
(1962) 11 MAD CK 0056
In the Madras High Court
Case No : A.A.O. No. 86 of 1961

Uthamram

APPELLANT

Vs

K.M. Abdul Kasim Co.

RESPONDENT

Date of Decision : 16-11-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 6, 44A(2)
Limitation Act, 1908 — Article 182, 183

Citation : AIR 1964 Mad 221 : (1963) ILR (Mad) 1040 : (1963) 76 LW 827

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Anantanarayanan, J

Bench : Division Bench

Advocate : John and Row, for the Appellant; R. Gopalaswami Aiyangar and R. Balasubramaniam, for the Respondent

Final Decision : Dismissed

Judgement

S. Ramachandra Iyer, C.J.—This is an appeal against the order of the learned District Judge of West Tanjore dismissing an application filed u/s 44-A C.P.C. by the appellant for execution of a judgment obtained by him in a foreign Court, the High Court of the Colony of Singapore. On 2nd October 1953, the Court entered judgment in favour of the appellant against the respondent firm, which was doing business* in Singapore for a sum of Rs. 60,408-84 dollars, inclusive of costs. By a supplemental judgment delivered on 23rd May 1954, a quondam partner of the respondent firm one Mohammad Ismail, was also held liable for the entire amount. It appears that under the rules governing the practice of that court, no formal decree on the basis of the judgment is issued for regulating the rights of parties. If execution were to be levied of a judgment entered up for payment of money a copy of the judgment alone is filed. Where the decree-holder obtains part-satisfaction there is no procedure for recording such part-satisfaction in Court. He merely applies to the sheriff for execution for the balance" of the amount due.

2. In the present case, various payments, in an amounting to 16000 dollars are

acknowledged to have been made to the decree-holder, the last of them being by a cheque for 1000 dollars made out in favour of the appellant by Mohammad Ismail on 13th August 1955; that was realised¹ two days later.

3. It appears there were other amounts due to the appellant from the respondent. The former applied on 4th October 1958 to the High Court at Singapore to have K. M. Abdul Kasim Rowther, the other partner of the firm, adjudged bankrupt. By an order, dated 31st October 1958, the High Court of Singapore adjudged him as such, notwithstanding the fact that no notice had been served to him.

4. K. M. Abdul Kasim Rowther owns considerable properties in this country. The colony of Singapore has been recognised as a reciprocating territory for purposes of execution of decree passed by the Superior Courts of that Country in India. That was by notification S.R.O. No. 4 dated 1st September 1955 passed u/s 44-A C.P.C. whereby, the Supreme Court of the Colony of Singapore was declared to be a superior "Court with reference to that territory.

5. On 16th August, some time prior to the adjudication of K. M. Abdul Kasim Rowther as an insolvent by the High court of Singapore, the appellant tiled an application in the Court below for realisation by way of execution of a sum of Rs. 2,32,798-25 (which represented the amount due in Indian currency), by attachment and sale of the debtor's properties in this country. The petition was not accompanied by any certificate from, the High Court of Singapore stating the extent to which the judgment remained unsatisfied. The application was resisted by the debtor on various grounds. The learned District Judge held that by reason of the subsequent bankruptcy of the debtor, the appellant who became disentitled to execute the decree in Singapore, could not do so in this country. He further held that the application for execution was barred by Article 182 of the Limitation Act. It would be sufficient in this appeal against the judgment of the learned District Judge to consider only two objections to the maintainability of the execution petition, namely, (1) whether the non-submission of a certificate from the superior Court at Singapore showing the extent to which the decree is still outstanding will be a bar to the maintainability of the execution petition;" and (ii) whether the execution petition is barred by limitation.

