

Jal Kaur
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of the Court below. The respondent will, however, pay the whole of the Court fee chargeable.

Pandit J.

PREM CHAND PANDIT, J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

LAKHPAT RAI SHARMA.—Appellant

versus

ATMA SINGH.—Respondent.

Execution First Appeal No. 108 of 1960

1960
Dec., 9th.

Code of Civil Procedure (V of 1908)—Section 44-A—Whether independent or controlled by Sections 38 and 39—Alternatives open to decree-holder who has obtained a decree from a reciprocating territory for its execution in India—Judgment-debtor having been adjudged insolvent in the country in which decree passed—Effect of—Decree-holder, whether can execute decree in India or must prove his debt before the Official Assignee—Foreign decree—Execution of—Law of Limitation applicable—Whether of India.

Held, that section 44-A of the Code of Civil Procedure, 1908, is an independent section and it is not controlled by the provisions of any other section. The moment a certified copy of a decree of any of the superior Courts of any reciprocating territory and a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted, are produced in a District Court in India, then the decree may be executed in India as if it had been passed by the District Court. It is not necessary that the decree should have been transferred to the Court for execution by the Court which passed the decree.

Held, that two alternatives have been given to a decree-holder who has obtained a decree from a superior Court in a reciprocating territory for execution of his decree in

India. Either he can get his decree transferred in compliance with the provisions of section 39 of the Code from the Court which passed the decree, to a District Court in India for execution, or he can directly put in an application for execution under section 44-A of the Code before the District Court in India, together with a certified copy of the decree and a certificate from such Court stating the extent, if any, to which the decree had been satisfied or adjusted. He can choose any of the two alternatives. In either of the two cases, the decree-holder will have to make an application to the Court which passed the decree—in one case, for the transfer of the decree for execution, and in the other, for obtaining a certificate of non-satisfaction, and in both the cases it would be for the Court passing the decree either to grant his application or refuse the same, depending on the facts of each particular case. The judgment-debtor in both the cases would be entitled to raise suitable objections before the Court which passed the decree, and it is only after his objections are heard that the application of the decree-holder would be disposed of.

Held, that the foreign adjudication order will not have the effect of vesting the immovable property of the insolvent situate in India in the Official Assignee and that property will be governed by the law of the land where it is situate. The decree-holder who has obtained a decree from a Superior Court in a reciprocating territory (Singapore in this case) can execute the decree against the immovable property of the judgment-debtor situate in India by making an application under section 44-A of the Code of Civil Procedure in the District Court in whose jurisdiction that property is situate even when the judgment-debtor has been adjudged insolvent in the country in which the decree was passed and need not prove his debt on the basis of the decree before the Official Assignee of his estate in that country. The adjudication order passed by the Singapore High Court has no effect on the immovable property of the insolvent situate in India.

Held, that the objection regarding limitation to the execution of a foreign decree in India can be taken by the judgment-debtor and is entertainable by the executing Court and that the Indian Law of Limitation will apply in order to see whether the execution application is within time or not.

Execution First Appeal from the order of Shri Parshotam Sarup, District Judge, Jullundur, dated the 2nd February, 1960, dismissing the execution application.

S. S. SODHI, ADVOCATE, for the Appellant.

F. C. MITTAL, G. P. JAIN AND P. C. JAIN, ADVOCATES, for the Respondent.

JUDGMENT

Pandit, J.

PANDIT, J.—This is an appeal from the judgment of the learned District Judge, Jullundur, dismissing the execution application filed by the appellant (decree-holder) on the ground that it did not lie in view of the fact that the judgment-debtor had been adjudged an insolvent. This matter arose in the following circumstances :—

On the 22nd September, 1954, Lakhpat Rai appellant obtained a money decree for \$ 9,104.80 (Dollars Nine thousand one hundred and four and cents eighty) and \$ 231 (Dollars two hundred and thirty-one) as costs against Atma Singh respondent from the High Court of Singapore. On 12th January, 1959, the decree-holder applied for the execution of the decree under section 44-A of the Code of Civil Procedure in the Court of the District Judge at Jullundur, and sought to execute this decree against the immovable property of the judgment-debtor situate in the District of Jullundur. Along with the execution application the decree-holder attached a certified copy of the decree passed in his favour. He also filed a certificate, dated the 4th March, 1959, of non-satisfaction of his decree, obtained from the High Court at Singapore.

