

(2017) 09 CAL CK 0008
In the Calcutta High Court
Case No : 323 of 2011

THE ORIENTAL GAS Co.LTD.& ORS

APPELLANT

Vs

DINESH VINIYOG LTD.& ORS.

RESPONDENT

Date of Decision : 05-09-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 44A\(3\)](#), [Section 13\(f\)\(a\)](#) - Execution of decrees passed by courts in reciprocating territory - When foreign judgment not conclusive
[Limi](#)

Citation : (2017) 09 CAL CK 0008

Hon'ble Judges : Soumen Sen

Bench : SINGLE BENCH

Advocate : Ratnanko Banerjee, Shaunak Mitra, Sachin Shukla, Tridib Bose, S.N. Mitra, Arindam Mukherjee

Judgement

1. This is an application for execution of a foreign decree dated 12th March 1988. maintainability of The judgment-debtors have questioned the this application on the ground that this application was filed on 19th July 2011, after lapse of a period of 12 years from the date of the decree.
2. It is submitted that a prior execution application filed by the decree-holders on 19th December 2006 was disposed of by an order dated 17th March 2009 and if any application was further required to be filed for execution of the said decree, then such application is required to be filed within the period of 12 years from the date of the decree and not thereafter.
3. It is submitted that the attempt to file an application for execution of the foreign decree dated 12th March 1998 having expired in March 2010, the second application filed on 19th July 2011 is ex facie barred by limitation.
4. Mr.S.N. Mitra, the learned senior counsel appearing on behalf of the judgment-debtors have referred to a Single Bench decision of our Court in Biswapati Dey versus Kennsington Stores & ORS.reported at AIR1972CAL172Paragraph 14, two

decisions of Honble Supreme Court in W.B.Essential Commodities Supply Corporation versus Swadesh Agro Farming & Storage PVT.LTD.reported at 1999 (8) SCC315paragraph 13 and in Hameed Joharan (Dead) & ORS.versus Abdul Salam (Dead) By LRs.& ORS.reported at 2001 (7) SCC573paragraphs 9 and 10 to submit that the 12 years period for the purpose of limitation under Article 136 of the Limitation Act has to be computed from the date of the decree as in the instant case the decree became enforceable the moment the money decree was passed and it is not dependent upon the volition of the party to apply for execution beyond the period of limitation. submits that the second application, to be held

5. Mr.Mitra maintainable, ought to have been filed within the period of 12 years from 12th March 1998. Mr.Mitra submits that successive applications could be filed for execution of a decree provided all such subsequent and/or successive applications are filed within the period of 12 years.Mr.Mitra has referred to a passage from B.B.Mitras The Limitation Act, 1963, twenty-second Edition at page 1652 and a decision of the Patna High Court in Ram Gobind Rai versus Shahabad District Board through the Special Officer, Arrah. reported at AIR1976Patna 118, a Division Bench judgment of the Madras High Court in N.S.Karuppanna Gounder versus Nagammal, wife of Subramanian reported at 1996(2) MLJ470 a Division Bench judgment of our Court in UCO Bank. versus Amalgamated Coalfields LTD.reported at 2000 (3) CLT492paragraphs 10, 11 and 12 and a decision of the Honble Supreme Court in Manohar s/o Shankar Nale & ORS.versus Jaipalsing s/o Shivilalsing Rajput & ORS.reported at 2008(1) SCC520paragraph 7.

6. Per contra, Mr.Ratnanko Banerjee, learned senior counsel representing the decreeholders submits that this application is essentially for implementation of an order passed by a coordinate Bench on 17th March 2009 by which receiver was appointed over the remaining assets in Annexure-O and Annexure-P in terms of prayer (a) of column 10 of the tabular statement and the said order could not be carried out in view of an appeal preferred by the judgmentdebtors which was pending before the Division Bench till 4th March 2011.

7. It was only after the appeal was dismissed on merits that the instant application has been filed for implementation of the order dated 17th March 2009.

8. It is submitted that having regard to the fact that the fiRs.application was filed within the period of limitation, the second application which is merely an extension of the fiRs.application could be filed beyond the period of twelve years.It would depend on the construction of the orders passed in the earlier proceeding as the Court in the instant case has allowed the said prayer without naming the receiver and the decreeholder was unable to proceed with the matter in view of an order passed by the Division Bench on 19th May 2009 restraining the receiver to take any further steps in the matter.

9. The judgments cited by Mr.Mitra were distinguished by submitting that in the Patna decision, there was an addition of new property and/or a new party, which

is not the case here.

