(1938) 04 MAD CK 0013

In the Madras High Court

S.V. Subba Rao APPELLANT

Vs

Tha Calicut Co-operative Urban Bank, Ltd. RESPONDENT

Date of Decision : 12-04-1938

Acts Referred:

Citation : AIR 1939 Mad 304 : (1939) 49 LW 143 : (1939) 1 MLJ 695

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The question raised in this appeal is as to the proper article of the Limitation Act for an application for the

enforcement of an award passed by the Registrar of Cooperative Societies u/s 51 of the Act.

2. The execution application in this case, out of which this appeal arises, was made in 1936 in respect of an award which was passed on 15th July,

1931. The first application for enforcement of the award made to the District Munsiff of Calicut was made in 1932 and between 1932 and 1936

there were other applications made for its enforcement. It is conceded that if Article 182 of the Limitation Act applies, there is no bar of limitation.

Both the lower Courts have taken the view that Article 182 is applicable and held that the application is not barred by limitation. But it is

contended by Mr. Sesha Aiyar that this view is wrong and that the article applicable is Article 181 of the Limitation Act. He places considerable

reliance on the decision of Cornish, J., in the The Co-operative Credit Society of Arungunam Village Vs. Chinnaswami Udayan, . With due

respect, I am unable to agree with the said decision. u/s 65 of the Co-operative Societies Act, the Local Government is empowered to make rules to carry out all or any of the purposes of the Act and one of such purposes is the enforcement of decisions or awards in proceedings before the

Registrar of Co-operative Societies. The rule which has been enacted in pursuance of this section is Rule 15, Clause 7. Clause 7 contains three

sub-clauses providing three methods of enforcement and the sub-clause, which is relevant for the purpose of the present discussion, is Sub-clause

(c) which runs thus:

On application to the Civil Court having jurisdiction over the subject-matter of the decision or award, that, Court shall enforce the decision or

award as if it were a final decree of the Court.

3. If therefore an application to enforce an award is made to a Civil Court, for the purpose of enforcement the legislature enacts that it should be

treated as a final decree of that Court. Thus by statute the award of the Registrar u/s 51 of the Act is given the same status as a decree of a Civil

Court for the limited purpose of execution and the provisions of law relating to the enforcement of decrees of such Courts including the law of

limitation applicable for such enforcement will apply-by necessary implication. So when the question of limitation arises as to the enforcement of an

award of the Registrar of a Co-operative Society, the Court before which the application for its enforcement is made will have to apply the article

applicable for the enforcement of the final decree of that Court. In this case, the article applicable for the enforcement of the final decree of the

Court of the District Munsiff of Calicut is Article 182. Prima facie therefore the article that should govern the present case is Article 182. In

Belvedere Jute Mills, Ltd., In re 31 C.W.N. 1097 a question arose as to the enforcement of an award u/s 15 of the Indian Arbitration Act where

the language is almost similar. Section 15 runs thus:

An award on a submission, on being filed in the Court in accordance with the foregoing provisions, shall (unless the Court remits it to the

reconsideration of the arbitrators or umpire, or sets it aside) be enforceable as if it were a decree of the Court.

4. Rankin, C.J., and Mitter, J., held that Article 181 would not apply to the case but the article applicable was Article 183, the article applicable to

the enforcement of the decree of the High Court. Rankin, C.J., in the course of the judgment remarked thus:

If one looks at the question of limitation from the point of view of the different alternatives, there can be one inference only and that is that the

words employed by the legislature in the first sub-section of Section 15 of the Indian Arbitration Act were intended to go to the question of

limitation as well as to the question of procedure.

5. This decision was followed in our High Court by the learned Chief Justice and King, J., in the Hindu Religious Endowments Board, Madras v.

Shirur Mutt (1934) 68 M.L.J. 200 : ILR 58 Mad. 760. There the question arose whether Article 181 or Article 182 is to be applied in regard to

the application for the enforcement of an order passed by the Hindu Religious Endowments Board u/s 70(2) of the Act which ran thus:

The Court shall, on the application of the President of the Board...recover the amount as if a decree had been passed for the amount by the Court

against the religious endowment concerned.

6. The learned judges referred to Lakshmindra Tirta Swamiar v. Hindu Religious Endowments Board, Madras (1922) 65 M.L.J. 364 : ILR 56

Mad. 712 where it was held that the words ""as if a decree had been passed"" attract to the order the whole procedure in execution and followed

the ruling in Belvedere Jute Mills Ltd., In re 31 C.W.N. 1097 and applied Article 182. In my opinion the above decisions lay down the correct

principle. I therefore hold that Article 182 of the 2nd Schedule to the Limitation Act would apply to the enforcement of an award passed by the

Registrar of Co-operative Societies u/s 51 of the Act by a Civil Court other than a High Court.

