

(1982) 08 AHC CK 0050

In the Allahabad High Court

Case No : Execution First Appeal No. 328 of 1969

Shanti Lal and Others

APPELLANT

Vs

Ram Ji Lal and Others

RESPONDENT

Date of Decision : 09-08-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 10, Order 21 Rule 11, 39, 47
Limitation Act, 1908 — Article 181, 182, 183

Citation : (1982) AWC 804

Hon'ble Judges : K.N. Singh, J;K.M. Dayal, J

Bench : Division Bench

Advocate : G.P. Bhargava, for the Appellant;

Final Decision : Dismissed

Judgement

K.M. Dayal, J.—This is a decree-holder's execution first appeal, against the judgment and order dated 4-8-1969, passed by the Civil Judge Agra, dismissing the execution application as time barred.

2. The brief facts of the case are that the Appellants obtained a decree for a sum of Rs. 1,11,977,50 with interest at the rate of 6% per annum on 15th October, 1934 against the Defendant judgment debtors. The decree was passed by the Bombay High Court in exercise of its original civil jurisdiction. The decree was sought to be executed and for that purpose a transfer certificate was issued to the Mathura court. Some amount was realised by sale of the property of the Defendants at Mathura and in the year 1943 sums of Rs. 5000/-, Rs. 2800/- and Rs. 2200/-, total Rs. 10,000/- was deposited by the Amin in the court. These amounts were transmitted to the Bombay High Court. It appears that the amounts realised by the execution remained with the court and the decree-holders withdrew the amount of Rs. 2800/- on 24th March 1950 and lastly Rs. 2200/- on 21st September 1951. In the meantime, objections were raised by the judgment-debtors against the auction sale of the properties by the Mathura court. Those objections were rejected and the judgment-debtors filed an appeal

before the High Court against the auction-purchaser impleading the decree-holders as well. The appeal was dismissed and the execution sales were confirmed. In the meantime, the decree-holders were ordered to take fresh steps in furtherance of the execution pending before the Mathura court by 28-9-43. As they did not take any steps the execution was struck off on 30-9-43 for non-prosecution. After the decision in appeal, the decree holders made an application for revival of the execution application dismissed on 30-9-43. Objections u/s 47, CPC were filed by the judgment-debtors. The main objection was that the decree had become time barred. That objection was accepted by the Civil Judge, Mathura and he dismissed the application, for revival of the execution, by his order dated 19-4-52. It was held that the decree which was passed on 15-2-34, had become time barred and the decree-holders could have taken out fresh execution in the meantime. The time spent in the appeal filed by the judgment-debtors against the auction purchaser could not be excluded. It appears that the decree-holders did not file any appeal or revision against the aforesaid order dated 19-4-1952 and that order became final between the parties.

3. On 3-3-63 the decree-holders made an application in the Bombay High Court for the transmission of the decree for execution to various courts. That application was accompanied with an affidavit which is paper No. 128/1 on the record. Para 4 of the affidavit stated that the Plaintiffs desired the execution of the decree against the Defendants and prayed that certified copy of the decree be transmitted to the Mathura, Bundi, Alwar and Agra courts to enable the Plaintiffs to execute the decree against the judgment-debtors. The decree-holders moved an application for execution along with the certificate and other documents, before the Civil Judge, Agra. It was numbered as Execution No. 16 of 1965. That application was moved on 30-3-65. Objections were filed by the judgment debtors u/s 47, CPC contending that the decree was time barred and it could not be executed in 1965. Their objections found favour with the Civil Judge and he dismissed the application for the execution by his order dated 4-8-69. It was held that the decree had become time barred long ago and it could not be executed in the year 1965. It also held that the earlier decision of Mathura court, rejecting the application of the decree-holders for revival of Execution as time barred, amounted to res-judicata. The third question, whether the heirs or legal representatives of the judgment debtors could be substituted in the decree of the Agra court, was decided against the judgment-debtors. The execution was, however, struck off on the finding that the execution was barred by time as well as res-judicata. As the execution itself was time barred there was no question of determining and substituting the heirs of the deceased judgment-debtors in the execution.

