

(1950) 05 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Execution First Appeal No. 126 of 1948

S.S. Said-ul-Hamid

APPELLANT

Vs

The Federal Indian Assurance Co. Ltd.

RESPONDENT

Date of Decision : 17-05-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 10, Order 21 Rule 11, 13, 41, 42
Independence (Legal Proceedings) Order, 1947 — Article 4 , 4(1)

Citation : (1950) 05 SHI CK 0007

Hon'ble Judges : Harnam Singh, J

Bench : Single Bench

Advocate : Panna Lal Behl, for the Appellant; Balraj Tuli, for the Respondent

Judgement

Harnam Singh, J.—To appreciate the point of law arising in these proceedings the facts must be set in some detail.

2. On 27-6-1947 Shri Jagdish Narain, Commercial Subordinate Judge, 1st Class, Lahore passed a decree for Rs. 5250 in favour of S.S. Said-ul-Hamid against the Federal Indian Assurance Co. Ltd., Connaught Place, New Delhi. The decree was transferred to the Court of the District Judge at Delhi. Execution was sent out in the Court of the Senior Subordinate Judge at Delhi, but the decree-holder having defaulted in appearance on 11-10-1947, the execution proceedings were dismissed in default.

3. Execution was then applied for on 15-4-1948. The judgment debtor resisted the execution of the decree inter alia on the following grounds: (1) that the transfer of the decree for execution to the Court at Delhi was illegal; (2) that non-satisfaction of the decree having been certified to the transferring Court, the executing Court had become functus officio; (3) that the decree being of a foreign Court was not executable at Delhi after the partition of India into two separate Dominions; and (4) that the petition for execution was neither signed nor verified by the decree holder.

4. In the executing Court the objections set out at Nos. (1), (2) and (4) supra were not pressed. On the third objection the executing Court found that the decree sought to be executed, being decree of a foreign Court, was not executable in Courts in the Delhi Province. In the result, the executing Court dismissed the application for execution, leaving the parties to bear their own costs.

5. From the order passed by the executing Court S.S. Said-ul-Hamid, decree-holder, has come to this Court u/s 47, Code of Civil Procedure, 1908.

6. Mr. Panna Lal, learned Counsel for the decree-holder, contends that the Senior Subordinate Judge at Delhi retained jurisdiction to proceed with the application for execution made on 15-4-1948. The argument raised is that the Court executing a decree sent to it for execution has the same powers in executing such decree as if it had been passed by itself and that the transferee Court retains jurisdiction over the execution proceedings until it certifies to the Court which passed the decree in the manner set forth in Section 41, Code of Civil Procedure, or until the execution has been withdrawn from it. In this connection reliance is placed on Section 42, Code of Civil Procedure. The relevant portion of Section 42 reads:

The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself.

7. Now, whether the decree in question can be executed in the Court of the Senior Subordinate Judge at Delhi depends on an adjudication as to whether after 15-8-1947, that decree is to be considered as one passed by a domestic Court or by a foreign Court. Under the provisions of the CPC as are in force in the Union of India, there is no escape from the conclusion that the Lahore Court is a Court situate beyond the limits of the Union of India and the said Court has no authority in the Union of India. In other words, from after 15-8-1947, the Lahore Court has become, in relation to the Court of the Senior Subordinate Judge at Delhi, "a foreign Court" and the judgment on the basis of which the decree now under execution was passed is a foreign judgment. Accordingly, the provisions of Section 13 read with Section 44A, Code of Civil Procedure, will be attracted and the decree-holder seeking to enforce the judgment of a foreign Court will have to satisfy the requirements of Section 13, Code of Civil Procedure, unless the judgment is by a Court situate within the territories of a reciprocating country contemplated by Section 44A, Code of Civil Procedure. But there has been no notification in the official Gazette declaring Pakistan to be a reciprocating territory for the purposes of Section 44A. That being so, it must accordingly be held that after 15-8-1947 the Court of the Senior Subordinate Judge Delhi, has no jurisdiction to entertain any application for execution of a decree passed by the Lahore Court. Authority for this proposition is to be found in *Dominion of India Vs. Hiralal Bothra*,

