
Before Viney Mittal, J.

SITA RAM,—*Petitioner*

versus

MAHADI AND OTHERS,—*Respondents*

C.R. No. 1872 of 2002

8th March, 2006

Limitation Act, 1963, Art. 136—Decree for possession passed by trial Court—Dismissal of appeals filed by judgment debtors upto Supreme Court—Decree holder seeking execution of the decree—Executing Court dismissing petition holding the same barred by limitation—Whether the period of limitation for executing a decree is to commence from the original decree in case there is no stay by the appellate Court—Held, no—Whenever a decree of trial Court is challenged by a competent appeal, the appeal is considered as a continuation of the suit—Even if there is no stay granted during the course of appeal the decree would be enforceable for purpose of limitation as passed by the Appellate Court—Petition allowed, order of Executing Court set aside while directing the Court to proceed in accordance with law.

Held, that under Article 182 of the Limitation Act, 1908, the period for execution of a decree or order of a civil Court for which there was no provision in Article 183, period was to run from the date of the decree or order, or where there had been an appeal, from the date of final decree or order of the Appellate Court, or withdrawal of the appeal. On enactment of Limitation Act, 1963, Limitation Act, 1908, stood repealed. Article 136 of 1963 Act provides for limitation for the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court.

(Paras 8 & 9)

Further held, that the controversy in question is squarely covered in favour of the petitioner by the judgment of this Court in **Chhota Ram and others versus Naginder Singh and others**, Civil Revision No. 1496 of 1998, decided on May 28, 1998 and the judgment of the Apex Court in **Chandi Prasad and others versus Jagdish Prasad and others**, (2004) 8 SCC 724. The present petition

is allowed. The order of Executing Court dated 7th November, 2001 is set aside. The matter is remanded back to the Executing Court for proceeding with the execution petition, in accordance with law.

(Paras 17 & 18)

H.N. Mehtani, Advocate, *for the petitioner.*

R.K. Gupta, Advocate, *for the respondents.*

JUDGMENT

VINEY MITTAL, J.

(1) On a request made by Mr. H.N. Mehtani, the learned counsel appearing for the petitioner, at the outset, the present petition is treated to be a petition filed under Article 227 of the Constitution of India.

(2) The petitioner is a decree-holder. A decree for possession dated January 31, 1976 was passed in his favour by the trial Court. The defendant/Judgment-debtors filed Regular Second Appeal No. 482 of 1977 before this court. Later on, because of the amendment in Punjab Courts Act and the jurisdiction of the District Judge having been enhanced, the aforesaid first appeal was transferred to District Judge for disposal. *Vide* judgment and decree dated May 26, 1980, the appeal filed by the defendants was dismissed by the learned Appellate Court. A Regular Second Appeal No. 1578 of 1980, was filed by the defendants before this Court. On July 18, 1980, by way of an interim order, this Court stayed the dispossession of the defendants. However, finally the Regular Second Appeal filed by the defendants was dismissed by this Court on October 23, 1984. It appears from the record that a Special Leave Petition filed by the defendants also failed before the Apex Court, when the same was dismissed on March 31, 1994.

(3) The decree-holder filed an execution petition on June 15, 1994, seeking execution of the decree. In the execution petition, the judgment-debtors filed an objection petition. The main objection taken by the Judgment-debtors was *qua* limitation. It was maintained by the judgment-debtors that since the original decree had been passed by the trial Court on January 31, 1976, therefore, the execution petition filed by the decree-holder on June 15, 1994 was barred by limitation.

(4) The objections filed by the judgment-debtors were contested by the decree-holder. It was pleaded by him that since the original decree had been challenged by way of first appeal and second appeal and even through a Special Leave Petition, therefore, the execution petition filed by him after the disposal of the Special Leave Petition on March 31, 1994 was within limitation.

(5) The learned Executing Court,—*vide* order dated 7th November, 2001 has allowed the objections filed by the defendant/judgement-debtors. The execution petition filed by the decree-holder has been held to be barred by limitation. The learned Executing Court has primarily relied upon a judgment of the Hon'ble Supreme Court of the India in the case of **Rattan Singh versus Vijay Singh (1)**. The order passed by the Executing Court has been challenged by the decree-holder through the present revision petition.

