

THE
INDIAN LAW REPORTS

PUNJAB SERIES

APPELLATE CIVIL

Before Harnam Singh, J.

S. S. SAID-UL-HAMID,—Appellant,

versus

THE FEDERAL INDIAN ASSURANCE CO., LTD, NEW DELHI,—
Respondent.

1950

May 17

Execution First Appeal No. 126 of 1948.

Civil Procedure Code (Act V of 1908)—Sections 13 and 44-A—Indian Independence (Legal Proceedings) Order, 1947—Article 4—Decree passed by a court situate in the territory now included in Pakistan prior to 15th August 1947—Decree transferred to the Delhi Court and execution taken out before 15th August 1947—Execution application dismissed for default on 11th October 1947—Second application for execution made to Delhi Court on 15th April 1948—Decree-holder if can proceed with the execution—Court passing the decree having become a foreign Court before the making of the second execution application.

A decree passed by the Sub-Judge, Lahore, in June, 1947, was transferred to Delhi and execution was sued out in the Court of Senior Sub-Judge, Delhi, but the decree-holder having defaulted in appearance on 11th October 1947, the execution proceedings were dismissed in default. Execution was then applied for on 15th April 1948, and it was contended by the judgment-debtor that the decree being of a foreign Court was not executable after the partition of Indian into two separate Dominions.

S. S. Said-ul-Hamid v. The Federal Indian Assu-rance Co, Ltd., New Delhi. *Held* (giving effect to the contention) that from the 15th August 1947 the Lahore Court became in relation to the Court of the Senior Sub-Judge at Delhi a 'foreign Court' and the judgment on the basis of which the decree under execution was passed was a foreign judgment and therefore, the provisions of section 13 read with section 44-A of the Code of Civil Procedure applied and in the absence of a notification in the official Gazette declaring Pakistan to be a reciprocating territory for the purposes of section 44-A the Court of the Senior Sub-Judge, Delhi, had no jurisdiction after the 15th August 1947, to entertain any application for execution of a decree passed by the Lahore Court.

Held further that Article 4 (i) of the Indian Independence (Legal Proceedings) Order, 1947, had no application to the case because that article saves only those proceedings which were pending immediately before the appointed day, i.e., before 15th August 1947, but in the present case the execution proceedings initiated in the Court of the Senior Sub-Judge, Delhi, on the transfer of the decree for execution, were dismissed in default on 11th October 1947, and between that date and the 15th April 1948, there were no proceedings pending in the Court of Senior Sub-Judge, Delhi, and, therefore, immediately before the appointed day there were no proceedings pending in the Court of the Senior Sub-Judge, Delhi, and that when the application for execution was made in that Court on the 15th of April 1948, that Court had ceased to have jurisdiction to deal with that case by reason of the partition of the country into India and Pakistan.

Naresh Chandra Bose v. Sachindra Nath Deb and others (1), *K. K. M. Muthukaruppan Chettyar v. P. S. T. Sellami Achi* (2), *Dominion of India v. Hira Lal Bothra* (3), relied upon.

Execution First Appeal from the order of Shri M. L. Vijn, Senior Sub-Judge, holding that the decree sought to be executed, being a decree of a foreign Court is inexecutable in the Delhi Province. The third objection of the judgment-debtor is accordingly given effect to and the execution application is dismissed as being not maintainable.

PANNA LAL BEHL, for Appellant.

BALRAJ TULI, for Respondent.

-
1. 1950 A.I.R. (Cal.) 8.
 2. 1938 A.I.R. (Rang.) 385.
 3. 1950 A.I.R. (Cal.) 12.

JUDGMENT.

S. S. Said-ul-Hamid

HARNAM SINGH, J. To appreciate the point of law arising in these proceedings the facts must be set out in some detail.

v.
The Federal
Indian Assurance
Co., Ltd.,
New Delhi,

On the 27th of June 1947, *Shri Jagdish Narain*, Commercial Subordinate Judge, 1st Class, Lahore, passed a decree for Rs. 5,250 in favour of S. S. Said-ul-Hamid against the Federal Indian Assurance Co. Ltd., Connaught Place, New Delhi. The decree was transferred to the Court of the District Judge at Delhi. Execution was sued out in the Court of the Senior Subordinate Judge at Delhi, but the decree-holder having defaulted in appearance on the 11th of October 1947, the execution proceedings were dismissed in default.

Harnam Singh
J.