4. Learned Counsel for the Appellants has argued that the present decree was a decree of a High Court, established by the Royal Charter, passed in exercise of its original civil jurisdiction. Consequently, Articles 181 and 182 of the Indian Limitation Act, 1908 were not applicable to the case but Article 183 applied. So far as the this question is concerned, we are in agreement with the learned

Counsel to that Article 183 of the Indian Limitation Act, 1908 alone could be applicable to the present decree as it was passed by the Bombay High Court in the year 1934. The limitation for the execution of such decree would be 12 years. The contention of the learned Counsel, however, is that the decree or the judgment could be enforced within 12 years from the date the decree-holders received the money from the court. It may be recalled that the decree-holders realised Rs. 22,000/- on 21st September, 1951. The application for execution having been made on 4-3-63 the application was within 12 years from the last payment. The argument of the learned Counsel is not tenable. No execution application was made on 4-3-63 as required by Order XXI Rules 10 and 11 Code of Civil Procedure. The application was merely for the transfer of the decree for execution to other courts u/s 39, Code of Civil Procedure. It is apparent from the certificate itself that it was issued at the instance of the decree holders without any notice to the judgment-debtors. Paper No. 4-C is the original certificate. It is dated 10th December, 1964. Thereafter the present execution was filed before the Agra Court on 30-3-65. Obviously the execution must be held to have been moved on the later date. The period of 12 years must be calculated from the time when the amount was realised from the Defendants and deposited in court, i. e. in the year 1943. It cannot be extended by any lapse or negligence on the part of the decree-holder in not withdrawing the amount from the court.

5. Learned Counsel for the Appellant relied on the case of *M. Sabayathy Chetty v. A. Sharmugappa Chetty* AIR 1924 Mad 638. In that case it was held by a learned Single Judge of the Madras High Court that the period of 12 years provided under Article 183 of the Indian Limitation Act, 1908 should recomputed from the date when the decree holders withdrew the amount from the court. In that case the order for payment to the decree-holder was made on 6-10-1909. The decree-holder could have obtained the payment at once. He, however, withdrew the amount only on 19-1-1912. Subsequently an application for execution was filed on 1-1-23 claiming limitation from 19-1-1912 under Article 183 of the Indian Limitation Act, 1908. The learned Single Judge of the Madras High Court held that the execution was within time. He, however, observed that there was a great deal of force in the contention that a person cannot, by his own volition defer receiving payment, and thus keep the decree alive for his own benefit. Even accepting the contention of the learned Counsel for the Appellants, we find that the appeal cannot succeed. The decree-holders moved the execution on 30-3-65 before the court below. The last amount was withdrawn on 21st September 1951. Even from 21st September 1951 the filing of the execution was beyond 12 years and thus barred by time.

6. Learned Counsel for the Appellants, however, contended that the application filed for the transfer of the decree amounted to the enforcement of the order of the Bombay High Court and consequently the limitation should be counted till that date. The execution could not have been filed without a certificate for the transfer of the decree and consequently that should be deemed to be the date of the filing of the execution itself. We are unable to accept that argument. The

court below has gone into that question in detail and relied upon the case of AIR 1927 73 (Privy Council) . In this case the Privy Council held that the application for transmission of the decree from the Bombay High Court to the district court is not by itself revival of the decree within the meaning of Article 183 of the Indian Limitation Act, 1908. It was merely a ministerial act of an officer of the court and not a judicial act of the Judge. We, therefore, do not find any force in this contention of the learned Counsel for the Appellant. In view of the above discussion filing of the application for transmission of the decree cannot be equated with the execution application and the execution has rightly been held to be time barred.

7. The learned Counsel for the Appellants next contended that the court below was not correct in holding that the execution of the present decree was barred by the principles of res-judicata due to the decision of revival application by Mathura court on 19-4-52. The learned Counsel contended that the aforesaid judgment of Mathura court was without jurisdiction and was liable to be ignored. We find that the judgment was given u/s 47 of the Code and the Judge had to decide the matter. The decision u/s 47 CPC amounted to a decree and as it was after contest, it would also bar the subsequent execution proceedings. It is also admitted that the aforesaid judgment had become final and has not been challenged by the decree holders by way of appeal or otherwise.

8. In the result, the appeal fails and is dismissed. However, there will be no order as to costs.