6. On the first question the learned District Judge was of the view that the omission to file what he called a non-satisfaction memo, would not amount to a material irregularity and that notwithstanding the fact that the execution petition was unaccompanied by a certificate specified in Section 44-A(2), the application was maintainable. In support of that view reliance has been placed on the decision of the Supreme Court in Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others, . That, however, was not a case of execution of a foreign decree. The decree in that case was passed by a Court in the Indian union which was later transferred for execution to the Court at Assansol. At the time of the original transfer, a certificate of non-satisfaction accompanied the decree. The execution could not be effected at that time, subsequently there was a fresh execution

petition in the Assansol court but that was unaccompanied by a certificate of non-satisfaction from the Court which passed the decree. Das J. observe in the course of his judgment at page 383 (of SCR): (ax p. 67 Of AIR):-

"It is true that Or. 21 rule 6 provides that the courts sending a decree for execution shall send a copy of the decree, a certificate setting forth that satisfaction of the decree had not been obtained by execution within the jurisdiction of the Court and a copy of the order for the execution of the decree but there is no authority to we effect that an omission to send a copy of the decree or an omission to transmit to the Court executing the decree the certificate referred to in clause (b) does not prevent the decree-holder from applying for execution to the Court to which the decree has been transmitted."

It was held that such an omission to send either the decree copy or a non-satisfaction memo, would not amount to a material irregularity within the meaning of Or. XXI rule 90 C.P.C. to justify a Court sale being set aside.

7. The foregoing observations can hardly apply to the present case where the decree is that of foreign court. The ordinary rule is that a judgment or decree of a foreign court cannot operate outside the country in which the Court is situate by virtue of the authority alone of we Court which rendered the judgment. Such a judgment ,can be enforced by action, the judgment itself being the cause of action for the suit. The period of limitation for; the suit will be governed by Article 117 of the Limitation Act. Subject to the question of limitation the judgment of the foreign Court will be conclusive as to any matter directly adjudicated upon between the parties, whether be a question of fact or law except in the circumstance, set out in clauses (a) to (t) of Section 13 C.P.C.

8. But statute can provide for a judgment openion in a foreign Court to be enforced directly without the necessity of filing a suit on the judgment. Section 44-A is such a provision. That enables the enforcement of decree of the Courts in reciprocating territories. Thus while in regard to ether foreign judgments a suit has got to de tiled before they can be enforced, judgments given by the superior Courts in reciprocating territories can, under the provisions of Section 44-A be executed in our country.

9. In England a system of registration of foreign judgments was introduced by the Foreign Judgment (Reciprocal Enforcement) Act, 1933. Under that enactment judgment of a superior Court of a foreign country, if final or conclusive and if the money payable thereunder is not in respect of taxes, fines or penalties, can be registered within six years of the date of the judgment. There will however, be no right to registration if the debt had open wholly satisfied or if it could not be enforced by execution in the country of the original Court. A foreign judgment, when registered, can be enforced in execution. The rules of the Supreme Court in England provide under Order XLI-B for the issue of a notice to the debtor who is given art opportunity to file an application for setting aside me registration on the ground stated in the rule. Execution would issue only thereafter.

10. The CPC in India has not adopted the procedure of registration of judgments. Section 44-A which was introduced in the year 1937 has simplified the procedure by insisting upon a certificate from the superior foreign Court stating the extent, if any, to which the decree still remains unsatisfied. That provision states-

"(1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in the State as if it had been passed by the District court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior court stating the extent, if any, to which the decree has been satisfied." or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of Section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of Section 13." (Explanations omitted).

It will be seen from Sub-clause 2 to the section; that the filing of a certificate from the superior court will be obligatory on the decree-holder. If such a certificate is not filed, the process of direct execution of the foreign judgment will not be available to the decree-holder who will then be left with the other remedy open to him u/s 13 C.P.C. i.e., filing a suit on the foreign judgment. The certificate required u/s 44-A(2), being a condition to the exercise of jurisdiction, cannot be equated to a non-satisfaction memo, under Or. XXI rule 6 C.P.C. The jurisdiction of the Court in India to execute directly the decree of a foreign Court can arise only when there is a statutory proof of the amount due. Non-submission of the certificate will, therefore, result in the application for execution being rejected.

