
(1971) 07 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil First Appeal No. 66 of 1967

Tansukhlal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-07-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 146, 48
Constitution of India, 1950 — Article 14

Citation : (1971) WLN 281

Hon'ble Judges : C.B. Bhargava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.B. Bhargava, J.—This appeal was preferred by Tansukhlal against the judgment and decree of the Senior Civil Judge, Jodhpur dated 31st March, 1967, and the respondent has also filed cross-objections.

2. On 14th May, 1973, learned Counsel for the respondent reported that Tansukhlal had died about one year back and as his legal representatives had not been brought on record till then, the appeal had abated. On the request of the counsel for the appellant the case was adjourned to enable him to ascertain facts about the death of Tansukhlal. On 16th July, 1971, Mr. B.L. Purohit who was representing Tansukhlal filed his power on behalf of Vimal Kumar son of Tansukhlal and also submitted an application that he may be allowed to continue the appeal, at the same time alleging that Order 22 Rule 3 C.P.C. which bars such application is against the provisions of Section 146 C.P.C and is also unconstitutional. No application for bringing on record the legal representatives of the deceased has been made within the prescribed period nor has any application been made for setting aside the abatement and as such the appeal has undoubtedly abated. But the learned Counsel has contended that the provisions of Order 22 Rules 3 and 4 are violative of Article 14 of the Constitution in as much as they provide for making of the application within the period

prescribed by the Law of Limitation whereas Rule 12 of the said Order is not subject to the Law of Limitation and specifically Rules 3, 4 and 8 have been made inapplicable to the proceedings in execution of a decree or order.

3. It is well settled that the equal protection clause also applies to procedural measures. In *The State of West Bengal Vs. Anwar Ali Sarkar*, it has been held that:

(1) A rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination.

It therefore, follows that every law, whether it affects substantive right for procedural rights would be invalid under the Constitution, if the said law denied to any person equality before the law or equal protection of the laws within the territory of India. But, in the case of both kinds of laws, legislative classification is permissible if it is based on intelligible differentia and the said differentia has a rational relation to the object sought to be achieved by the Act. The Legislature can classify persons with distinct and common characteristics and properties. That distinction must have a rational relation or nexus to the object sought to be achieved. See *Pichayya v. Govt. of Andhra* AIR 1957 A.P. 136. Section 146 C.P.C. was introduced in the Code of Civil Procedure, 1908, because in the absence of a similar provision in the Code of 1882 judicial opinion was divided on the question whether the legal representatives of a deceased defendant could apply to set aside an *ex parte* decree under Order 9 Rule 13 C.P.C. This controversy has now been set at rest by this section which was introduced in the Code of 1908 with the object of facilitating the exercise of rights by persons in whom they come to be vested by devolution or assignment and lays down that where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him. This entitles the legal representatives of the deceased to take or continue proceedings which the deceased might himself have done. Section 146 is however subject to the other provisions of the Code such as Section 48 which applies to execution proceedings and Order 22 and Rules 3 and 4 which lay down the procedure for bringing on record the legal representatives of the deceased plaintiff or defendant as a party on the death of the plaintiff or the defendant. Previously the Code did not contain Rule 12 under Order 22 and the provisions of Order 22 only applied to suits. There was a great difference of opinion as to whether the provisions relating to abatement contained in Order 22 applied to execution proceedings. In several cases it was held that they did not and the present Rule 12 was, therefore, introduced to affirm that view.

4. In *Gulabdas v. Lakshman Narhar* ILR 3 Bom. 221 it was observed that:

The CPC does not provide that applications for executions shall, like suits, abate

by the death of the judgment creditor, nor have any cases been cited to us to show that the analogy of the sections applicable to pending suits governs pending proceedings in execution. Before execution can be had at all, a right must have been fully established; and delay is then an indulgence to the judgment-debtor. The legislature may have thought that the ordinary terms of limitation prescribed by Article 171 of Schedule II of Act XV of 1877 and the corresponding provisions in Act IX of 1871 afforded protection enough against laches on the part of a judgment-creditor; but we shall not, at any rate, be justified in saying without authority that the proceedings in execution abate just as in a pending litigation. Nor, if they do abate, can we properly apply to the application of representatives, coming in to carry on the execution, the limitation prescribed by Article 171 of Schedule II of Act XV of 1877, which is expressly confined to the "legal representative of a deceased plaintiff" not of a deceased judgment-creditor. The latter may, it seems, come in at any time, as his coming in is contemplated by Article 179, Expl. 1, subject always to the same conditions as would apply to his principal.

Now one of the considerations on which the doctrine of limitation and prescription may be said to be based is that it is necessary that title to property and matters of right in general should not be in a state of constant uncertainty, doubt and suspense. This is in accordance with the maxim *interest reipublicae ut sit finis litum*—the interest of the State requires that there should be an end to litigation. Statutes of limitation and prescription are thus statutes of peace and repose. Until the proceedings in a suit are finally terminated and the rights of the parties are adjudicated the state of uncertainty about the rights of the parties continues and therefore the Legislature thought it fit keeping the same object in view that the application for substitution of the legal representatives of the deceased plaintiff or defendant be made within the period prescribed by the Law of Limitation so that the proceedings may be continued. That is the reason why Order 22 Rules 3 and 4 require the applications for the legal representatives being made a party in the case of the deceased be within a period provided by the law of limitation. But after the suit is finally decided and the rights of the parties have been determined, the state of uncertainty no longer continues and the presumption is that the party itself should be keen to recover the fruits under the decree. Besides this, Section 48 of the CPC and other articles under the law of limitation already prescribe a period for the enforcement of the decrees and orders passed by the court, and, therefore, it was quite unnecessary to apply Rules 3, 4 and 8 of Order 22 to the execution proceedings. If the legal representatives of a decree holder allow the time provided in Section 48 C.P.C. to lapse, then automatically they would be debarred from executing the decree. It is therefore, clear that the litigants whose rights have already been determined and have culminated in decree or order capable of execution stand on a different footing. It is not that the Legislature has made any differentia between any class of decree-holders or any class of suits. The provisions of Order 22 Rules 3 and 4 apply to all classes of suit. Similarly Rule 12 applies to all

classes of decrees.

5. If we look at Rule 6 of Order 22, it lays down that notwithstanding any thing contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place. It would be clear from the above that the proceedings are presumed to be determined on the date the case is heard even though the judgment may be proceed subsequently. So when the rights of the parties are actually determined or deemed to be determined then the provisions relating to abatement do not apply. The same principle governs the execution proceedings.

6. I am, therefore, of the view that no question of discrimination or classification arises and Rules 3 and 4 of Order 22 C.P.C. do not contravene Article 14 of the Constitution.

7. The appeal is, therefore, dismissed as having abated. The cross-objections are for the same reasons dismissed as they cannot be proceeded with in the absence of the legal representatives of the deceased appellant. No order as to costs.