(6) The facts as noticed above, clearly show that the first appeal filed by the defendant/judgment-debtors against the original decree dated 31st January, 1976 had been dismissed by the learned District Judge on 26th May, 1980. Regular Second Appeal filed by the defendant being R.S.A. No. 1578 of 1980 was dismissed on 23rd October, 1984. The Special Leave Petition filed by the defendants failed before the Apex Court on 31st March, 1994.

(7) In these circumstances, the primary question which arises for consideration in the present revision petition is as to whether under Article 136 of the Limitation Act, 1963, whether the period of limitation for executing a decree is to commence from the original decree or in case of an appeal, the said period is to commence from the Appellate decree ?

(8) Under Article 182 of the Limitation Act, 1908, the period for execution of a decree or order of a civil Court for which there was no provision in Article 183, period of limitation provided was three years and the said period was to run from the date of the decree or order, or where there had been an appeal, from the date of final decree or order of the Appellate Court or withdrawal of the appeal.

(1) (2001) 1 S.C.C. 469

(9) On enactment of Limitation Act, 1963, Limitation Act, 1908, stood repealed. Article 136 of 1963 Act provides for limitation for the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil Court. For the sake of ready reference, Article 136 of the 1963 Act may be noticed as follows :--

“ARTICLE 136

Description of suit	Period of Limitation	Time from which period beings to run.
136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of the civil court.	Twelve years	(When) the decree or order becomes enforceable or where the decree of any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement of execution of a decree granting a prepetual injunction shall not be subject to any period of limitation.”

(10) From the perusal of Article 136, on the first impression, the decree sought to be executed becomes enforceable, the moment it is passed if it is not stayed in appeal or revision, as the case may be. Therefore, the interpretation sought to be suggested by the learned counsel for the respondents is that the period of limitation would continue to run from the date when the decree becomes enforceable i.e. passing the original decree, in case there is no stay. The learned counsel for the judgment-debtors/respondents has vehemently argued that a mere filing of the appeal cannot operate as a stay of the decree, and therefore, the period of limitation for

executing such a decree would commence from the date of passing of the decree itself. In support of the contention, the learned counsel has placed strong reliance upon two single Bench judgments of this Court in the case of **Bharat Nidhi Ltd. versus M/s Sehgal Bros. and others (2)** and **Diwan Singh versus Om Parkash and others (3)**. The said judgments' of course, support the proposition posed by the learned counsel for the judgment-debtors/respondents. Further reliance has been placed by the learned counsel upon the judgment of the Apex Court in the case of **Rattan Singh versus Vijay Singh (supra)**. The judgment in **Rattan Singh's** case has also been relied upon by the Executing Court.

(11) On the other hand, the learned counsel appearing for the decree-holder/petitioner has vehemently argued that the decree, which is sought to be executed by the petitioner/decreed-holder has merged into the decree of the first Appellate Court and that of the High Court. According to the learned counsel, a Special Leave Petition filed by the judgment-debtors had been dismissed by the Hon'ble Supreme Court of India on 31st March, 1994. In these circumstances, the learned counsel has maintained that the execution petition filed by the decree-holder on 15th June, 1994, immediately after the dismissal of the Special Leave Petition filed by the judgment-debtors, could not be treated to be barred by limitation.

(12) I have duly considered the rival contentions of the learned counsel for the parties. In my considered view, the present revision petition deserves to be allowed.

(13) Identical controversy, as involved in the present revision petition, was involved in the case of **Chhota Ram and others versus Naginder Singh and others**, Civil Revision No. 1496 of 1998, decided on 28th May, 1998, by a Single Bench of this Court. The learned Single Judge in the aforesaid case had duly noticed the law laid down in **Diwan Singh's** case (supra), which had followed **Bharat Nidhi Ltd's.** case (supra) and after noticing the pronouncements by different High Courts and also noticing the law laid down in