The judgment-debtor filed objections to the execution on the ground that he had been adjudged an insolvent by the High Court at Singapore on

the 22nd July, 1955, and consequently the decree-holder could not execute the decree against him and his remedy lay by way of filing an application to prove his debt before the Official Assignee at Singapore.

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The only issue struck in the case was, whether the execution application was maintainable.

The learned District Judge upheld the objections of the judgment-debtor and dismissed the execution application holding that under section 8 of the Singapore Bankruptcy Ordinance, after the judgment-debtor had been adjudged an insolvent, the decree-holder was left with no remedy except to prove his debt before the Official Assignee at Singapore, and that the decree-holder could not proceed with the execution application because the immovable property of the judgment-debtor in India was not open to attachment after the order of his adjudication as an insolvent, and that the property had vested in the Official Assignee at Singapore.

The decree-holder has filed the present execution first appeal against the order. The first question for decision in this case is whether section 44-A of the Code of Civil Procedure, under which the execution application was filed by the decree-holder-appellant, is an independent section or it is controlled by the provisions of sections 38 and 39 of the Code, the argument of the learned counsel for the judgment-debtor being that a decree can be executed either by the Court which passed it or by the Court to which it is sent for execution. Therefore, according to him, unless the decree in question was sent by the Singapore High Court which passed the same to the Court of the District Judge at Jullundur for execution, it could not be executed by the latter Court.

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Section 44-A of the Code runs as under :—

- “(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 India 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.”

From a bare reading of the section itself, it would be clear that it is an independent section and it is not controlled by the provisions of any other section. The moment a certified copy of a decree of any of the superior Courts of any reciprocating territory and a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted, are produced in a District Court in India, then the decree may be executed in India as if it had been passed

by the District Court. It is not necessary that the decree should have been transferred to the Court for execution by the Court which passed the decree.

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This section was inserted in the Code by section 2 of the Code of Civil Procedure (Amendment) Act No. 8 of 1937. It is meant to reciprocate the policy contained in the Foreign Judgments (Reciprocal enforcement) Act, 1933, and is a part of the arrangement under which on the one part decrees of Indian Courts should be executable in the United Kingdom and on the other part decrees of the Courts in the United Kingdom should be executable in India. (See statement of objects and reasons, Gazette of India, Part V, page 24, 16th February, 1955),—*vide* Mulla's Code of Procedure, 12th edition, page 176.

By the same Amendment Act, rule 22 of Order 21 of the First Schedule of the Code of Civil Procedure was amended and in (1) (b) after the words "party to the decree," the following words were inserted, namely,—

"or where an application is made for execution of a decree filed under the provisions of section 44-A".

The result of this amendment was that where an application was made under section 44-A of the Code, the Court executing the decree had to issue a notice to the person against whom execution was applied for, requiring him to show cause, on a date to be fixed, why the decree should not be executed against him. There was no other condition precedent for the execution of the decree under section 44-A of the Code, and after the certified copies of the two documents mentioned-above are filed before a District Court

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in India, the decree shall be executed as if it had been passed by the District Court, and in this case it was not necessary for the Singapore High Court to have transferred this decree for execution to the District Judge at Jullundur.

In my opinion, two alternatives have been given to such a decree-holder. Either he can get his decree transferred in compliance with the provisions of section 39 of the Code from the Court which passed the decree, to a District Court in India for execution, or he can directly put in an application for execution under section 44-A of the Code before the District Court in India, together with a certified copy of the decree and a certificate from such Court stating the extent, if any, to which the decree had been satisfied or adjusted. He can choose any of the two alternatives. In either of the two cases, the decree-holder will have to make an application to the Court which passed the decree—in one case, for the transfer of the decree for execution, and in the other, for obtaining a certificate of non-satisfaction, and in both the cases it would be for the Court passing the decree either to grant his application or refuse the same, depending on the facts of each particular case. The judgment-debtor in both the cases would be entitled to raise suitable objections before the Court which passed the decree, and it is only after his objections are heard that the application of the decree-holder would be disposed of.

