

(1985) 07 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 348 of 1984

Municipal Committee,
Nabha

APPELLANT

Vs

Padam Kumar

RESPONDENT

Date of Decision: July 25, 1985**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 11
- Limitation Act, 1963 - Section 5

Hon'ble Judges: R.N. Mittal, J**Bench:** Single Bench

Judgement

R.N. Mittal, J.

Briefly the facts are that Padam Kumar Petitioner filed a suit against the Municipal Committee, Nabha for a declaration that he, as a senior employee of the Defendant committee, was entitled to grade promotion to the post of either Sub Inspector of Octroi or Sanitary Inspector or Head Clerk or Cashier or Account or Meter Clerk or Tehbazari Clerk or Rent Collector or House-tax Inspector. The suit was decreed on 11th March, 1970 by the Subordinate Judge, Nabha. The Committee filed an appeal against the judgment and decree of the trial Court before the District Judge, Patiala through the Executive Officer. A preliminary objection was raised in the appeal by the Plaintiff that it had not been filed by a properly authorised person as no resolution of the Municipal Committee authorising the Executive Officer to file the appeal had been produced. The objection was upheld by the District Judge and the appeal was dismissed on this ground on 16th March, 1971.

2. The decree holder thereafter filed an execution application in the executing Court. In that petition a statement was made by the counsel for the judgment debtor on 9th December, 1971 that the decree holder had been posted as a Cashier. In view of that statement, the Court dismissed the execution application as fully satisfied on that day. The decree holder filed the present execution petition on 22nd January, 1983 stating that

he has not been granted the relief by the Committee in accordance with the decree

3. The Committee filed an objection petition and raised two objections, namely, that the execution application was barred by limitation and that the decree holder could not file the execution application after the decree had been satisfied. The objection petition was contested by the decree-holder. The executing Court held that the execution application was filed within 12 years from the date of the decision of the appellate Court and, therefore, it was within limitation and that merely because the first application was dismissed and satisfied does not debar the decree holder from filing the fresh petition as the rule of res-judicata as embodied in Section 11 of the CPC is not applicable to the execution proceedings. Consequently it dismissed the objections. The committee has come up in revision petition to this Court.

4. The first question that arises for determination is whether the execution application is within time. It is not disputed that if the limitation for execution is reckoned from the date of judgment of the trial Court, the execution application is not within time but if the date is reckoned from the date of judgment of the appellate Court, it is within time. It is therefore, to be seen in the present case whether the limitation is to be reckoned from the judgment of the trial Court or that of the appellate Court. Admittedly the appeal was dismissed on the ground that it was not filed by a properly authorised person. Under Order 41, Rule 1 of the Code it is required to be presented by the Appellant or his authorised agent; if it is not filed by such a person, it is no appeal in the eye of law and cannot be deemed to have been entertained by the appellate Court. The order by which the appeal stands disposed of amounts to an order of rejection of the memorandum of appeal and does not amount to a decree.

5. In the aforesaid view I am fortified by the observations of this Court in *Des Raj v. Om Parkash* R.S.A. 1318 of 1976, R.S.A. No. 1518 of 1976 (treated as Civil Revision No. 1936 of 1985), decided on 30th May, 1985 by a Division Bench to which I was a party. The facts of the case were that the Plaintiff-Appellant filed an appeal against the judgment and decree of the trial Court which was beyond limitation. He consequently filed an application u/s 5 of the Limitation Act for extending the period of limitation. The application was dismissed on the ground that there was no sufficient ground to condone the delay. In view of the dismissal of the application, the appeal was dismissed as barred by time. The Plaintiff came up in second appeal to this Court. The question arose whether a second appeal was maintainable against the judgment and decree of the first appellate Court. After taking into consideration the various decisions it was held that an order dismissing an appeal after dismissal of an application u/s 5 of the Limitation Act was not a decree and, therefore, no second appeal was maintainable against such an order. The ratio in the above case is applicable to the present case. A Division Bench of Allahabad High Court in [Mohammad Qamar Shah Khan Vs. Mohammad Salamat Ali Khan](#), held that where a memorandum of appeal was presented in the Court by an unauthorised person, it was no appeal at all and the Court may reject it for that obvious defect but the Court was not justified in treating that as an appeal in due form and rejecting the same as

statute barred

6. The limitation in the present case will, therefore, be reckoned from the date of the judgment of the trial Court and not from that of the appellate Court. If the date of execution is taken from the judgment of the trial Court, the execution application is beyond 12 years and thus not within limitation.

7. The second question that arises for determination is whether the order of the Court dated 9th December, 1971 operates as res judicata and the matter cannot be re-agitated by the decree-holder now. It is not necessary to elaborate the argument as Explanation VII to Section 11 of the CPC which relates to res judicata, provides that the provisions of section shall apply to a proceeding for execution of a decree. Therefore, the decree-holder cannot be allowed to re-agitate that the decree in his favour was not satisfied.

8. For the aforesaid reasons I accept the revision petition, set aside the order of the executing Court and dismiss the execution application with no order as to costs.