
(1973) 02 OHC CK 0015
In the Orissa High Court
Case No : Misc. Appeal No. 176 of 1971

Smt. Nisamono Dibya and Others

APPELLANT

Vs

Indramoni Sahu and Others

RESPONDENT

Date of Decision : 21-02-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1908 — Article 182(5)

Citation : AIR 1973 Ori 208 : (1973) 39 CLT 503

Hon'ble Judges : S.K. Ray, J

Bench : Single Bench

Advocate : B. Harichandan, for the Appellant; B.H. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Ray, J.—The respondents obtained a decree for Rs. 282-59 p. together with costs against the appellants on 3-11-1959 in the court of the Subordinate Judge, Cuttack exercising powers under the Provincial Small Cause Courts Act. The decree-holders levied execution of the decree in Ex. Case No. 69 of 1960 on 2nd 4-1960 in the Court of the Subordinate Judge, Cuttack. This execution case was dismissed on 6-12-1965. Thereafter the decree-holders filed an application in the Court of the Subordinate Judge, Cuttack on 8-3-1967 to transfer the decree to the court of the Subordinate Judge, Bhubaneswar u/s 39 C. P. C. After the decree was transferred, the execution case No. 44 of 1968 was instituted for executing the decree.

2. The judgment-debtors preferred an objection u/s 47, C. P. C. that the execution case was barred by limitation. This objection was registered as Misc. Case No. 58 of 1969. The Subordinate Judge, Bhubaneswar held this execution case No. 44 of 1968 to be barred by limitation as the previous execution case No. 69 of 1960 which had been dismissed on 6-12-1965 was not in accordance with law and as such, was not a step-in-aid of execution. From the order of the Subordinate Judge, Bhubaneswar passed in Misc. Case No. 58 of 1969 the

decree-holders filed C. R. No. 386 of 1969 (Orissa) in the High Court and also Preferred an appeal to the District Judge. Puri which was numbered as M. A. No. 88 of 11969.

3. C. R. No. 386 of 1969 was referred to a Division Bench of this Court which decided in favour of the decree-holders. It held that the execution case No. 69 of 1960 was a step-in-aid of execution even though it also expressed the view that Civil Revision did not lie from the order, it being an appealable order. This decision has been reported in 1970 (1) C WR 168.

4. The District Judge. Puri relying upon the decision of the High Court in C. R. No. 386 of 1969 (Orissa) allowed M. A. No. 88 of 1969 on 14-9-1971 (Orissa) holding that the execution case was not barred by limitation. It is from this decision of the District Judge. Puri that the present appeal has been preferred.

5. The learned counsel for the appellants raises the very question, namely that the execution case No. 69 of 1960 was not a step-in-aid of the execution of the decree and accordingly, Ex. Case No. 44 of 1968 is barred by limitation which had been decided in C. R. No. 386 of 1969. (Orissa). To escape from the binding nature of the decision of the Division Bench of this Court on the legal question, it is contended that since the learned Judges of the Division Bench held that the Civil Revision did not lie, the adjudication on the question of law was without jurisdiction and hence not binding on me nor on the parties. He does not dispute that if the decision of the Division Bench is held to be binding between the parties and, on that score, also on me this appeal is bound to be dismissed. It is further stated that the decision of the Division Bench in Civil Reyn. No. 386 of 1969 (Orissa) is one which is in conflict with an earlier Division Bench decision of this Court in the case of Abdul Quddus v. Md. Jubar, AIR 1953 Orissa 59, and thus unconstitutional.

6. I do not find any principle laid down in AIR 1953 Orissa 59 which runs counter to what has been said in C. R. No. 386 of 1969 (Orissa). In both cases the principle has been recognised that if a previous execution petition is not in accordance with law and it is ultimately dismissed, it would not save limitation, as it will not be considered as a step-in-aid of execution of the decree: In the previous Orissa case, while applying the principle to the facts of that case, it was held that previous execution applications were in accordance with law and the following observation was made-

"But there may be exceptions, such as when the petition Prays for relief which it is not within the jurisdiction of the executing court to grant, or that when the executing court has no jurisdiction to entertain the petition at all."

