
(2006) 11 JH CK 0065
In the Jharkhand High Court

Smt. Uma Mishra and Others

APPELLANT

Vs

Bharat Coking Coal Ltd. and Another

RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 227

Citation : (2007) 1 JCR 408

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This application filed by the petitioner decree holder is directed against the order dated 21.2.2006 passed by Munsif-I, Dhanbad whereby he has allowed the objection petition filed by the judgment-debtor u/s 47 of the CPC and dismissed the execution case being Execution Case No. 21/05 holding that Execution case being barred by limitation is not maintainable.

2. The facts of the case lie in a narrow compass:

The predecessor-in-interest of the petitioner filed Title Suit No. 5/96 in the Court of Munsif, Dhanbad for declaration that plaintiff is entitled to appointment of his sons in the defendant/Company as land looser under rehabilitation scheme. The aforesaid suit was decreed by Munsif-I, Dhanbad against the respondent-Bharat Coking Coal Limited and direction was is, sued for giving employment to at least one son of the plaintiff. Defendant-respondent, aggrieved by the said Judgment dated 11.10.2002 filed Title Appeal, which was ; eventually dismissed by District Judge, cum-Fast Track Court V, Dhanbad in terms f of Judgment and decree dated 11.10.2002., During the pendency of the appeal the. plaintiff-decree holder died and in his place present petitioners were substituted by order dated 30.8.2002 in the said Title Appeal, Petitioners, thereafter, filed execution case being Execution Case No. 9/02 for execution of the decree passed in Title Suit No. 5/96 and affirmed in Title Appeal No. 12/99. The respondents-judgment

debtor raised objection against the maintainability. of the aforesaid execution case and the Executing Court by order dated 26.2.2004. dismissed the Execution Case as not maintainable. Petitioners then challenged the. said order by filing writ petition under Article 227 of the Constitution of India being WPS No. 2626/2004. The said application was, therefore, dismissed by this Court, i Petitioners then again filed execution application which was registered as Execution Case No. 21/05. In that execution case the respondent-judgment debtor filed objection u/s 47 of the CPC challenging the maintainability of the~eXeeution case. The Court below after hearing the parties dismissed the execution case in terms of order dated 21.2.2006.

3. A counter affidavit has been filed by the respondent stating inter alia that the Appellate Court by its judgment passed in Title Appeal No. 12/99 modified the judgment of the trial Court holding that plaintiff decree holder is only entitled to a declaration. It is stated that Executing Court therefore, rightly dismissed the execution case holding the same not maintainable.

4. I have heard learned Counsel appearing on behalf of the parties.

5. As noticed above, in Title Suit No. 5 of 1996, the Court of Munsif passed a decree declaring that the plaintiff is entitled to employment and the defendant-respondent was directed to give employment to one son of the plaintiff. In appeal, the judgment and decree passed by the Munsif was modified to the extent that the plaintiff is entitled to declaration only. The petitioner filed Execution case being Execution case No. 9 of 2002 and the Executing Court dismissed the same holding that the decree cannot be executed. Instead of challenging the said order, the petitioners filed writ application being WP (S) No. 2626 of 2004. This Court disposed of the writ application on 17.5.2004 by passing the following orders:

Heard the counsel for the parties.

The petitioner's father had filed a suit for declaration that one of his sons is entitled to get employment. The trial Court decreed the suit and directed the respondents to give employment to one of the sons of the plaintiff.

Against the said judgment and decree, the respondent-Management filed appeal and the judgment was confirmed with the only modification that the plaintiff is entitled to employment to one of his sons.

When the judgment and decree was not complied with, the petitioner has

In my view, the petitioner should challenge the said order passed by the Executing Court in the said Execution Case. The judgment of the Civil Court cannot be executed by invoking the writ jurisdiction of the High Court. Complete machinery has been provided in the Code of Civil Procedure. No relief can be granted to the petitioner. This writ petition is dismissed.

6. Instead of challenging the order passed by the Executing Court, the petitioner

again filed a fresh execution case in 2005 being Execution Case No. 21 of 2005. The respondent raised objection u/s 47 of the CPC. The Executing Court, in the light of the aforesaid facts, allowed the objection and dismissed the Execution case by passing the impugned order.

7. Having regard to the facts and circumstances of the case, I do not find any error of law in the impugned order. This writ application is, accordingly, dismissed.