8. Mr. Panna Lal then contends that the Lahore Court having sent the decree in

question for execution to the Delhi Court, the Court at Delhi retains jurisdiction over the execution proceedings until it certifies to the Court which passed the decree in the manner set forth in Section 41, Code of Civil Procedure. As stated above, the Lahore Court has become a foreign Court in relation to the Courts at Delhi have no jurisdiction to execute the decree save as expressly provided by Article 4, Indian Independence (Legal Proceedings) Order, 1947. Article 4 reads:

Notwithstanding the creation of certain new Provinces and the transfer of certain territories from the Province of Assam to the Province of East Bengal by the Indian Independence Act, 1947-

(1) all proceedings pending immediately before the appointed day in any civil or criminal Court (other than a High Court in the Province of Bengal, the Punjab or Assam) shall be continued in that Court as if the said Act had not been passed, and that Court shall continue to have for the purposes of the said proceedings all the jurisdiction and powers which it had immediately before the appointed day.

As already mentioned, the execution proceedings initiated in the Court of the Senior Subordinate Judge on the transfer of the decree for execution were dismissed in default on 11-10-1947. Between 11-10-1947, and 15-4-1948, there were no proceedings pending in the Court of the Senior Subordinate Judge at Delhi. On 15-4-1948, the decree-holder made an application for the execution of the decree within the meaning of Order 21, Rules 10 and 11, Code of Civil Procedure. The proceedings, therefore, in which the objection as to jurisdiction of the Delhi Court was raised, were initiated for the first time on 15-4-1948, and could not be said to be pending immediately before the appointed day in the Court of the Senior Subordinate Judge at Delhi. That being so, Article 4(1), Indian Independence (Legal Proceedings) Order, 1947, has no application to the case.

9. A similar point arose in *Muthukaruppan Chettyar v. Sellami Achi* AIR 1938 Rang. 385 : 1938 Rang. L.R. 355 In that case Baguley J., said:

In my opinion execution proceedings can only start with an application for execution; vide Order 21, Rules 10 and 11. In this case the application was not filed until after the Court had ceased to have jurisdiction to deal with it. Before 1-4-1987, the execution proceedings could have been initiated in Henzada and had they been initiated, it is possible, though I have not considered the matter, that the result would have been different. In this case they were not initiated until the Court ceased to have jurisdiction to deal with them: as I cannot agree that the receipt of a copy of the decree gives the receiving Court a jurisdiction to do anything before an application was made for it.

With great respect, I follow the decision in, *Mathukaruppan Chettyar v. Sellami Achi* AIR 1938 Rang. 385 : 1938 Rang. L.R. 355 , and find that immediately before the appointed day, there were no proceedings pending in the Court of the Senior Subordinate Judge at Delhi and that the proceedings were initiated in that Court on 15-4-1942, after the Court ceased to have jurisdiction to deal with

them. A reference may also be made to Naresh Chandra Bose Vs. Sachindra Nath Deb and Others, . In that case R.P. Mookerjee J., K.C. Chaunder J., concurring) said:

The proceedings in the High Court originated either on the filing of the application for execution by the decree-holder in the Alipore Court or more strictly speaking, on the filing of the objection u/s 47, Code of Civil Procedure, by the judgment-debtor. The present appeal arises directly out of the miscellaneous case started on the filing of the objection u/s 47, Code of Civil Procedure, the proximate connection is with that objection and the side miscellaneous case. A more distinct connection is with the filing of the execution in the Alipore Court. Passing of the decree by the Jessore Court or the filing of the application for transferring the decree to Alipore Court cannot be considered to be the starting point of the "proceedings" now pending in the High Court.

10. Applying the test laid down in Naresh Chandra Bose Vs. Sachindra Nath Deb and Others, the proceeding"s in the "Court of the Senior Subordinate Judge at Delhi originated on 15-4-1948, on the filing of the application for execution by the decree-holder.

11. For the foregoing reasons, I find that immediately before the appointed day there were no proceedings pending in the Court of the Senior Subordinate Judge, Delhi, and that when the application for execution was made in that Court on 15-4-1948, that Court had ceased to have jurisdiction to deal with that case by reason of the partition of the country into India and Pakistan.

12. In the result the appeal fails and dismissed with costs.