It is argued that as under the rules of the High Court of Singapore there is no provision for certifying part satisfaction of money decrees, the Courts would consequently not be prepared to issue non-satisfaction certificates. Or XXI rule 6 C. P. Code applies to a case of a transfer of a decree for execution by the Court passing the decree to the Court to which it is sent for execution. There is no procedure of transfer of a judgment entered by the foreign Court to the Indian Court for the purpose of execution. The petition u/s 44-A C.P.C. is an original petition in an Indian Court and unless the terms of the section, are satisfied the petition cannot obviously lie in the circumstance that the High Court of Singapore has no practice of recording part satisfaction cannot justify a non-compliance with the mandatory provisions of the section. We may, however, observe that even if in that country there is no practice of recording part satisfaction, there could be no prohibition to the decree holder applying to the Court which passed the decree for a certificate or order that the judgment remains unsatisfied either

wholly or with respect to any specified amount. We are, therefore, of opinion, that the application for execution, cannot lie in the absence of the certificate.

11. The next question relates to limitation. Article 11/- of the Indian Limitation Act provides for a period of six years from the date of foreign judgment for a suit thereon. Suits and proceedings are, under principles of international law, to be instituted within the period fixed by the law of the Court in which the suit or proceeding is instituted. Limitation is a part of the law of procedure in any country, and the general principle is that the limitation in regard to suits will be governed by the law of the country. Rule 204 in Dicey's Conflict of Laws, 7th edn. page 1087 states:-

"All matters of procedure are governed wholly by the local or domestic law of the country to which this court wherein any legal proceedings are taken belongs (ex Fori). In this rule, the term procedure includes (inter alia) certain aspects of the following matters:-

1. Remedies and Process;
2. Damages;
3. Statutes of Limitation;
4. Evidence;
5. Parties;
6. Priorities;
7. Set-off and counter claim."

The learned author elaborating the point further states at page 1092-

"Statutes of Limitation are of two kinds; those which merely bar a remedy and those which extinguish, or create, a right. For the purpose of this rule, statutes of the former kind are procedural while statutes of the latter kind are substantive."

12. As we are concerned now only with the former type of cases, the rule of limitation applicable for execution of a decree of a foreign Court will have to be found in the Indian Limitation Act.

13. It is contended for the appellant that Article 183 would govern the case as the judgment that is now sought to be enforced is that of a High Court, albeit that court is situated in a foreign country. Article 183 provides for a period of 12 years from the time specified in Column A thereto for enforcing a judgment of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction or of a Supreme Court. The article on its terms would exclude from its operation the decrees of a High Court on its appellate side. Learned counsel for the appellant contends that the High Court at Singapore should be regarded as having been established under a Charter and the judgment which is now the

subject-matter of execution having been rendered on its original side, the appellant should be held entitled to a period of 12 years from the date thereof for proceeding with execution u/s 44-A C.P.C. Alternatively, it is suggested that as the status of the Court has been recognised u/s 44-A C.P.C. as that of a superior Court, it will be appropriate, and indeed would be consistent with the principles of comity of nations, that the judgments of that Court are accorded the same period of limitation as is given to those of the superior courts in this country.

The argument, in our opinion., proceeds on a mis-apprehension. The period of limitation fixed by the Indian Limitation Act is not by reason of anything inherent in the Court or with respect to the status of it. Arts. 182 and 183 reveal a distinction in regard to the period of limitation for execution of decrees passed by the various Courts. The distinction is the result of certain historical reasons rather than of any superiority of Courts. Prior to the year 1861, there were two distinct judicial systems in this country: (1) the mofussil courts which had been established by the East Indian Company called the sudder Courts, and (2) the courts established in the Presidency Towns by the Royal Charter called Supreme Courts administering within their jurisdiction subject to certain exceptions, the law of England. The period of limitation for suits and applications in regard to the former courts was found in the regulations which varied from province to province. These regulations had no application to the presidency Towns where the statute law of England was applied. Thus the law of limitation applicable to proceedings in the mofussil courts in each presidency differed from the English law of limitation which governed the proceedings in Supreme Courts, it was in this context that Act XIV of 1859 was passed. It provided one uniform law of limitation for all Courts in British India except as to proceedings for execution of decrees of Supreme courts and certain in other matters. section 19 of that enactment spoke of decrees of Courts established by the Royal Charter and provided a period of 12 years for their execution. Section 20 provides a period of three years for execution of decrees of courts not established by a Royal Charter. In *Kristo Kinkur Roy v. Rajan Burrodacaunt Roy*, 14 Moo Ind App 465, Sir James William Colvile referring to the two provisions observed at page 485:

