The Union of India and others v. M/s. Bhanamal-Gulzarimal, Ltd. and others

Gajendragadkar, J.

impugned clause was not at all similar to clause 4(3) with which this Court was concerned in the case of *M/s. Dwarka Prasad Naxmi Narain* (1). The appellants contended that the reasons given by this Court in upholding s. 3 of the Order applied with equal force to clause 11B in the present appeals. It cannot be said that there is no force in this contention. In the result we hold that neither clause 11B of the Order nor the impugned notification issued by the Controller on December 10, 1949, violate the respondents' fundamental rights under Arts 19 (1) (f) and (g), and so their validity cannot be successfully challenged.

The orders passed by the High Court on the writ petitions filed by the respondents before it would, therefore, be set aside and the said petitions dismissed.

Subba Rao, J.

SUBBA RAO, J.—I have had the advantage of perusing the judgment of my learned brother, Gajendragadkar, J. I agree with his conclusion.

The question raised in this case is whether clause 11B of Iron and Steel (Control of Production And Distribution) Order, 1941, violates the fundamental rights enshrined in Art. 19 (1) (f) and (g) of the Constitution. In view of the decision of this Court in *Harishankar Bagla* v. *The State of Madhya Pradesh* (1), which is binding on us, I agree with my learned brother that clause 11B of the said Order is valid. I do not propose to express my view on any other question raised in this appeal.

B. R. T.

APPELLATE CIVIL

Before I. D. Dua, J.

BISHAN SINGH,—*Appellant*

versus

SARDARNI GURNAM KAUR,—*Respondent*

Execution Second Appeal No. 19 of 1959:

1959

Dec., 16th

Patiala Relief of Indebtedness Act (Act No. V of 1999 Bk)—Sections 15A, 25 and 26—Effect of—Indian

(1) [1954] S.C.R. 803

Limitation Act (IX of 1908)—Section 14—Appeal against the order of Debt Conciliation Board filed before the Deputy Commissioner—Appeal held to be incompetent—Time spent in prosecuting the appeal—Whether can be excluded in computing the period of limitation for filing execution application—Article 182—"Proper Court" and "in accordance with law"—meaning of—Indian Limitation Act (IX of 1908)—Construction of.

Held, that the essential priciple underlying section 25 of the Patiala Relief of Indebtedness Act seems to be that so long as the question of determination of the debt for the purposes of the said Act remains *sub-judice*, no suit or other proceedings for the recovery of any debt covered by the proceedings before the Board should be entertained or continued. It is an intelligible rule because so long as there is any question *sub judice* between the parties, those affected should not be compelled to pursue what the Privy Council described as "the so often thorny path of execution which, if the final result is against the party concerned, may lead to no advantage."

Held, that as soon as the judgment-debtor preferred an appeal from the decision of the Debt Conciliation Board, those proceedings became a part of and a further stage, and, therefore, a continuation, of the original proceedings before the Board and the judgment-debtor cannot be permitted to defeat the decree-holder's right by urging that the appeal filed by him was incompetent.

Held, that the time spent during the appellate proceedings with the Deputy Commissioner, even though ultimately the appeal was held to be incompetent, can be excluded while computing the period of limitation for filing the execution application.

Held, that the expression "Proper Court" in Article 182(5), Limitation Act, should be construed to mean the Court which normally has inherent power under the general law relating to execution of decrees to entertain execution applications. It does not refer to any other obstacle temporarily created in the way of the decree-holder in executing the decree itself or in the way of the Court to immediately proceed with the execution of the decree.

Held, that the expression "in accordance with law" refers to the procedural rules under the general law governing the subject of making execution applications. This expression would not cover the case where, because of some other proceedings, the Court is temporarily not in a position forthwith to proceed to grant effective relief to the decree-holder, but must stay its hand till such other proceedings are finally terminated.

Held, that the provisions of the Limitation Act are, generally speaking, to be strictly construed in favour of the right to proceed, and unless the objection on the ground of limitation is clearly established, a legitimate claim of a creditor should not be lightly rejected.