(2) 1979 R.L.R. 199

(3) 1998 (2) PLR 694

Lakshmi Narayan Guin and others versus Niranjan Modak, (4) had held that whenever a decree of trial Court is challenged by a competent appeal, the appeal is considered as a continuation of the suit and when the appellate decree affirms, modifies or reverses the decree on the merits, the trial Court decree is said in law, to merge in the appellate decree, and it is the appellate decree which rules. On the basis of the aforesaid law, the following observations made in **Chhota Ram's** case, may be noticed :—

“After pondering thus for some of the precedents, it is clear that period of limitation would be reckoned from the date, the appeal was dismissed. Even if there was no stay granted during the course of the appeal, the decree would be enforceable for purpose of limitation as passed by the Appellate Court. The doctrine of merger permits us to say so. The moment Appellate Court decree comes into being, the original judgment and decree loses its independent entity. Consequently, the learned trial court, therefore, rightly held that it was within time. There is no ground to interfere in the order of the trial court.”

(14) In a recent judgment, an identical controversy was also raised before the Hon'ble Supreme Court of India in the case of **Chandi Prasad and others vs. Jagdish Prasad and others,** (5) The Hon'ble Supreme Court noticed the law laid down in **Rattan Singh's** case(*supra*) and it was explained that in **Rattan Singh's** case the execution petition had been filed beyond the period of limitation, even after the Appellate Court judgment. **Rattan Singh's** case was explained by holding that the second appeal against the judgment of the first Appellate Court had been filed in that case after the period of limitation and the second appeal was dismissed as barred by limitation. Execution petition had been filed by the decree -holder much after the period of limitation from the date of the appellate Court decree. Consequently, it was held that **Rattan Singh's** case had no application to the proposition of law to the effect that the limitation would commence from the date of the original decree and not from the appellate decree or revisional order.

(4) AIR 1985 S.C. 111

(5) (2004) 8 S.C.C. 724

(15) In **Chandi Prasad's** case (*supra*), the Apex Court held as under :—

“The reasons for bringing on the statute-book, the present Article 136 may be noticed. By reasons of the said amendment, the filing of the execution petition has been simplified and the difficulties faced for computation which used to arise for grant of stay or not have become immaterial. In terms of Article 136 of the Act, thus, a decree can be executed when it becomes enforceable. Article 136 substantially reproduces the provisions of Section 48(1) of the Code of Civil Procedure which by reason of the Act stands repealed. In that view of the matter, Parliament thought it fit to provide for one period of limitation for an application for execution in stead and place governing each of the several execution applications which the decree-holder can make within a period of 12 years. It is not disputed that all decrees, be they original or appellate, are enforceable. Once a decree is sought to be enforced for the purpose of execution thereof irrespective of being original or appellate, the date of the decree or any subsequent order directing any payment of money or delivery of any property at a certain date would be considered to be the starting period of limitation. It is axiomatic true that when a judgment is pronounced by a High Court in exercise of its appellate power upon entertaining the appeal and a full hearing in the present of both parties, the same would replace the judgment of the lower court and only the judgment of the High Court would be treated as a final.

When an appeal is prescribed under a statute and the appellate forum is involved and entertained, for all intend and purport, the suit continues. The doctrine of merger is based on the principles of propriety in the hierarchy of the justice-delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation

passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time. It is trite that when an appellate court passes a decree, the decree of the trial court merges with the decree of the appellate court and even if and subject to any modification that may be made in the appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial court. When a special leave petition is dismissed summarily, doctrine of merger does not apply but when an appeal is dismissed, it does.”

(16) However, it was held that when an appeal against the original decree is dismissed on the ground of delay and the aforesaid delay is not condoned, the doctrine of merger shall not apply.

(17) In these circumstances, it is apparent that the controversy in question is squarely covered in favour of the petitioner by the judgment of this Court in **Chhlota Ram's** case and the judgment of the Apex Court in **Chandi Prasad's** case (*supra*).

(18) As a result of the aforesaid discussion, the present revision petition is allowed. The order of the Executing Court dated November 7, 2001 is set aside. The matter is remanded back to the Executing Court for proceeding with the execution petition, in accordance with law. Since the decree in question was originally passed in the year 1976 and the decree-holder has not been able to obtain the fruits of his decree, therefore, the learned Executing Court is directed to issue warrants of possession forthwith.