In the present case, the certificate produced by the decree-holder is dated the 4th March, 1959, and it specifically mentions the terms of the decree that had been passed by the Singapore High Court against the judgment-debtor. It further mentions that no order for the stay of that execution had been obtained, and that the decree-holder was

entitled to recover from the judgment-debtor the decretal amount along with costs. It also certifies that nothing has been paid towards the satisfaction of the decree. In view of this certificate and the certified copy of the decree, nothing more was needed by the executing Court for executing this decree.

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The second question for decision in this case is as to what is the effect of the judgment-debtor having been adjudged an insolvent by the Singapore High Court on the 22nd July, 1955.

Learned counsel for the judgment-debtor submits that under section 8 of the Bankruptcy Ordinance of the Colony of Singapore, the Official Assignee became the Receiver of the entire property of the judgment-debtor and the decree-holder was left with no remedy under the decree, except that he could prove his debt in the Insolvency Court at Singapore and share the assets of the judgment-debtor along with his other creditors. The learned counsel drew my attention to sub-clause (2) of section 28 of the Provincial Insolvency Act, 1920, which is as follows :—

“(2) On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors, and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the

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leave of the Court and on such terms as the Court may impose.”

and submits that the position of law in Singapore is exactly the same as is prevailing in India. He further submits that the adjudication order will affect all kinds of properties of the judgment-debtor, movable and immovable, and wherever situate, but there was only one exception to this general rule, namely, that if some creditor had already attached some property of the judgment-debtor (insolvent) before the order of adjudication, his rights will not be affected. Learned counsel for the decree-holder, on the other hand, submits that the foreign adjudication order will not have the effect of vesting the immovable property of the insolvent in the Official Assignee and that property will be governed by the law of the land where it is situate.

After hearing the learned counsel for the parties at length, I am of the view that the position taken by the learned counsel for the decree-holder is correct. In *Anantapadmanabhaswami v. Official Receiver of Secunderabad* (1), it was observed at page 135—

“The rule of private international law is clearly laid down in *Galbraith v. Grimshaw* (1910 A.C. 508), as regards movable estate, for it is settled that no adjudication order is recognised as having the effect of vesting in the receiver any immovables in another country.”

Reference may also be made to *In re Summer-mull Surana*, (2), where it was observed that an

(1) A.I.R. 1933 P.C. 134.

(2) A.I.R. 1932 Cal. 124.

adjudication order does not operate to vest the insolvent's immovable property situated in a foreign State in the Official Assignee.

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In re Sumermull Surana (1), reliance was placed upon a Division Bench authority of the same Court in *Re Mogi and Co., The Yokohama Specie Bank, Ltd. v. Curlender and Co.* (2), where it was held—

“So far as movable property is concerned, the general principle is that it is subject to that law which governs the person of the owner.

As regards immovables in a foreign country such as Japan, the view of international law taken by English and British Indian Courts is that Indian Statutes do not operate unless indeed it is shown that the foreign law will give them effect.”

Cheshire in the fifth edition of his *Private International Law* observed at page 554—

“In the United States of America and in European countries with few exceptions, the general rule is that the *lex situs* is the governing law for all questions that arise with regard to immovable property; ‘The consent of the tribunals’, says Story, ‘acting under the common law, both in England and America, is in a practical sense absolutely uniform on the same subject. All the authorities in both countries, so far as they go, recognize the principle in its fullest import, that real estate, or

(1) A.I.R. 1932 Cal. 124.

(2) A.I.R. 1926 Cal. 898.

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immovable property, is exclusively subject to the laws of the government within whose territory it is situate'."

In Dicey's Conflict of Laws, seventh edition, page 512, it is stated—

"As a general rule, all questions that arise concerning rights over immovable (land) are governed by the law of the place where the immovable is situated (*lex situs*). The general principle is beyond dispute, and applies to rights of every description. It is based upon obvious considerations of convenience and expediency. Any other rule would be ineffective because in the last resort land can only be dealt with in a manner which the *lex situs* allows."