...*Execution Second Appeal from the order of Shri E. F. Barlow, District Judge, Patiala, dated 13th November, 1958, reversing that of Shri Joginder Singh, Sub-Judge, 2nd Class, Nabha, dated 2nd May, 1958, and holding the second execution application to be within time and remanding the case to the executing Court with direction that it shall proceed with the execution application according to law.*

M. R. SHARMA, for Appellants.

D. S. KANG, for Respondent.

JUDGEMENT.

Dua, J.

DUA, J.—On 9th April, 1953 the decree-holder respondent obtained a decree for a sum of Rs. 1,750 with costs against Bishan Singh judgment-debtor appellant. An execution application was filed on 1st August, 1953 which was dismissed on 3rd of November of the same year. A second execution application was presented on 29th August, 1957. The question which arises for consideration is whether or not this application is barred by limitation. Since *prima facie* it appeared to be out of time, the decree-holder contended that more than a year had ben spent in proceedings before the

Debt Conciliation Board and the time so spent before the Board as well as in appeal before the Appellate Authority should also be excluded. It appears that the judgment-debtor had filed n application before the Debt Conciliation Board on 9th June, 1953 which was decided on 30th June, 1954. The judgment debtor then preferred an appeal with the Deputy Commissioner which was finally held on 28th February, 1955 to be incompetent. Time spent before the Board and before the Appellate Authority was sought to be excluded in view of section 26 of the Patiala Relief of Indebtedness Act read with section 14 of the Indian Limitation Act. The Subordinate Judge dealing with the execution application disagreed with the contention of the decree-holder and held that time in this case started running from 30th June 1954 when the proceedings in the Conciliation Board concluded. The execution petition having been filed more than three years after the said date was thus barred by time.

Sardarni Gurnam Kaur took an appeal to the Court of the learned District Judge, Patiala, who disagreeing with the executing Court held the execution application to be within limitation, and setting aside the order of the first Court remanded the case for proceeding with the execution application according to law. The learned District Judge does not appear to have decided whether or not the period spent in appeal before the Deputy Commissioner could be excluded, but he calculated the time spent in proceedings before the Board to be one year and 21 days, and adding this period to three years, the prescribed period, he considered the execution application to be within limitation. The learned District Judge also observed that the executing Court entertained the first application for execution wrongly because the application of

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the judgment-debtor which had been filed by him on 9th June, 1953, before the Board was still pending when the execution petition was instituted on 1st August, 1953. Proceedings on this application could, according to the Court below, however, only be suspended, and the petition could not be dismissed until the Board had decided the application for conciliation filed by the judgment-debtor.

Aggrieved by the order of the learned District Judge, judgment-debtor Bishan Singh has come to this Court on second appeal, and Mr. M. R. Sharma, his learned counsel, has contended that the period spent in the appeal before the Deputy Commissioner could not be excluded while computing the period of limitation for the execution application and that the calculation of the lower appellate Court is not correct, with the result that the execution application has been erroneously held to be within time.

In order to appreciate the question that arises for consideration before me, the following three sections of the Patiala Relief of Idebtedness Act, 1999 Bk. (Act No. V of 1999 Bk.), should be set out at this stage:—

> "15. A. (1) If a creditor or debtor, as the case may be, challenges the genuineness or enforceability of any debt included in an application, the board shall adjudicate upon the issue.
>
> (2) Any person aggrieved by a decision of the board under sub-section (1) may appeal therefrom to the Nazim.
>
> (3) The period of limitation for an appeal under this section shall run from the

date of the order appealed against and shall be thirty days.

(4) An appeal shall not lie from an order refusing to review or confirming on review a previous order.

(5) Notwithstanding any thing hereinbefore contained, no appeal or application for revision shall lie against a decision of the board under sub-section (1) unless the aggregate value of the items in regard to which the appeal is preferred exceeds two thousand rupees.

(6) No order passed under this section shall be open to question in a civil Court."