"It is not surprising that, in framing a law designed to be common in both systems of judicature, it was deemed necessary to make certain exceptions to the general rule of uniformity. And it may be presumed that, in dealing with this matter of execution, the legislature was moved by certain reasons which approved themselves to the minds of those who were conversant with the administration of justice in the mofussal, to subject the execution of decrees of the mofussal courts, whether of appellate or of original jurisdiction., to the three years" limitation; whilst, on the other hand, being pressed by its weight and value which the law of England gives to a Judgment or decree of a superior court, it determined not to reduce the period for enforcing the decrees of the Supreme Courts to less than 12 years. "Hence the disfunction made by the 19th and 20th sections of the Act; in which the term Courts established by Royal Charter was obviously used not by reason of anything inherent in every court

established by Royal Charter, but simply because it was thought to define (whether happily or not it is needless to inquire) certain existing courts" (italics (here into " ") are ours), viz., the Supreme Courts in the three Presidency towns, and the Recorders" in the Straits Settlements, and possibly to include other courts of similar constitution and functions which might thereafter be established ("Straits Settlements were then administered .as part of the Indian territory") (italics here into " ") not in the original).

In the year 1861, the High Court Act was passed and the following year saw the amalgamation of the supreme Court and the Sudder Dewanny Adawlut exercising appellate jurisdiction over the mofussil courts, into a single High Court. The jurisdiction of the erstwhile supreme Court was transferred to the High Court to be exercised by it in its original jurisdiction. The jurisdiction over the mofussil courts till then exercised by the Sudder Dewanny Adawlut was to be exercised by the appellate side of the same High court. But the law to be administered in the exercise of the original jurisdiction of the High Court was substantially the same as that administered by the Supreme Court before notwithstanding the fact that both the appellate as well as the original sides together constituted a single High court, which could in essence be said to have been established by the Royal Charter, it was held that the larger period of limitation allowed by Section 19 of the 1859 Act was applicable only to judgments rendered on the original Side of the High Court. Referring to this matter the Privy Council observed in the case referred to above at page 487: -

"It seems to their Lordships considering the date and history of the Limitation Act No. VIII of 1859, that the High Court of Madras and the High Court of Bengal in its decision of the 12th of June 1871, were warranted in holding that the. High Courts, though unquestionably "courts established by Royal charter" in the broad and general sense of the term, were not when executing their appellate jurisdiction from We mofussil courts, such courts within the meaning of Act No. XIV of 1859".

From the observations extracted above, it follows that the mere fact that a court has been established by a Royal Charter does not ipso facto attract the operation of Section 19 of the 1859 Act, which corresponds to the present Article 183. On the other hand, that article would apply to decrees obtained on the Original side, alone of the High Court of the three Presidency Towns Act IV of 1859 was superseded by Act IX of 1871. Article 169 or the latter enactment which corresponded to Section 19 of the old Act accepted the view of the Privy Council and expressly referred to decrees as "those in the exercise or their Ordinary Original Civil Jurisdiction." This article 16 was renumbered as Article 180 in the Limitation Act of 1877 and the same has been reproduced in the present Limitation Act of 1908 as Article 183. It win be noticed that the provisions of the Limitation Act is to govern only suits and applications filed in this country. Prior to 1937 there was no provision by which decrees passed outside India could be executed by the Indian courts. Therefore, Arts 182 and 183 can only apply to

execution of decrees passed by the courts of this country and the words "established by Royal Charter" occurring in Article 183 can refer therefore, only to such courts established in India and not to any Court albeit established by Royal Charter outside its territory. As we have pointed out earlier, the prescribing of different periods of limitation for execution of decrees has no relation to the status or character of the courts. If the court is one which is specified in Article 183, the period prescribed by that provision will apply for execution of the decrees passed on its original side. For the reasons stated above we are of opinion that Article 183 will not apply to execution of a foreign judgment albeit the court in the reciprocating territory whose judgment is sought to be executed, might have been established by Royal Charter.

