

(1958) 12 CAL CK 0023
In the Calcutta High Court
Case No : A.F.A.O. No. 90 of 1956

Ushapati Mandal

APPELLANT

Vs

Pioneer Commercial Bank (in Liquidation)

RESPONDENT

Date of Decision : 04-12-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11
Limitation Act, 1908 — Article 182

Citation : AIR 1960 Cal 62

Hon'ble Judges : Renupada Mukherjee, J

Bench : Single Bench

Advocate : Guruprosad Ghosh, for the Appellant; Prasanta Kumar Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Renupada Mukherjee, J.—A short question of law which does not appear to be covered directly by any decision of our High Court is involved in this appeal. That question is whether an application for execution of a decree which has been drawn up in conformity with Rule 11 of Order 21 of the CPC and which is otherwise in form can be treated as a good application for the purpose of saving limitation if it has been filed by a lawyer who has got no authority to file it.

2. The above question of law has arisen for my determination under the following circumstances about which there is no dispute. The Pioneer Commercial Bank (in Liquidation) obtained a decree against appellant Ushapati Mandal on September 2, 1949. It appears that an application for execution of the decree was drawn up in accordance with law and signed by the Official Liquidator Sri P. C. Sen. The application was presented in Court by the Liquidator's Pleader Sri Asoke Charidra Bose on September 2, 1952. The contents of the application were noted in the Register of the executing court and the application was also given a number, namely, No. 44 of 1952 of the executing court. It was, however, found that the lawyer who had presented the application in court had no vakalatnama and on

that ground the execution case was struck off on that very date, namely, on September 2, 1952. The present application for execution was filed in the executing court on July 11, 1955. An objection was taken on behalf of the judgment-debtor that this second application for execution was barred by limitation inasmuch as the previous application had not been duly or legally presented before the executing court and so it could not have saved limitation. This objection of the judgment-debtor was negatived by the executing court. An appeal was preferred by him which was unsuccessful. So the judgment-debtor has preferred this Second Appeal.

3. The facts involved in this appeal are practically admitted. Mr. Guru Prasad Ghosh appearing on behalf of the judgment-debtor appellant contended before me that in holding that the previous application for execution of the decree which was struck off on 2-9-1952 was legally made and presented in court and was, therefore, sufficient to save limitation, the courts below committed an error in law. Mr. Ghosh contended that if a lawyer who has not been authorised by his client to present a document in court as required by the provisions of Order 3 of the Code of Civil Procedure, actually presents such a document in court, then that would be neither a valid nor a legal presentation and no court should take any action on such presentation. Mr. Ghosh submitted that the effect of such an unauthorised presentation would for all purposes be that no document has been presented in court at all. If this argument of Mr. Ghosh were to be accepted then I would have certainly come to the conclusion that the subsequent execution case in connection with which this objection has been taken by the judgment-debtor has become barred by limitation. After a careful consideration of the matter I am not inclined to accept the contention of Mr. Guru Prasad Ghosh.

4. In this connection Mr. Ghosh drew my attention on behalf of the appellant to a case of Madras High Court reported in *Nandamani Anangabhima v. Modono Mohono Deo* AIR 1937 Mad 239. It has been held in that case that where an execution application is presented by a pleader without any documentary authority in his favour from the decree-holder, it is not a question of a defect in the pleader's authority; nor is it a question of irregularity nor even of an illegality, in anything that he does. The pleader having no power to act the application has no legal effect as not having been made in accordance with law. If this decision were to be followed then the present execution case must be held to have become time-barred and the former application for execution must be held to have not been made in accordance with law. A contrary view has, however, been taken in a Full Bench case of Allahabad High Court reported in *Kanhaiya Lal Vs. The Panchayati Akhara*, . In that case it has been held that such an absence of authority on the part of the pleader is a mere irregularity and it does not vitiate the application. The Full Bench decision of Allahabad High Court appeals to me as the correct decision. I can only add that a presentation of a plaint or an application by a lawyer who does not hold any authority from his client should not be considered to be even irregular if we have regard to the practice prevailing in our law courts regarding the initial presentation of a plaint,

an original application and similar documents in our civil courts. These documents are never presented to the Presiding Officer of a Court himself either by any party or by his authorised agent. Such documents are placed in the hands of either the Bench Clerk or the Sheristadar, according to the prevailing practice of the Court and thereafter they are checked by appropriate Officers of the Court and further action is taken upon them. The word "presentation" merely means the mechanical or physical filing of document either in the court room or in the office. It is not at all necessary that this should be done personally by the party or through a duly engaged lawyer in all cases. A party may present or file the document through anybody he likes. If, therefore, a party has filed an application for execution of a decree through a lawyer whom he presumably intended to engage by a vakalatnama, but in whose favour no vakalatnama was actually executed, then it cannot be said that the effect of the omission would be such as to invalidate the document itself. The only consequence which should flow from the above omission would be that the Pleader would not be entitled to act any further in that matter. In this view of the matter I am of opinion that the previous application for execution of the decree which was otherwise in accordance with law should be regarded as being a step-in-aid in execution of the decree. It was, therefore, sufficient for the purpose of saving limitation.

5. On grounds set forth above, I dismiss this appeal. Regard being had to the circumstances of this case I direct that parties will bear their own costs in this Court.