* * *

"25. When an application has been made to a board under section 9 or section 23 no civil vourt shall entertain any new suit or other proceeding brought for the recovery of any debt covered by such application and any suit or other proceeding pending before a civil Court in respect of any such debt shall be suspended until the board has dismissed the application or an agreement has been made under section 17.

(2) When any execution proceeding pending before a civil court is suspended under sub-section (1) and any animal has been attached and made over to supardar in connection with such proceeding, the judgment-debtor shall be entitled to the return of such animal but shall not be competent to sell or in

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any way part with the ownership of any animal so attached during the suspension of such proceeding; and if the judgment-debtor has been committed to a civil prison in connection with such proceedings he shall be released forthwith."

"26. The time spent in proceedings before a conciliation board and the time during which a person is debarred from suing or executing his decree under the provisions of this part of this Act shall be excluded when counting the period of limitation for any application, suit or appeal."

The counsel contends that under section 25(1) when an application has been made to a Board under section 9 or section 23, no civil court can entertain any new execution proceeding for the recovery of a debt covered by such application and any execution petition pending before a civil Court in respect of such debt must be suspended until the Board has either dismissed the application or an agreement has been made under section 17. The counsel has then submitted, that under section 26, the time spent in proceedings before a Conciliation Board and the time during which a person is debarred from executing his decree under Act No. V of 1999 Bk. alone can be excluded for the purposes of counting the period of limitation for an execution application. It is emphasized that during the period the appeal was pending the decree-holder was not debarred from executing his decree under any provision of the aforesaid Act. He had also in this connection referred to section 15-A which, according to him, confers a very restricted right of appeal from the decisions of the Board and, indeed, he has submitted that in the

present case the appeal was actually held to be incompetent on 28th of February 1955. An incompetent appeal, the counsel argued, could, by no stretch, entitle the decree-holder to exclude the period during which such appeal was kept pending. Connected with this contention is the argument that in order to take advantage of Article 182(5) of the Limitation Act the final order must be passed on an application for execution made in accordance with law to the proper Court. It has been stressed that in the instant case it was not open to the civil Court to entertain an execution application during the period the proceedings were pending in the Conciliation Board, with the result that the first application for execution could not be considered to be an application made in accordance with law to the proper Court; nor could such an application be considered to have been made to take some step-in-aid of execution of the decree. In support of his contention he has placed reliance on the folowing decided cases: In *Munnu Chamar* v. *Hari Narain and another* (1), it was observed that the expression "applying in accordance with law" must mean applying to the Court to do something in execution which by law the Court is competent to do and it does not mean applying to the Court to do something which, either to the decree-holder's direct knowledge in fact or from his presumed knowledge of law, he must have known the Court was incompetent to do. In the reported case an application made to a Court of Small Causes for execution of a money decree by attachment and sale of immovable property was held not in accordance with law within the meaning of clause (5) of Article 182, Limitation Act. In *Gopal Parsharam Namjoshi and others* v. *Damodar Janardan Bhagwat* (2), it was observed that a mere

(1) A.I.R. 1947 All. 352
(2) A.I.R. 1943 Bom. 353

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compliance with the formal requirements of the Code of Civil Procedure as to the manner of filing, and the particulars to be shown in, an application for execution would not suffice to make it an application in accordance with law. The main test of an application being in accordance with law is whether it is possible for the Court to issue execution upon it, i.e., whether it is within the power of the Court to grant the kind of relief asked for, though in the particular case the relief may not, on the merits, be granted, e.g., owing to some finding on facts, not to the nature of the application itself. The counsel has also contended that section 14 of the Limitation Act is inapplicable to administrative tribunals such as the Debt Conciliation Board and, therefore, the decree-holder cannot derive any assistance from this section. He has also drawn my attention to *K. L. Gauba* v. *Pb. Cotton Press Co., Ltd. (in liquidation)* (1) *Jambar Alo* v. *Ram Ditta Mal* (2), and Firm *Thakar Dass Madan Mohan Ahuja* v. *Mst. Kashalya Devi* (3) in support of the contention that civil Court can consider whether or not the appeal filed by the judgment-debtor before the Deputy Commissioner was competent. He has also in this connection emphasized that the decree of the civil Court is under the law conclusive so far as the decretal amount is concerned and the decree being only for a sum of Rs. 1,750, under section 15-A (5) of the Patiala Relief of Idebtedness Act, no appeal or revision was competent against the decision of the Board.