14. It has next to be considered as to which other article of the Limitation Act would apply. The learned District Judge has held that Article 182 would govern a case like the present one. Even if that article were not to apply, the execution (proceedings in the present case will have to be held to be barred by limitation as the only other provision which would apply would be Article 181 which provides a period of 3 years from the date when the right to apply accrued. Learned counsel for the appellant contends that Article 182 will not apply to the present case as the judgment which is now sought to be executed could not be regarded as a decree or order of a civil court in this country. We have earlier referred to Section 44-A(1) C. P. Code, which states that where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District court, the decree may be executed in the State "as if it had been passed by the District court". It would prima facie follow particularly having regard to the fact that the Limitation Act does not provide any special period of limitation for execution of decrees of foreign courts, that the period of limitation applicable to such cases would be the same as that which would apply for execution of a decree of the District court, namely, Article 182. But learned counsel contends, that it is only by a fiction that the judgment of the foreign court is treated as a decree of the District court for purposes of execution, and that fiction cannot be extended so as to attract the provisions of the Limitation Act as well. In support of this contention reliance has been placed on the decisions reported in *Tincowrie Dawn v. Debenaronath Mookerjee*, ILR 17 Cal 491, *Ali Bhai Mohamed a Firm v. Mohamed Noor Mohamed*, ILR 6 Rang 566 : AIR 1928 Rang 317 and *Ranganandham v. Ponnacharamma*, AIR 1942 Pat 128. In the first of the cases referred to above a creditor who obtained a decree in a court of small Causes had it transferred to the High Court for execution and took up the plea that the period of limitation applicable to the case was governed by Article 180 of the Limitation Act of 18/7 (corresponding to the present Article 183). That contention was rejected on no terms of Section 228 of C. P. C. of 1882. The operative terms of S. 18 which empowered execution by the transferee court stated -

"The court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself".

Wilson J. held that the provision was restricted to the manner of execution and did not relate to the effect of any decree. The period of limitation had, therefore, to be governed by the Limitation Act, which specifically provided for a period of limitation for execution of decrees of Small Cause Courts.

15. ILR 6 Rang 566: AIR 1928 Rang 317 was concerned with a case where the decree of the Chief Court of Burma was executed by the High Court which succeeded it. The question of the law of limitation to be applied for the petition was governed by the provisions of Section 26 of the Burma Courts Act, the relevant portion of which said "....."shall be deemed for the purpose of execution to have been passed or made by the High Court"." It was held that Article 183 would not apply to the case as the provision stated above did not say that the decree should be deemed to be a decree of the High Court for all purposes. It will be noticed that Article 182 of the Limitation Act in terms applied to the case and the only question was whether by the mere reason of the High Court happening to execute the decree, a larger period was available. It was held that the limitation for execution was governed by the specific provision in the Limitation Act and did not depend upon the character of the Court which actually executed the decree.

16. In N.V. Ranganandham and Others Vs. M. Ponnacharamma, , a decree passed by the Presidency Small Cause Court to which the provisions of Section 48, C. P. Code were held not to apply, was sent for execution to the District Munsif's court where the plea , was taken that it being more than 12 years old could not be executed. It was held that Section 42 C. P. Code which conferred upon the Court executing the decree, the same powers in executing the decree as if it had been passed by itself related only to the manner of execution and the question of limitation was to be governed by only the provisions of the Limitation Act.

17. The three decisions referred to above cannot, in our opinion apply to the case of a foreign judgment which is sought to be directly executed in this country under the provisions of Section 44-A, C. P. C. There is no provision in the CPC or Limitation Act specifically providing for a period of limitation, for execution of the decree of a foreign Court. On the other hand, Section 44A Itself says that such a decree shall be executed in we State as if it had been passed by the Courts in the state. The words of the section are comprehensive enough to treat the decree itself as a decree of a Court in the State, and they need not be confined so as merely to confer on the Court the powers which it would exercise In executing its own decree.

