

*Before Paramjeet Singh, J.*

**TARSEM LALSURESH KUMAR CONTRACTORS—Petitioner**

*versus*

**STATE OF PUNJAB—Respondent**

**CR No. 5081 of 2005**

October 31, 2013

*Constitution of India, 1950 - Art. 227, Limitation Act, 1963 - Ss 18, 19 & Art. 136 - Arbitral award passed on 15.1.1988 - Execution Petition filed on 23.11.2004 alleging some payments made between 6.1.1999 to 3.2.1999 and balance amount claimed - Execution application allowed and warrants of attachment issued - Order of attachment challenged on ground of limitation as execution filed beyond the period of 12 years - Contention that payment made in the year 1999 will not extend period of limitation as it does not amount to acknowledgment under S.18 of Limitation Act - Held, Commencement of fresh period of limitation from the date of last payment does not arise - Period of limitation to execute decree is 12 years from the date decree becomes enforceable - If order directs payment to be made on a certain date or at recurring period then limitation of 12 years will start from the date of default - Petition allowed.*

*Held*, that Section 18 of the Limitation Act, 1963 excludes an application for execution of decree or order meaning thereby, if after passing of decree or order acknowledgment of liability is made within period prescribed for execution, fresh period of limitation will not commence thereon. Likewise, Section 19 of the Limitation Act, 1963 excludes debt payable under decree or order of Court implying that if after passing of decree or order certain payment is made within limitation fresh period of limitation will not commence thereon.

(Para 8)

*Further held*, that the question of commencement of fresh period of limitation from date of last payment does not arise. As per Article 136 of the schedule to Limitation Act, 1963, period of limitation for the execution

of any decree or order of any civil court is 12 years from the date when the decree or order becomes enforceable and where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring period, period of limitation of 12 years will start from the date when default in making the payment or delivery in respect of which execution is sought takes place.

(Para 10)

*Further held*, that it is settled law in case of simple instalment decree, limitation for execution in respect of each instalment starts from the date when payment falls due. On the other hand in case of instalment decree containing default clause when the default in payment of any instalment takes place, the decree holder can either file execution in respect of whole amount, waiving of benefit of default clause or he may file execution in respect of each instalment. But he cannot exercise both rights.

(Para 11)

Petition Allowed

H.R. Bhardwaj, Advocate, *for the petitioner.*

T.N. Sarup, Addl. A. G. Punjab.

**PARAMJEET SINGH, J.**

(1) Instant civil revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 20.08.2005 passed by learned Additional District Judge, Patiala whereby execution application filed by the respondent has been allowed.

(2) Shorn of unnecessary details, the facts relevant for disposal of the present petition are to the effect that an arbitral award was passed in favour of the respondent for a sum of Rs. 1,32,496/- which was made rule of court on 15.01.1988. The respondent filed an execution application on 23.11.2004 alleging that some payments were made between period from 06.01.1999 to 03.02.1999 and claimed balance amount. The said application was allowed and warrant of attachment for recovery was issued. Hence, this revision petition.

(3) I have heard learned counsel for the parties and perused the record.

(4) It is the case of the petitioner that award was made rule of court on 15.01.1988. The period of limitation for filing execution application is 12 years as per Article 136 of the Limitation Act, 1963. The execution petition filed in the year 2004 is hopelessly time barred as even last payment was due on 01.08.1988. Learned counsel for the petitioner contended that payment allegedly made in the year 1999 will not extend the period of limitation as it does not amount to acknowledgment under Section 19 of the Limitation Act, 1963. In support of his contentions, the learned counsel has relied upon the judgment of Hon'ble Supreme Court in *Sant Lal Mahton versus Kamla Prasad and others (1)* wherein while dealing with Section 20 of the Limitation Act, 1908 (which is akin to Section 19 of the 1963, Act), the Hon'ble Supreme Court observed that although it is the payment which really extends the period of limitation under Section 20 of the Limitation Act, 1908, but the payment has to be got proved in a particular way and for reason of policy the legislature insists on a written or signed acknowledgment as the only proof of payment and excludes oral testimony unless, therefore, there is an acknowledgment in the required form, the payment by itself is of no avail.

(5) Per contra, learned State counsel has contended that although the award was passed on 15.01.1988, but some instalments were paid in 1999 and as per Section 19 of the Limitation Act, 1908, fresh period of limitation will commence as last payment was made within limitation, therefore, period of 12 years is to be reckoned from the date of last payment. There is no illegality or perversity in the impugned order.

(6) I have given thoughtful consideration to the contentions of learned counsel for the parties and judgment cited by learned counsel for the petitioner.

(7) In order to appreciate the same in right perspective, it would be appropriate to refer to relevant provisions of the Limitation Act, 1963 which read as under:

**“18. Effect of acknowledgment in writing.**

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is

claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.- For the purposes of this section, -

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

**19. Effect of payment on account of debt or of interest on legacy.** Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made: Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. Explanation.- For the purposes of this section, -

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) "debt" does not include money payable under a decree or order of a court.