Execution was then applied for on the 15th of April 1948. The judgment-debtor resisted the execution of the decree, *inter alia*, on the following grounds :—

- (1) that the transfer of the decree for execution to the Court at Delhi was illegal ;
- (2) that non-satisfaction of the decree having been certified to the transferring Court, the executing Court had become *functus officio* ;
- (3) that the decree being of a foreign Court was not executable at Delhi after the partition of India into two separate Dominions; and
- (4) that the petition for execution was neither signed nor verified by the decree-holder.

In the executing Court the objections set out at Nos. (1), (2) and (4) *supra* were not pressed. On the third objection the executing Court found that the decree sought to be executed, being decree of a foreign

S. S. Said-ul-Court, was not executable in Courts in the Delhi Pro-
 Hamid vince. In the result, the executing Court dismissed
 v. the application for execution, leaving the parties to
 The Federal bear their own costs.
 Indian Assu-
 rance Co, Ltd.,
 New Delhi,

From the order passed by the executing Court
 S. S. Said-ul-Hamid, decree-holder, has come to this
 Court under section 47 of the Code of Civil Procedure,
 1908.

Harnam Singh
 J.

Mr. Panna Lal, learned counsel for the decree-
 holder, contends that the Senior Subordinate Judge
 at Delhi retained jurisdiction to proceed with the ap-
 plication for execution made on the 15th of April 1948.
 The argument raised is that the Court executing a
 decree sent to it for execution has the same powers in
 executing such decree as if it had been passed by itself
 and that the transferee Court retains jurisdiction over
 the execution proceedings until it certifies to the Court
 which passed the decree in the manner set forth in sec-
 tion 41 of the Code of Civil Procedure or until the exe-
 cution has been withdrawn from it. In this connec-
 tion reliance is placed on section 42 of the Code of
 Civil Procedure. The relevant portion of section 42
 reads :

“ 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. ”

Now, whether the decree in question can be exe-
 cuted in the Court of the Senior Subordinate Judge at
 Delhi depends on an adjudication as to whether after
 the 15th day of August 1947, that decree is to be con-
 sidered as one passed by a domestic Court or by a
 foreign Court. Under the provisions of the Code of
 Civil Procedure as are in force in the Union of India
 there is no escape from the conclusion that the Lahore
 Court is a Court situate beyond the limits of the Union
 of India and the said Court has no authority in the
 Union of India. In other words, from after the 15th
 of August 1947, the Lahore Court has become, in re-
 lation to the Court of the Senior Subordinate Judge

at Delhi, "a foreign Court" and the judgment on the basis of which the decree now under execution was passed is a foreign judgment. Accordingly, the provisions of section 13 read with section 44-A of the Code of Civil Procedure will be attracted and the decree-holder seeking to enforce the judgment of a foreign Court will have to satisfy the requirements of section 13 of the Code of Civil Procedure unless the judgment is by a Court situate within the territories of a reciprocating country contemplated by section 44-A of the Code of Civil Procedure. But there has been no notification in the official Gazette declaring Pakistan to be a reciprocating territory for the purposes of section 44-A. That being so, it must accordingly be held that after the 15th of August 1947, the Court of the Senior Subordinate Judge, Delhi, has no jurisdiction to entertain any application for execution of a decree passed by the Lahore Court. Authority for this proposition is to be found in *Dominion of India v. Hiralal Bothra* (1).

S. S. Said-ul-Hamid
v.
The Federal Indian Assurance Co, Ltd.,
New Delhi,
Harnam Singh
J.

Mr. Panna Lal then contends that the Lahore Court having sent the decree in question for execution to the Delhi Court, the Court at Delhi retains jurisdiction over the execution proceedings until it certifies to the Court which passed the decree in the manner set forth in section 41 of the Code of Civil Procedure. As stated above, the Lahore Court has become a foreign Court in relation to the Courts at Delhi and the Courts at Delhi have no jurisdiction to execute the decree save as expressly provided by Article 4 of the Indian Independence (Legal Proceedings) Order, 1947. Article 4 reads—

“Notwithstanding the creation of certain new Provinces and the transfer of certain territories from the Province of Assam to the Province of East Bengal by the Indian Independence Act, 1947 ;

(1) 1950 A.I.R. (Cal.) 12.