7. I shall now deal with the decisions relied on by Mr. Sesha Aiyar. The first case relied on by him is The Co-operative Credit Society of

Arungunam Village Vs. Chinnaswami Udayan, . On a perusal of the said decision, it looks as if it was assumed that Article 181 applied to the case

and the only question was whether the application was time barred. This appears clear from the following observations of the learned Judge in that

case:

The only question in this appeal is whether the application is time barred. Admittedly it is, if Article 181 of the Limitation Act governs it. But the

argument is that the application not being one under the Civil Procedure Code, the Limitation Act has no application.

8. The learned Judge after overruling this contention held that the application being one under the Code, Article 181 would apply and he purported

to follow the decision in Sambasiva Mudaliar v. Panchanada Pillai (1907) 17 M.L.J. 441 : ILR 31 Mad. 24 which is another decision relied on by

Mr. Sesha Aiyar. That was a decision u/s 40 of the Revenue Recovery Act. The question there was what article would apply for an application by

a purchaser at a revenue auction sale for delivery of possession. The learned Judges applied Article 178 of Act XV of 1877, corresponding to

Article 181 of the present Limitation Act and the decision turned on the language of Section 40 of the Revenue Recovery Act which runs thus:

Where, notwithstanding such publication, any lawful purchaser of land may be resisted and prevented from obtaining possession of his purchased

land, any Court of competent jurisdiction, on application and production of certificate of sale provided for by Section 38 shall cause the proper

process to be issued for the purpose of putting such purchaser in possession in the same manner as if the purchased lands had been decreed to the

purchaser by a decision of the Court.

9. It is with reference to this language the following observations were made:

The section as we read it places the purchaser in the position of a decree-holder for the purposes of putting the machinery of the Court in motion in

order that the certificate of sale granted by the Revenue authority may be given effect to. It does not, by implication, make the law of limitation with

reference to the execution of decrees or orders of Civil Courts applicable to proceedings u/s 40 of the Act.

10. But the language of Rule 15, Clause 7(c) given above is quite different. For the limited purpose of execution an award is treated as a decree of

the Court. On this ground the decision in Sambasiva Mudaliar v. Panchanada Pillai (1907) 17 M.L.J. 441 : ILR 31 Mad. 24 is distinguishable as it

may be possible to contend that the use of the words ""the proper process to be issued"" and ""in the same manner"" connote only the bare machinery

of the Court for putting the purchaser in possession. The other cases relied on by Cornish, J., in his judgment seem to me to have no bearing on the

actual point for decision before me, and I think it unnecessary to deal with them.

11. Mr. Sesha Aiyar brought to my notice the decision in Raghavendra v. Industrial Bank, Guledgud (1907) 17 M.L.J. 441 : ILR 31 Mad. 24

where Beaumont, C.J., doubted whether the award of the Registrar of Co-operative Societies under the Bombay Co-operative Societies Act of

1925 would ever become a decree of a Civil Court within the meaning of Article 182 of the Limitation Act but left the question open. It may be

pointed out that the wording of the rule which the learned Chief Justice was dealing with is different from the rule in the present case. The question

is not, if I may say so, with respect whether the award becomes a decree of the Civil Court but whether the law of limitation governing the

execution of the decree of a Civil Court is made applicable by statute by necessary implication. Both the lower Courts took the view that the

decision; in The Co-operative Credit Society of Arungunam Village Vs. Chinnaswami Udayan, would not apply in view of Section 57-B of the Act

which runs thus:

The Registrar or any person empowered by him in that behalf, shall be-deemed, when exercising any powers under this Act for the recovery of

any amount by the attachment and sale or by the sale without attachment of any property, or when passing any orders on any application made to

him for such recovery or to take some step-in-aid of such recovery to be a Civil Court for the purposes of Article 182 of the first schedule to the

Indian Limitation Act, 1908.

12. In terms this section would not be applicable to an application for the enforcement of an award in a Civil Court as provided in Rule 15, Clause

7(c) but the object underlying the section in my opinion establishes beyond doubt that the legislature intended by necessary implication in enacting

the said Clause (c) that Article 182 of the Limitation Act would apply to applications made in pursuance thereof because the award has to be

treated by a Court as a decree of that Court. The object in enacting Section 57-B is to have one uniform rule of limitation for the enforcement of

decrees of Civil Courts and the decrees and awards and orders of a Registrar of Co-operative Societies and whether they are enforced by a

Registrar or a Civil Court. It would be anomalous to hold that an award when enforced by a Registrar would be governed by Article 182 but when

enforced by a Civil Court is governed by Article 181. In the result the appeal fails and is dismissed with costs. Leave to appeal granted.

