(1952) 04 RAJ CK 0019

Rajasthan High Court

Case No: Civ. Review (I.K.) No. 4 of 1950

Rajmal and Another		APPELLANT
	Vs	
Mt. Pepkanwar and Others		RESPONDENT

Date of Decision: April 9, 1952

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 2
- Rajasthan Appeals and Petitions (Discontinuance) Ordinance, 1949 - Section 3, 4

Citation: AIR 1952 Raj 178 : (1952) RLW 172

Hon'ble Judges: K.N. Wanchoo, C.J; K.L. Bapna, J

Bench: Division Bench

Advocate: Chandmal, for the Appellant; Amritraj, for the Respondent

Judgement

Wanchoo, C.J.

This is an application by Rajmal and Manmal for review of judgment of the Ijlas-i-Khas of the former State of Jodhpur and has come up to us for disposal in view of the provisions of Ordinance No. XL. (40) of 1949 and Ordinance No. XII (12) of 1950.

2. The application was made in the following circumstances. Rajmal and Manmal were decree-holders and put their decree in execution in the Court of the District Judge. While the execution proceedings were pending, the estate or the judgment-debtor Jalam Singh, who is now represented by his legal representatives, was taken over by the Court of Wards. The usual notice was then issued by the Court of Wards inviting claims against the estate of the judgment-debtor in the prescribed manner. No claim was said to have been presented by the decree-holders though the District Judge had sent information to the Court of Wards about the decree in execution.

Ultimately the estate was discharged from the superintendence of the Court of Wards and thereupon a fresh application for execution of the decree was made by the decree-holders. The question then arose whether the debt due under the decree had been discharged in view of Section 34 of the Marwar Court of Wards Act which provided that every claim of the nature specified in Section 32 against a ward or his property which had not been notified under that section shall be deemed, for all purposes and on all occasions, to have been duly discharged.

The District Judge decided this question in favour of the decree-holder. The High Court of the former State of Jodhpur in appeal allowed the appeal and decided the matter in favour of the judgment-debtor. Thereupon there was an appeal to the Ijlas-i-Khas and the Members of the Judicial Committee advised His Highness the Maharaja Sahib Bahadur that the appeal be dismissed and this recommendation was approved by His Highness on the 11th of April, 1948. Thereafter the present application was made for review of the order of His Highness on the 3rd of August 1948.

This application remained pending and no notice was issued on this application by His Highness till the integration on the 7th of April 1949. All petitions which were pending in the Ijlas-i-Khas, came to this Court for disposal under the provisions of the two Ordinances which we have already mentioned and notice was issued by a Bench of this Court on 21st of November, 1950.

3. A preliminary objection has been taken on behalf of the respondents opposite party that as no notice had been issued by His Highness the Maharaja of Jodhpur before Ordinance No. XL (40) of 1949 came into force, Order XLVII, Rule 2 applied to this matter and we cannot dispose of the petition in view of the provisions of Order XLVII, Rule 2. A similar point arose before us in -- ''Harlal v. Subh Karan'', Misc. Case No. 7 of 1950 which was decided on the 8th of February 1952. In that case, after a review of the law, we came to the conclusion that we could not dispose of the petition as notice had not been issued by His Highness the Maharaja of Jodhpur and Order XLVII, Rule 2 stood in the way of our hearing the petition on the merits. In that judgment, we used the following words :

"In any case, the words of Order XLVII, Rule 2 are quite clear and, therefore, this Court as the successor to Ijlas-i-Khas cannot dispose of this application as notice was not issued by the Ijlas-i-Khas."

4. Learned counsel for applicant urges that u/s 4 of Ordinance No. XL (40) of 1949 read with Ordinance No. XII (12) of 1950, it has been specifically provided that this Court shall hear, determine and dispose of any appeals, revisions, references or petitions pending before any Ijlas-i-Khas if they relate to judicial matters. It is, therefore, urged that when we said in -- ''Harlal''s case'', (Mis. Case No. 7 of 1950) that we could not dispose of the application, we had overlooked the specific provisions of Section 4 of Ordinance No. XL (40) of 1949 and that what we said in --

''Harlal''s case'', was in direct contradiction to these provisions.

It is enough to point out that we had not overlooked the provisions of Ordinance No. XL (40) of 1949 and that the so-called contradiction is only apparent and not real. The words "disposed of" when used in Order XLVII, Rule 2 obviously mean disposal on the merits and this is what we meant by those words in the portion quoted above from -- ''Harlal''s case. Section 4 certainly provides that every appeal, revision, reference or petition which comes to this Court by virtue of the provisions of Ordinance No. XII (12) of 1950 shall be heard, determined and disposed of by this Court. That does not, however, mean that the disposal in every case shall be on the merits. It only means that the disposal shall be according to law.

Learned counsel for applicant urges that Section 4 of Ordinance No. XL (40) of 1949 in authorising the Court to hear, determine and dispose of petitions like the present, abrogated the provisions of Order XLVII, Rule 2. We are not prepared to accept this argument and need only point out to Section 5 of the Ordinance which specifically provides that nothing in this Ordinance shall be deemed to affect any express and specific provision to the contrary in or in pursuance of any law made by a competent legislative authority of the United State of Rajasthan.

Under Section 3 of Ordinance No. I (1) of 1949, all the laws in force in any Covenanting State immediately before the commencement of that Ordinance in that State shall, until altered or repealed or amended by a competent Legislature or other competent authority, continue in force in that State subject to certain modifications with which we are not concerned. Therefore, the provisions of the Marwar CPC remained applicable as before the integration and there is no question of any abrogation of Order XLVII, Rule 2 by implication by Ordinance No. XL (40) of 1949.

5. There is no force, therefore, in this argument and -- ''Harlal''s case'', (Mis. Case No. 7 of 1950) applies with full force to the facts of the present case.

6. The next point that is urged is that a review is really a petition before the Court which passed the decree for further hearing and that as this Court has been authorized under Ordinance No. XII (12) of 1950 to hear all petitions including petitions of review pending before the Ijlas-i-Khas, the judgment of the Ijlas-i-Khas must be deemed by a legal fiction to be a judgment of this High Court and, therefore, the restriction imposed under Order XLVII, Rule 2 does not apply.

The argument is certainly ingenious but we see no substance in it. By no amount of legal fiction can the judgment of the Ijlas-i-Khas become the judgment of this High Court. It is by virtue of the special provisions of Ordinance No. XII (12) of 1950 that this Court is hearing appeals, petitions etc., which were pending be-fore the Ijlas-i-Khas. In view, therefore, of the decision in -- ''Harlal''s case'', Misc. Case No. 7 of 1950, we are of opinion that Order XLVII, rule 2 applies and we cannot, therefore, dispose of this review on the merits. It is hereby dismissed; but under the peculiar

circumstances of this case, we pass no order as to costs of this Court.