent to such a date if it had not been taken within the prescribed period of limitation. There is nothing in the language of the sub-section, in my opinion, to accept the contention for the respondent whose acceptance would lead to results which would not have been contemplated by the legislature."

9. From the above extracts, it is quite clear that both the learned judges have categorically held that exclusion of the period of limitation intended in Section 450(1) applies with equal force to both kinds of cases, namely, where the cause of action arises either before or subsequent to the presentation of the application for winding-up.

10. Wanchoo J., however, expressed himself on this question differently and observed *Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co.*, :

" But where the time has not begun to run before the winding-up petition, the liquidator would have ample time within which to know the true state of affairs and in such a case the legislature did not intend that there should be no

limitation as provided in the Indian Limitation Act..... The benefit of that provision is meant for cases where time has begun to run but has not run out before the presentation of the winding-up petition;....."

11. From the above discussions and taking the majority view of the Supreme Court into consideration, it has but to be held that the question of limitation did not arise in allowing the amendment of the execution petition by inserting certain new properties in it beyond the period of twelve years from the date of the decree which might be otherwise barred but for the special provisions contained in Section 450 of the Act which lifts the bar of limitation completely in the case of a debt which had not become already time barred on the date of the presentation of the petition for winding up.

12. There is yet another aspect of the matter on which the question must be decided against the petitioner. The question of limitation as raised by him is essentially a matter relating to the executability of the decree on the ground that it became barred by limitation. This matter directly falls under the mischief of Section 47 of the Code and, therefore, cannot be raised by the claimant-petitioner, a third person. A Bench of this court in the case of Thakur Prasad Sah Vs. Shedeni Sah and Others, has expressly decided this question against the petitioner and held that the court had no jurisdiction to enter into the question of limitation in dealing with the claim application made under Order 21, Rule 58, Code of Civil Procedure, as it was beyond the scope of the enquiry, the only question at issue being as to whether the property was or was not at the time of attachment in possession of the judgment-debtor or of some person in trust for him and the like. In other words, there is no justification on the part of the court in releasing the attachment merely on the ground that the execution case was barred by limitation. In view of this clear authority, the petitioner is not entitled to raise the question of limitation.

13. Mr. Prem Lal also cited some authorities in support of the proposition that the principles of Section 3 of the Limitation Act applied to an execution proceeding as well. The proposition as such cannot be doubted, but in all the cases referred to by the learned counsel, the question of limitation was considered when it was raised by the judgment-debtor himself. As already observed earlier by me, the question of limitation being a question relating to the executability of the decree specially falling u/s 47 of the Code, it is not necessary to discuss this part of the argument or to consider any of the authorities cited by the learned counsel.

14. The cumulative result of all the discussions made above is that the preliminary objection must fail and it must be held that the amendment of the execution application by bringing in new properties even beyond the period of twelve years from the date of the decree was not barred by limitation. The issue having been decided against the petitioners, the opposite party should get his costs. Hearing fee Rs. 110 only.