(8) Section 18 of the Limitation Act, 1963 provides that if before expiration of limitation for a suit or application acknowledgment of liability is made in writing and signed by party, fresh period of limitation shall begin thereon. Likewise, Section 19 of the Limitation Act, 1963 provides if payment on account of debt or interest on a legacy is made before expiration of limitation, fresh period of limitation shall begin thereon. Needless to mention that such payment shall be acknowledged in writing signed by person making it. It is also pertinent to mention that Section 18 of the Limitation Act, 1963 excludes an application for execution of decree or order meaning thereby, if after passing of decree or order acknowledgment of liability is made within period prescribed for execution, fresh period of limitation will not commence thereon. Likewise, Section 19 of the Limitation Act, 1963 excludes debt payable under decree or order of Court implying that if after passing of decree or order certain payment is made within limitation fresh period of limitation will not commence thereon.

(9) Such exclusions did not find mention in the Limitation Act of 1908. Comparing the provisions of the Limitation Act, 1908 and Limitation Act, 1963, the Division Bench of the Hon'ble Calcutta High Court in *Subodh Chandra Mitra versus Kanal Lal Mukherjee (2)*, observed as under:

*"8. Now; under Section 19 of the old Limitation Act of 1908, an acknowledgment made after the passing of a decree but before the expiry of the period of limitation for execution of the decree under Article 183, amounted to acknowledgment under Section 19 of the Act and used to give fresh start to the period of Limitation. It is no longer so under Explanation (c) to S. 18 of the new Limitation Act of 1963. Further, a payment towards decretal debt, which used to start off a fresh period of limitation for execution, from the time when the payment was made, under Section 20 of the old Limitation Act of 1908, has no longer that effect under Explanation (b) to Section 19 of the new Limitation Act of 1963. Also, Article 136 of the new Limitation Act of 1983 does not, like the old Article 183, contain provisions for revivor or fresh start of the period of limitation. Thus under the new Act of 1963, the decree-holder respondent is not entitled to utilise*

*the acknowledgment of decreed liability and payment towards the decretal debt made between 4-5-1962 to 4-6-1983, for start of a fresh period of limitation. His only escape route lies in establishing that the new Act is not so far retrospective as to be confiscatory in nature even it respect of existing rights."*

(10) This being the provision of law, the question of commencement of fresh period of limitation from date of last payment does not arise. Now it is to be determined whether the execution application filed by the respondent was within period of 12 years as prescribed by the Limitation Act, 1963. For ascertaining the same, the date of commencement of limitation has to be found out. As per Article 136 of the schedule to Limitation Act, 1963, period of limitation for the execution of any decree or order of any civil court is 12 years from the date when the decree or order becomes enforceable and where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring period, period of limitation of 12 years will start from the date when default in making the payment or delivery in respect of which execution is sought takes place.

(11) The decree can be either simple instalment decree or instalment decree containing a default clause providing that in case of default in payment of any instalment execution may be filed in respect of entire amount. It is settled law in case of simple instalment decree, limitation for execution in respect of each instalment starts from the date when payment falls due. On the other hand in case of instalment decree containing default clause when the default in payment of any instalment takes place, the decree holder can either file execution in respect of whole amount, waiving of benefit of default clause or he may file execution in respect of each instalment. But he cannot exercise both rights. Reference in this regard may be made to a Full Bench decision of the Bombay High Court in *Chunilal* versus *Shivram* (3), Full Bench judgment of the Calcutta High Court in *Ranglal* versus *Shyamlal* (4), *Sheo Lal* versus *Devi Das* (5) and the judgment of a Division Bench of Patna High Court in *Narayan Chandra Dutta* versus *Nath Bank Ltd.* (6).

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(3) AIR 1950 Bom. 188

(4) AIR 1946 Calcutta 500

(5) AIR 1952 Allahabad 900

(6) AIR 1967 Patna 124

(12) In the case at hand, instalments were to be paid on 01.11.1987, 01.02.1988, 01.03.1988 and 01.08.1988. There is no mention of default clause. The award was made rule of court on 15.01.1988. This is the date when it became enforceable. Therefore, in respect of installments which were due on 01.11.1987 and 01.02.1988, the period of twelve years would commence from 15.01.1988. In respect of instalments due on 01.03.1988 and 01.08.1988, the period of 12 years would commence from respective dates. Thus at best execution application could have been filed within 12 years after 01.08.1988 i.e. by 01.08.2000.

(13) The respondent, however, filed execution application on 23.11.2004 which is clearly time barred. The findings recorded by learned executing court observing that period of limitation would commence from date of last payment viz. 03.02.1999 is perverse and cannot be sustained as there is no written acknowledgment.

(14) Accordingly, the present revision petition is allowed, the impugned order dated 20.08.2005 is set aside, objections filed by the petitioner are allowed and the execution application filed by the respondent is dismissed as time barred.

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*M. Jain*