S. S. Said-ul-Hamid
 v.
 The Federal Indian Assurance Co., Ltd.,
 New Delhi,
 ———
 Harnam Singh
 J.

(1) all proceedings pending immediately before the appointed day in any civil or criminal Court (other than a High Court in the Province of Bengal, the Punjab or Assam) shall be continued in that Court as if the said Act had not been passed, and that Court shall continue to have for the purposes of the said proceedings all the jurisdiction and powers which it had immediately before the appointed day ;”

As already mentioned, the execution proceedings initiated in the Court of the Senior Subordinate Judge on the transfer of the decree for execution were dismissed in default on the 11th of October 1947. Between the 11th of October 1947 and the 15th of April 1948, there were no proceedings pending in the Court of the Senior Subordinate Judge at Delhi. On the 15th of April 1948, the decree-holder made an application for the execution of the decree within the meaning of Order 21, rules 10 and 11 of the Code of Civil Procedure. The proceedings, therefore, in which the objection as to jurisdiction of the Delhi Court was raised, were initiated for the first time on the 15th of April 1948, and could not be said to be pending immediately before the appointed day in the Court of the Senior Subordinate Judge at Delhi. That being so, Article 4(1) of the Indian Independence (Legal Proceedings) Order, 1947, has no application to the case.

A similar point arose in *K. K. K. M. Muthukaruppan Chettyar v. P. S. T. Sellami Achi* (1). In that case Baguley, J., said :—

“In my opinion execution proceedings can only start with an application for execution,—*vide* Order 21, Rules 10 and 11. In this case the application was not filed until after the Court had ceased to have jurisdiction to deal with it. Before 1st April, 1937, the execution proceedings

(1) 1938 A.I.R. (Rang.) 385.

could have been initiated in Henzada and had they been initiated, it is possible though I have not considered the matter that the result would have been different. In this case they were not initiated until the Court ceased to have jurisdiction to deal with them : *as I cannot agree that the receipt of a copy of the decree gives the receiving Court a jurisdiction to do anything before an application was made for it.*"

S. S. Said-ul-Hamid
v.
The Federal Indian Assurance Co, Ltd.,
New Delhi,
Harnam Singh
J.

With great respect I follow the decision in *K. K. M. Muthukaruppan Chettyar v. P. S. T. Sellami Achi* (1), and find that immediately before the appointed day there were no proceedings pending in the Court of the Senior Subordinate Judge at Delhi and that the proceedings were initiated in that Court on the 15th of April 1948, after the Court ceased to have jurisdiction to deal with them. A reference may also be made to *Naresh Chandra Bose v. Sachindra Nath Deb and others* (2). In that case R. P. Mookerjee, J. (K. C. Chaunder, J., concurring) said :—

“The proceedings in the High Court originated either on the filing of the application for execution by the decree-holder in the Alipore Court or more strictly speaking, on the filing of the objection under section 47, Civil Procedure Code, by the judgment-debtor. The present appeal arises directly out of the miscellaneous case started on the filing of the objection under section 47, Civil Procedure Code, the proximate connection is with that objection and the said miscellaneous case. A more distinct connection is with the filing of the execution in the Alipore Court. Passing of the decree by the Jessore Court or the filing of the application for transferring the decree to Alipore Court cannot be considered to be the starting point of the ‘proceedings’ now pending in the High Court.”

(1) (1938) A. I. R. (Rang.) 385.

(2) (1950) A. I. R. (Cal.) 8

S. S. Said-ul-Hamid
 v.
 The Federal Indian Assurance Co, Ltd.,
 New Delhi,

Applying the test laid down in *Naresh Chandra Bose v. Sachindra Nath Deb and others* (1) the proceedings in the Court of the Senior Subordinate Judge at Delhi originated on the 15th of April 1948, on the filing of the application for execution by the decree-holder.

Harnam
 Singh J.

For the foregoing reasons, I find that immediately before the appointed day there were no proceedings pending in the Court of the Senior Subordinate Judge, Delhi, and that when the application for execution was made in that Court on the 15th of April 1948, that Court had ceased to have jurisdiction to deal with that case by reason of the partition of the country into India and Pakistan.

In the result, the appeal fails and dismissed with costs.

REVISIONAL CIVIL

Before Harnam Singh, J.

JARNAIL SINGH, ETC.,—Petitioners,

versus

Jam. CHATAR SINGH, ETC.—Respondents.

Civil Revision No. 145 of 1949.

The Indian Soldiers (Litigation) Act (IV of 1925), sections 3, 10, 11, 12—Scope and purpose thereof—Person serving under special conditions—Within the meaning of section 3—Question of his death coming before the Court in the trial of civil suit to which he was a party—Procedure to be followed—Trial Court not noticing the provisions of section 12—Whether material irregularity in the exercise of Jurisdiction—Within the meaning of section 115 of the Code of Civil Procedure (Act V of 1908)—High Court whether can interfere in revision.

Held that when a Court is in doubt as to whether a party can be said to be serving under war conditions or not it ought to refer the matter to the prescribed authority and act on the certificate given by such authority.

(1) 1950 A.I.R. (Cal.) 8.