

(2015) 06 KAR CK 0060
In the Karnataka High Court
Case No : CRP No. 212 of 2011

V. Anjaneya Reddy

APPELLANT

Vs

Special Additional Land Acquisition Officer, Bangalore
Development Authority

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2015) 4 AKR 452 : (2015) ILR Kar 4101

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : P. Krishnappa, for the Appellant

Final Decision : Dismissed

Judgement

B.S. Patil, J.—This revision petition is filed under Section 115 of the Code of Civil Procedure challenging the order passed by the executing Court dismissing the Execution Petition No. 811/2002 as barred by time. The execution petition was filed on 09.04.2002 seeking enforcement of judgment and award passed by the reference Court in LAC No. 467/1983 disposed of on 31.07.1985.

2. The claimant sought recovery of a sum of Rs. 23,611.00. Earlier, on three occasions execution petitions were filed by the revision petitioner. E.P. No. 162/1986 came to be disposed of on 19.03.1986; E.P. No. 1127/1991 came to be disposed of on 22.03.1993 and E.P. No. 620/1993 was disposed of on 27.06.1997. The present execution petition being the fourth petition was filed on 09.04.2002.

3. The petition was contested by the respondent by filing statement of objections including as regards maintainability of the petition as barred by limitation. The executing Court having examined the matter and upon hearing the learned counsel on both sides, has dismissed the petition as barred by time.

4. Learned counsel for the petitioner has urged twin contentions before this

Court. The first contention urged by him is that on three occasions in the past, the revision petitioner had filed execution petitions and on each occasion, after payment of certain sum of money, the execution proceedings were closed by the Court below and therefore, as the entire amount due to the decree holder was not paid, the cause of action to file the execution petition continued. It is urged that limitation would start from the closure of last of the execution petitions on 27.06.1997 i.e., upon the closure of Execution Petition No. 620/1993 after payment of Rs. 66,130/-.

5. The next contention being that an appeal in MFA No. 2465/1986 had been filed by the judgment debtors and the same came to be dismissed only on 21.06.1991 and therefore, limitation of 12 years as prescribed under Article 136 of Limitation Act, 1963, would run from the date of dismissal of the appeal.

6. Article 136 of Limitation Act, 1963, which is applicable to the matter, reads as under:

7. It is true, if the amount due to the petitioner has not been fully satisfied, the petitioner is entitled to initiate execution proceedings until the amount due to him is fully paid. But, there is no scope under Article 136 of the Limitation Act to hold that wherever the decree holder has initiated previous execution proceedings and the said execution proceedings have ended in closure of the proceedings on payment of allegedly, only part of the amount or on any other ground, the limitation period will start from the date of closure of the execution proceeding and not from the date of judgment and award passed by the reference Court. Such an interpretation is impermissible as per the language employed in Article 136 of Limitation Act. In any event, in the instant case, there is nothing on record to show that only part of the amount was paid and as regards the balance any order was passed directing payment subsequently. In such circumstance, the contention of the counsel for the petitioner cannot be accepted. It has to be held that limitation of 12 years starts from the date of the judgment and decree passed by the reference Court and not from the date last of the execution petitions was closed. Similarly, it is not the case of the petitioner/decree holder that there was any interim stay in MFA No. 2465/1986 staying enforcement of the judgment and award passed by the reference Court. Indeed the very fact that the revision petitioner had initiated execution proceedings at the first instance in the year 1986, subsequently in the year 1991 and for the third time in the year 1993, which culminated in the order dated 27.06.1997, disclosed that there was no impediment for the revision petitioner to enforce the decree as there was no stay of the operation of the decree. Therefore, the second contention urged by the learned counsel for the petitioner is misconceived. Merely, because an appeal is filed against the decree, the execution of the decree under appeal will not get stayed nor the decree holder would be prevented from executing the decree. Therefore, both the contentions urged by the learned counsel for the petitioner are untenable.

Hence, the revision petition being devoid of merits is dismissed.