Mr. Kang, the learned counsel for the respondent, has, on the other hand, contended that the competency of the appeal is really immaterial, provided an appeal has actually been preferred

(1) A.I.R. 1941 Lah. 234
(2) A.I.R. 1948 Lah. 32
(3) A.I.R. 1949 E.P. 27

and entertained by the appellate tribunal. In support of his contention he has placed reliance on *Nagappa Bandappa Kadadi* v. *Gurushantappa Shankrappa Umarji* (1), where it is observed that there is no definition of "appeal" in the Civil Procedure Code and any application by a party to an appellate Court asking to set aside a decision of a subordinate Court is an appeal within the ordinary acceptation of the term and an appeal is no less an appeal because it is irregular or incompetent. For these observations the learned Judges of the Bombay High Court derived support from a decision of the Privy Council reported as *Nagendra Nath Dey and another* v. *Suresh Chandra Dey and others* (2).

After considering the contentions raised at the Bar, in my opinion the decision of the learned District Judge must be upheld. As soon as the judgment-debtor preferred an appeal from the decision of the Debt Conciliation Board, those proceedings became a part of and a further stage, and, therefore, a continuation, of the original proceedings before the Board and, in my opinion, the judgment-debtor cannot be permitted to defeat the decree-holder's right by urging that the appeal filed by him was incompetent. It has not been contended, and indeed it is difficult to contend, that on appeal the Deputy Commissioner does not exercise all the powers and functions of the Board, including the power to pass orders under section 17 of the Patiala Act or to dismiss the debtor's petition. With respect to the argument that the appeal was incompetent, as observed by Sir Dinshah Mulla while delivering the judgment of the Privy Council in *Nagendra Nath Dey and another* v.

(1) A.I.R. 1933 Bom. 255
(2) A.I.R. 1932 P.C. 165

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Suresh Chandra Dey and others (1), any application by a party to an appellate Court asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term, and it is no less an appeal because it is irregular or incompetent. This principle is, in my view, also in consonance with reason and justice. In the reported case the above observations were made while construing clause (2) of Article 182 of the Limitation Act. This decision has since been approved by the Supreme Court in *Raja Kulkarni* v. *The State of Bombay* (2), and in *Messrs Mela Ram and Sons* v. *Commissioner of Income-tax, Punjab* (3). In the former case Ghulam Hasan, J., on behalf of the Court, spoke thus:—

> "Whether the appeal is valid or competent is a question entirely for the Appellate Court before whom the appeal is filed to determine, and this determination is possible only after the appeal is heard, but there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent, e.g., when it is held to be barred by limitation or that it does not lie before that Court or is concluded by a finding of fact under section 100 of the Civil Procedure Code. From the mere fact that such an appeal is held to be unmaintainable on any ground whatsoever, it does not follow that there was no appeal pending before the Court."

In the latter case an appeal, though presented beyond the period of limitation and, therefore, liable to be dismissed *in limine*, was nevertheless held to be an appeal in the eye of law.

(1) A.I.R. 1932 P.C. 165
(2) A.I.R. 1954 S.C. 73
(3) A.I.R. 1956 S.C, 367

The essential principle underlying section 25 of the Patiala Relief of Indebtedness Act seems to be that so long as the question of determination of the debt for the purposes of the said Act remains *sub-judice*, no suit or other proceeding for the recovery of any debt covered by the proceedings before the Board should be entertained or continued. It is an intelligible rule because so long as there is any question *sub judice* between the parties, those affected should not be compelled to pursue what the Privy Council described "the so often thorny path of execution which, if the final result is against the party concerned, may lead to no advantage". I would, therefore, be inclined to hold that the time spent during the appellate proceedings with the Deputy Commissioner, even though ultimately the appeal was held to be incompetent, can be excluded while computing the period of limitation for the execution application. In this view it is unnecessary to decide whether or not civil Court can go into the question of the competency of the appeal before the Deputy Commissioner.