The learned District Judge has referred to the following passage from the judgment of the House of Lords in *Galbraith v. Grimshaw, etc.* (1)—

"Now so far as the general principle is concerned it is quite consistent with the comity of nations that it should be a rule of international law that if the Court finds that there is already pending a process of universal distribution of a bankrupt's effects it should not allow steps to be taken in its territory which would interfere with that process of universal distribution ; * * *"

I do not find anything in these observations which go to show that the adjudication order

(1) 1910 A.C. 508 at p. 513.

will affect the immovable property of the insolvent in another country. It is also significant to mention that in that authority the property involved was movable and not immovable.

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Reliance was also placed on a Division Bench authority in *B. Veeranna Sha and another v. Official Receiver* (1), for holding that immovable property of the insolvent in India in the present case was not open to attachment by the decree-holder. I am afraid the learned District Judge has mis-applied this authority. Nowhere it has been held in this authority that the adjudication order will affect the insolvent's *immovable* property in a foreign country. The learned Judges in that case were not dealing with immovable property. They had, as a matter of fact, relied upon *Anantapadmanabhaswami v. Official Receiver of Secunderabad* (2), already referred to above.

In view of what I have said above, I am of the opinion that the adjudication order passed by the Singapore High Court had no effect on the immovable property of the insolvent in the District of Jullundur and consequently this property could be proceeded against by the decree-holder-appellant.

The third point for determination is whether the execution application was barred by limitation or not. The learned counsel for the judgment-debtor submitted that the decree in the present case was passed on the 22nd of September, 1954, and the present execution application was filed on the 12th January, 1959, and was obviously barred by time.

(1) A.I.R. 1940 Mad. 47.

(2) A.I.R. 1933 P.C. 134.

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This objection was not taken by the judgment-debtor before the executing Court, but the learned counsel relied on section 3 of the Indian Limitation Act for his submission that though this point was not taken before the lower Court, still it could be taken in this Court because (a) it was a law point, and (b) it was the duty of the Court to dismiss the application for execution if it was found to have been filed after the period of limitation prescribed therefor, although limitation had not been set up as a defence.

As regards the question as to whether the executing Court in this case could entertain this objection, my attention was drawn to the provisions of sub-section (3) of section 44-A, Civil Procedure Code, where it is mentioned that the provisions of section 47 of the Code shall apply to the proceedings of a District Court executing a decree under this section, and it was submitted that the question of limitation related to the execution of the decree as provided for in section 47, Civil Procedure Code.

Regarding the question as to which Limitation Act would apply when a foreign decree is being executed in this country, reliance was placed upon a Division Bench authority, *Nabibhai Vazirbhai v. Dayabhai Amulakh* (1), for the proposition that the law of limitation of the country where the decree was being executed would apply.

In view of what I have said above, I find that the objection regarding limitation could be taken by the judgment-debtor and was entertainable by the executing Court, and that the Indian Law of Limitation would apply in order to see whether the execution application was within time or not. But since this point was not raised before the

(1) I.L.R. 40 Bom. 504.

executing Court and it is a mixed question of fact and law, I would remand the case to the executing Court for deciding as to whether the execution application was filed within limitation or not. If the Court finds that the execution application is within limitation, he should dispose it of according to law. Parties have been directed to appear before the Court below on 9th January, 1961. In the peculiar circumstances of the case, I will make no order as to costs in this Court.

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APPELLATE CIVIL

Before Inder Dev Dua and Prem Chand Pandit, JJ.

GURDIP SINGH,—*Appellant.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Regular First Appeal No. 243 of 1957

Pension—Claim to—Whether a legal right and enforceable in a Court of law—Pension—Meaning and nature of.

1960
—
Dec., 13th.

Held, that the right to pension is justiciable and can be enforced through Civil Courts. The word pension, in relation to government servants, must be given a meaning of periodical payment by a Government to a person in consideration of past services. This periodical payment must be construed so as to stimulate efforts in the performance of duty by Government servant and, therefore, in order to achieve this object this right must not be made to depend on the arbitrary and uncontrolled whim of the authorities. The law of pensions is basically statutory and so long as the provision under which the pensions are sanctioned remains in force, the person in whose favour they are sanctioned is entitled to claim them. The fact that they are