10. Insofar as the UCO Bank (supra) is concerned, the decree dated 24th June 1986 was satisfied in the years 1987 and 1992 and the decreeholder proceeded on the basis of subsequent order of the writ court which had nothing to do with the decree dated 24th June 1986.

11. Moreover, the execution application was finally disposed of on 5th January 1999 and concluded the proceeding in all respects.

12. It was on such grounds, it is submitted, that the Courts have held that the application is barred by limitation.

13. Mr.Banerjee submits that it has been the consistent view of all courts that Article 136 is to be construed liberally so as to enable the decree-holder to obtain the fruits of the decree.

14. Unlike a decree passed in the municipal law, for a foreign decree to be executable in India, it has to pass through the tests of enforceability as required under Section 44A(3) of the Code of Civil Procedure.

15. The executing Court dealing with an application for enforcement of a foreign decree may refuse execution of any such decree if it is shown to be satisfaction of the court that the decree falls within any of the exceptions specified in Clauses (a) to (f) of Section 13 of the Code of Civil Procedure.

16. The enforceability of the foreign decree was decided by the executing Court on 17th March 2009.

17. Prior thereto, there were certain defects in the execution application which were removed by an order dated 2nd July 2008.

18. It was only upon a satisfaction being recorded decree that the foreign becomes executable.

19. Further orders were passed by the executing court on 17th March 2009.

20. In the earlier proceeding, execution was sought by sale of properties set out in Annexures O, P and Q of the supporting affidavit.

21. The executing court found that some of the properties are outside jurisdiction and accordingly disposed of the said application by appointing a receiver over the remaining assets in Annexures O and P in terms of prayer (a) of column 10 of the tabular statement, provided such assets are within the jurisdiction of this court.

22. Prayer (a) of column 10 of the tabular statement reads:a) Receiver assets mentioned be appointed in Annexure over O, the P properties and Q of and the supporting affidavit with a direction to sell the same and pay the sale proceeds to the judgment creditors in protanto satisfaction of the decretal dues. The executing court, it appeaRs.by oversight did not name the receiver. by the said

The judgment-debtors appear to have been benefited oversight.

23. The Division Bench at the stage of admission of the appeal on 19th May 2009 directed the receiver not to take any further steps till the next date.

24. It appears that the judgment-debtors submitted before the Appeal Court that since the receiver has been appointed, their rights may be prejudicially affected unless the judgment-debtors are protected.

25. The Honble Division Bench noticed that receiver has not even been named as yet.

26. In view of the aforesaid order, the decree-holders could not have gone back to the executing court for naming the receiver, which act, in my view, is a clear oversight of the court.

27. Moreover, the said order did not conclude the proceedings in all respects. not It is a settled principle that mistake of court shall prejudice anyone.

28. In this application the petitioners are essentially seeking such mistake to be removed and to carry out the directions passed in the said order.

29. In this application the petitioners are not seeking addition of new properties or of new party.

30. Although this application may have the nomenclature of an execution application, but it is essentially an application for implementation of an earlier order, which has remained stayed for almost two years.action.

31. This application is not on a fresh cause of The second application in substance is for implementation of the previous order and is merely one for continuing the earlier proceeding. previous The decree-holders could have got the relief in the application which is claimed now and in fact got it previously but before it could be implemented the decree-holders were restrained from approaching the executing court for naming the receiver.

32. In this application, the decree-holders have prayed for naming the receiver.

33. The petitioners have filed this application immediately after the appeal was dismissed.

34. Under such circumstances, I am unable to accept the submission of the judgmentdebtors that this application is barred by limitation.

35. Mr.Rajarshi Dutta, Advocate, Bar Library Club, is appointed as a receiver over and in respect of the remaining assets in Annexures O and P of the tabular statement as directed by the earlier order dated 17th March 2009 which has since been affirmed by the Division Bench. adjourned date.

36. The receiver shall file a report on the The receiver shall be entitled to an initial remuneration of 1500 GMs to be paid by the decree-holdeRs.All costs,

charges and expenses incurred by the decree-holder in such regard shall be added to their claim in this proceeding.

37. An affidavit of assets by the judgment-debtors in Form No.16A of Appendix-E of the Code of Civil Procedure shall be filed by the adjourned date.

38. The matter stands adjourned till 31st October 2017.

39. Mr.Mitra has prayed for stay of operation of the order.

40. The said prayer is considered and rejected.