

(1965) 10 KL CK 0019
In the High Court Of Kerala
Case No : A.S. No. 103 of 1961

State of Kerala

APPELLANT

Vs

Kesavan Govindan Potti

RESPONDENT

Date of Decision : 07-10-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 82
Limitation Act, 1908 — Article 181, 182(1)

Citation : AIR 1966 Ker 104 : (1965) KLJ 1154

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J; S. Velu Pillai, J

Bench : Division Bench

Advocate : A.B. Pereira, Govt. Pleader, for the Appellant; S. Narayanan Potti and N.K. Varkey, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Krisinamoorthy Iyer, J.—This appeal filed by the judgment debtor raises the question whether the execution petition is barred by limitation. The decree is for payment of money passed on 31-3-1954 against the State, The execution petition was mod by the decree holder on 7-2-1950. The contention of the State that the execution petition is barred by limitation was overruled by the court below

2. It is agreed by both sides that the question of limitation has to be decided in the light of Sub-sections 1 and 2 of Section 82 of the CPC as it stood prior to its amendment by Central Act 66 of 1956. Subsections 1 and 2 of Section 82 (before its amendment by Act 6B of 1956) read;

"(1) Where in a suit by or against the Government, or by or against a public officer in respect of any such act as aforesaid a decree is passed against the Union of India or a State or, as the case may be, the public officer; a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the State Government.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

x x x

3. No time is specified in the decree within which it has to be satisfied. After the expiry of the period fixed in the decree, Section 88(1) requires the court to send a report of nonsatisfaction to the State Government for its orders and execution shall not be issued on any such decree unless it remains unsatisfied for a period of three months computed from the date of such report. Even if no time is fixed in the decree for satisfaction, sub-section 2 of Section 82 applies and execution cannot be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report of non-satisfaction. Before execution could proceed, a report of non-satisfaction has to be sent and three months must elapse from the date of the report, in this case the report of non-satisfaction of the decree was sent by the court to the State Government only as per the directions given in the order under appeal. The learned Government Pleader contended that, as no time is specified in the decree as required in Section 82(1) of the Code as it stood prior to its amendment in 1956, even if the decree is not void, it is incomplete and is not executable in its present form and in that way the execution petition has to be dismissed. It has to be mentioned that this point was not raised before the execution court and we feel that this objection cannot be allowed in appeal. Since the court in pursuance of the directions in the order under appeal, has sent the report of non-satisfaction to the Government thereby implementing the decree, the contention is also without force.

4. The contention of the Government Pleader on the question of limitation is that Article 182(1) governs the case and since the execution application is filed beyond three years from the date of the decree, it is barred by limitation. According to the learned advocates for the respondent, Article 182(1) is not applicable to the execution of the decree in question, as the decree by virtue of Section 82 of the CPC is not immediately capable of execution. According to the learned advocate, in the case of such a decree, time cannot run against the decree holder until the decree becomes capable of execution and the relevant Article applicable in such cases is Article 181 and not Article 182(1) of the Limitation Act 1908. We are inclined to accept the contention put forward on behalf of the respondent. Article 182(1) of the Limitation Act is to the following effect:

5. In view of order 20, Rule 7 of the Code of Civil Procedure, the words "date of the decree" in Clause 1 of the third column of this article must therefore mean the date in which the judgment was pronounced and not the date on which the decree is actually drawn up and signed. An application for execution of a decree must be made within three years of the "date of the decree as explained above if the case is governed by clause 1 of the Article Article 182 clause 1 assumes that the decree is capable of immediate execution; if it is not so, Article 182 clause 1

does not apply but Article 181 applies.

6. In *Rameshwar Singli v. Homeswar Singh*, AIR 1921 PC 31 at p. :S2 it is observed:

"They (Their Lordships) are of opinion that, in order to make the provisions of the Limitation Act apply, the decree sought to be enforced must have been in such a form as to render it capable in the circumstances of being enforced. A decree so limited in its scope as that of the 27th July, 1906. under consideration cannot, in their opinion, be regarded as being thus capable of execution. Under the decree Ekradeshvar was not made personally liable, nor did it extend to any portion of the estate of Janeslmir which was not in his hands until after the decision of the Board in 1914. As to the ability of the appellant to have applied to enforce his claim when in August 1908 the Subordinate Judge decided that Ekradeshvar was entitled to recover possession against the widow, it is enough to point out that the High Court at Calcutta promptly stayed execution of this decision, and later on reversed it, Neither can their Lordships accede to an argument put forward by counsel for the respondents that the decree against Ekradeshvar could be treated as a decree against the estate of Janeshvar. still less as one against that estate though not in the hands of Ekradeshvar. Their Lordships think that the appellant has not been shown to have been responsible for the delay which has taken place in giving effect to his title, which did not become complete until after the decision of this Board in 1914. They are of opinion that when the Limitation Act of 1908 prescribes three years from the date of a decree or order as the period within which it must be enforced, the language read with its context, refers only, as they have already indicated to an order or decree made in such a form as to render it capable in the circumstances of being enforced. This interpretation appears to them not only a reasonable one in itself, but to be in accordance with the previously expressed opinion of this Board in *Shaik Kamamddin Alnnad v. Jawahir Lal*. ILR 27 All 334 "

7. It is not necessary that the immediate non-executability of the decree must be inherent in the decree itself in order to avoid the operation of Clause I of Article 182. Referring to the above decision of the Privy Council, Wallace J. in *Mangamma Nayaknralu v. Ramdasappji*. AIR 1925 Mad 981 at p 983 observed:

"It had been held in several cases that the immediate non-executability of a decree must be inherent in the decree itself that is, that the mere reading of the decree would show that it was unexecutable at once. But the decree in AIR 1921 PC 31 did not on its face imply any such non-executability since, for all that the Court passing the decree knew the judgment-debtor might be already in possession of Janeshwar's property and therefore the decree would be enforceable as soon as passed. The general principle laid down by the Privy Council is that in order to make a provision of the Limitation Act. namely Article 182, apply, the decree sought to be enforced must have been in such a form as to render it capable "in the circumstances" of being enforced. I would stress the words "in the circumstances" as implying that the Court is to be guided by the

circumstances of the case in deciding whether the decree could not have been enforced at once, that is, whether any right to execute it had or had not accrued. Part of the circumstance which their Lordships considered relevant in that case was whether or not the decree holder was responsible for the delay which had taken place in giving effect to his title, that is his right to execute,"

8. The principle of these cases is that when the decree on the date on which it is passed cannot be executed but becomes executable on a later date, the decree holder has three years from the date on which it becomes executable under Article 181. It is a fundamental principle of law that for the purpose of any particular application, time will run only from the moment at which the applicant first becomes entitled to make it. Article 182 is not exhaustive of applications for execution of decrees. There are cases to which Article 181 may apply. Where a decree is not immediately executable, and the right to apply for execution depends on the expiry of any period fixed in the decree or provided for by any statute, Article 182 clause 1 is inapplicable and the only Article governing execution is the residuary Article 181

9. Even though the decree does not specify any period for its satisfaction by the State Government, the right of the decree holder to execute the decree can arise in view of Section 82, Sub-section 2 of the CPC as it stood before the amendment of 1956, only after the expiry of three months computed from the date of the report of non-satisfaction by the court to the State Government.

10. In view of the above, the execution petition filed by the decree-holder is within time and the appeal is without any substance. The appeal is therefore dismissed with costs.