18. It must be remembered that Section 44-A embodies end is also exhaustive of the law in regard to the direct enforcement of judgments of superior Courts in foreign countries situate in reciprocating territories. Under the rules of International Law, the law of limitation of this country alone would apply. It is a fundamental rule of Interpretation that due meaning must be given to the language employed in a statute for purpose of ascertaining its scope. Section 44-

A, C. P. C. creates a fiction that the decree of a superior Court of a reciprocating territory, If filed for the purpose of execution, can be executed as if it had been passed by the Courts in this country. The corollary to that fiction is that execution would not lie if in respect of a decree passed by the executing Court, the period of limitation as prescribed in this country had expired. In giving effect to the legal fiction, a court Is entitled to ascertain the purpose for which fiction has been created. The purpose being one for execution and not merely for the manner of execution, it must follow that all the incidents including the rule of procedure that applies to execution proceedings will attach to the decree of the foreign Court. A telling Instance or the application of the legal fiction is found in *East End Dwelling Co. Ltd. v. Finsbury Borough Council*, 1952 AC 109, where Lord Asquith observed at page 132.

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is the emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say the "having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

19. To the same effect is the view taken by the Supreme Court in *Commissioner of Income Tax, Delhi Vs. S. Teja Singh*, , where Venkatarama Aiyar, J. said,

"It is a rule of interpretation well settled that m. construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate."

20. From this it would follow that we must assume for purposes of Section 44A C. P. Code, that the District Court had actually passed the decree. If so much is assumed, the question then is only one of interpretation of the provisions of the Limitation Act and Article 182 which refers to execution of decrees by the Civil Courts will in our opinion automatically apply. That provision, will apply to ail cases of execution, petitions filed u/s 44-A C.P. Code, whether the foreign Court which gave the judgment was a Chartered High Court or any other superior court. In this view it is unnecessary to consider the applicability of Article 181 of the Limitation Act. The execution petition in the instant case must, therefore, be held to be barred by limitation.

21. We have already referred to the tact that subsequent to the presentation of the execution petition before the lower Court, the debtor had been adjudicated by the foreign Court as insolvent. No evidence has been placed before us as to the present stage of administration in insolvency. For instance it is not known whether there has Seen a discharge of the debtor. Nor is it known what steps the Official Assigns of Singapore intends to take in regard to the properties of the insolvent situate in this country. In *B. Veeranna Sha and Another Vs. The Official*

Receiver of Secunderabad, it has been held by a Bench of this Court that a receiver appointed by a foreign Court in insolvency would be entitled to the free assets of the bankrupt in another country. It is, however, not necessary for the purpose of the present case to consider whether the principle of comity of nations should prevent the creditor from executing his decree by proceeding against the Immovable property in a foreign country which had not vested in the Assignee in Bankruptcy and in respect of which such Assignee had taken no steps to reduce it to his possession, for facilitating universal distribution of the bankrupt's effects, There is, however, one principle which will have a bearing on this case and which if accepted will prevent the appellant from pursuing the execution in this country.

22. That is stated in the proviso (b) to rule 195 W Dickey's Conflict of Laws, 7th Edo. thus:

"That no judgment of a foreign Court will be ordered to be registered if it could not be enforced by execution. In the country of the Original Court. This rule is bases upon the foreign judgments (Reciprocal Enforcement) Act, 1933 of the United Kingdom."

23. That can be taken as a statute of the rule or international Law on the subject.

24. On the date when the appellant filed the application, for execution, the respondent was a free citizen. Subsequently, however, he had been adjudged a bankrupt with the result that no execution could be levied against him in the Singapore High Court. If the execution cannot be laid against him there, it would follow that it would not be maintainable in this country as well. But we need. not rest our decision on this point.

25. On the grounds we have stated earlier the appeal tails and is dismissed with costs.