This is an observation of general application and has not been departed from in Civil Revision No. 386 of 1969 (Orissa), where their Lordships held:

"If a relief flows directly out of the facts pleaded in the execution application the Court has full Jurisdiction to grant such a relief even though such a relief was not

expressly sought. It may be that unless a relief is expressly sought the same is not ordinarily granted by the court. But that is altogether different from saying that the Court has no jurisdiction to grant such a relief. If the court has jurisdiction to grant such a relief, then, on the facts pleaded, obviously the application for execution was made to the proper Court and was also in accordance with law inasmuch as the Court was competent to grant the relief of transfer of the decree for being executed in a Court, which was competent to execute the decree. The elements in Article 182, Clause (5) of the Indian Limitation Act are fulfilled and the execution would constitute a step-in-aid."

Bv applying the principle to the facts of the case in C. R. No. 386 of 1969 (Orissa). it was held that the previous application was one in accordance with law and as such was a step-in-aid of the execution and saved limitation. Their Lordships must be held to be apprised of the decision in AIR 1953 Ori 59 because the order they were reviewing directly referred to that decision. I am of opinion that the decisions in AIR 1953 Orissa 59 and in C. R. No. 386 of 1969 (Orissa) do not conflict and the latter cannot be held to be unconstitutional.

7. I am not in agreement with the next contention of the learned counsel of the appellants that the decision of Division Bench in the Civil Revision referred to above without jurisdiction and should not be taken into account. In that Civil Revision, two distinct questions were raised for consideration and both these questions were equally potent and a determination of each of the two questions in a particular way could have disposed of the entire Civil Revision, but if decided in another way it would have necessarily called for a determination of the other question. In other words, if Civil Revision was held not maintainable, then the necessity to decide the other question would not arise but if it decided to be maintainable then the other question must be decided.

Similarly if the legal questions were decided one way, that is to say if it were decided that the previous execution application was not one in accordance with law the question of maintainability need not have been considered but if the legal question were decided the other way, the question of maintainability will still fall for consideration. In such case this Court was surely entitled to determine both of them and determination of the two issues would not amount to deal with anything immaterial or irrelevant. Thus the decision on both the two points, in C. R. No. 386 of 1969 (Orissa) will have the full weight of judicial precedent and also binding upon the parties to that litigation.

This is in accord with the doctrine, judicially recognised, that where more than one point fall for consideration and all the points are urged and considered and the Court proceeds to dispose of all the points on merit, though one of them could have disposed of the case, it cannot be said that the disposal of all other Points was not necessary and that the observations in relation thereto are obiter. A. Janardhana Rao Vs. Deputy Transport Commissioner, Kakinada and Others, and Chirala Buchi Reddi Vs. Satti Savitramma, . This doctrine has been noticed in a different manner in a number of cases where it has been said that when a

court bases its decision upon a point which it has to decide, upon two separate grounds, it cannot be said that the decisions upon one of those grounds is obiter merely because the decisions upon the other ground would be itself sufficient to dispose of the case. (Vide Kishori Lal Potdar Vs. Debi Prasad Kejriwal and Another, and Ramkhelawan Sahu Vs. Bir Surendra Sahi and Others, .

8. For the aforesaid reasons. I am clearly of opinion that the very question now urged which has been decided in C. R. No. 386 of 1969 (Orissa) is binding upon the parties, and it is not open to me to ignore it and launch a fresh investigation of the point. I feel myself bound by that decision specially when, for reasons stated above, the decision of the Division Bench in the Civil Revision does not run counter to the substance of the decision in the earlier decision of this Court as reported in AIR 1953 Orissa 59.

Even if I felt free and were called upon to decide that point even again, I would agree with the reasons and conclusions of the Division Bench in regard to that very Point set out in C. R. No. 386 of 1969 (Orissa) and hold that the execution case No. 69 of 1960 is a step-in-aid of execution and that Ex. Case No. 44 of 1968 is not barred by limitation.

9. For the aforesaid reasons. I find there is no merit in this Misc. Appeal which is accordingly dismissed with costs.