Coming to the next point, that the previous execution application was not made in accordance with law to the proper Court, in my opinion here again the decree-holder is entitled to succeed. The expression "proper Court" in Article 182(5), Limitation Act, should be construed to mean the Court which normally has inherent power under the general law relating to execution of decrees to entertain execution applications. It does not refer to any other obstacle temporarily created in the way of the decree-holder in executing the decree itself or in the way of the Court to immediately proceed with the execution of the decree. Similarly the expression "in accordance with law" would appear to refer to the procedural rules

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under the general law governing the subject of making execution applications. This expression would not, in my opinion, cover the case where, because of some other proceedings, the Court is temporarily not in a position forthwith to proceed to grant effective relief to the decree-holder, but must stay its hand till such other proceedings are finally terminated. The authorities on which Mr. Sharma has placed reliance are clearly distinguishable on facts and seem to be consistent with the view which I have expressed. In all those cases there was inhedent incomtence in the Court concerned to grant the relief claimed by the respective decree-holders.

In so far as the applicability of section 14, Limitation Act, is concerned, it is true that in terms the section deals with the proceedings in Court but the word "Court" has not been defined in the Limitation Act. The point is undoubtedly, not free from difficulty and it has also not been fully and properly debated before me. But there is a tendency discernible in Courts not to restrict the operation of this section, but to follow its principles in suitable cases, even in proceedings which cannot technically and strictly be called proceedings in a Court of law, provided, of course, the conduct of the person claiming its benefit has been bona fide, who has established his good faith, and further that he has been prosecuting with due diligence another civil proceeding. See *K. B. Mohammad Maqsood Ali Khan* v. *B. Hoshiar Singh* (1), Without, however, deciding the question of the applicability of section 14 of the Limitation Act, in my view, the respondent decree-holder is entitled to succeed on both grounds stated by me earlier. It must also be borne in mind that the provisions of the Limitation Act are, generally

(1) A.I.R. 1945 All. 377

speaking, to be strictly construed in favour of the right to proceed, and unless the objection on the ground of limitation is clearly established, a legitimate claim of a creditor should not be lightly rejected.

For the reasons given above, this appeal fails and is dismissed, but in the peculiar circumstances there will be no order as to costs in this Court.

R. S.

APPELLATE CIVIL

Before Mehar Singh and K. L. Gosain, JJ.

LAL SINGH AND OTHERS,—*Appellants*

versus

ISHAR SINGH AND OTHERS,—*Respondents*

Regular Second Appeal No. 621 of 1955

1959

Dec., 22nd

Custom—Ludhiana District—Adoption of a sister's son—Whether valid.

Held, that there is no prohibition amongst the agriculturists of Ludhiana District with regard to the adoption of a sister's son as is clear from the answer to Question 67 of the Customary Law of that district. The Jats of Ludhiana District have undoubtedly got the power of adoption and the matter of choice whether it relates to the question of degree of relationship or of the adoptee being a kinsman of the adopter or belonging to a particular *got* or caste or creed is certainly a matter, the regulation of which should not, generally speaking, be considered to be mandatory.

Second Appeal from the decree of the Court of Shri Harbans Singh, District Judge, Ludhiana, dated the 9th day of May, 1955, modifying that of Shri Badri Parshad Puri, Additional Sub-Judge, 1st Class, Ludhiana, dated the 23rd June, 1954, (granting the plaintiffs a decree for a declaration to the effect that the adoption of defendant No. 2 by defendant No. 1 and the gift by defendant No. 1 in favour