

(1961) 11 AHC CK 0007

Allahabad High Court

Case No: Letters Patent Appeal No. 13 of 1952

Sukhanand Mathura Prasad

APPELLANT

Vs

Baikunth Nath

RESPONDENT

Date of Decision: Nov. 29, 1961

Acts Referred:

- Limitation Act, 1908 - Article 182(5)

Citation: AIR 1962 All 509 : (1962) 32 AWR 372

Hon'ble Judges: J. Sahai, J; B. Mukerji, J

Bench: Division Bench

Advocate: Babu Ram Avasthi, for the Appellant; K.C. Saxena, for the Respondent

Final Decision: Allowed

Judgement

Mukerji, J.

This is a special appeal arising out of a decision made by Mr. Justice Mushtaq Ahmad by which decision the learned Judge modified an order of the court below when the order was made the subject-matter of an execution second appeal in this Court. While deciding the appeal Mr. Justice Mushtaq Ahmad granted leave to file a special appeal, and this is how this appeal is before us.

2. On the 18th April, 1934, the appellant firm Sukhanand Mathura Prasad obtained a decree for money in their suit No. 176 of 1933. The decree was for a sum of Rs. 4000/- odd. Applications for execution were made in respect of the decree, and we are concerned in this appeal with the application which was made on the 10th Oct. 1945. The question which falls for determination is one of limitation and for purposes of determining that question, or even for the purpose of understanding the question properly, it is necessary to state that there was a firm called Beni Ram Ganesh Prasad who had obtained a decree for Rs. 500/- odd in a Small Cause Court suit against firm Sukhanand Mathura Prasad and that Beni Ram Ganesh Prasad had attached the decree of Sukhanand Mathura Prasad which was under execution. Firm

Beni Ram Ganesh Prasad applied that they be permitted to continue the execution application as a decree-holder of that execution and this was allowed. In this execution a house which had already been attached in the execution which had been initiated by firm Sukhanand Mathura Prasad was put up for sale and it was sold on the 20th July, 1939 for Rs. 680/- and it was purchased by firm Beni Ram Ganesh Prasad the attaching creditor of Sukhanand Mathura Prasad.

After giving credit for the amount of the decree the balance was filed in court and an order was made on the 24th October 1939 striking off this execution in part satisfaction.

3. After the sale Sukhanand Mathura Prasad filed objections to the sale on the ground that the sale could not take place inasmuch as the decree of the attaching creditor Beni Ram Ganesh Prasad had been stayed under the provisions of Act X of 1937 by an order dated the 8th October, 1938. The Civil Judge, who tried the objections preferred on behalf of Sukhanand Mathura Prasad, dismissed the objections on the 16th October, 1939. but on appeal against the decision of the Civil Judge the learned District Judge allowed the objections and set aside the sale by his order dated the 28th November, 1940. Beni Ram Ganesh Prasad brought up this decision of the learned District Judge to this Court in second appeal and the second appeal was dismissed by this Court on January 29, 1943, with the result that the sale which had taken place on the 20th July, 1939, was set aside and all consequences which follow on the setting aside of a sale came into being. The order of the 24th October 1939, whereby the execution case was "struck off in part satisfaction" also was put in jeopardy by the order made in the second appeal which affirmed the order of the District Judge referred to above by us.

4. On the 10th October, 1945, the present appellant firm Sukhanand Mathura Prasad made their application for execution and, as we have said, it is this application out of which this appeal has arisen. By this application firm Sukhanand Mathura Prasad sought the sale of the same house which had been earlier sold in the decree of the attaching creditor, namely the Small Cause Court decree of firm Beni Ram Ganesh Prasad. The judgment-debtor raised a question of limitation for he contended that limitation in respect of the execution initiated by the aforementioned application had to be computed from the 24th of October 1939 and since the execution application was beyond three years from that date the execution was barred. This leads us to the question as to whether time would begin to run in respect of the present execution from the 24th October 1939, or from some other later date so as to bring this application within limitation. The Article of the first Schedule of the Limitation Act that could render assistance to the decree-holder was Article 182 which said:

" Three years; or where of a certified copy of the decree or any Civil Court not provided for by Art. 183 or by S 48 of the Code of Civil Procedure, 1908 (V of 1908).
The date of the decree or order or 2.....
3.....
4.....
5(Where the application next hereinafter mentioned has been made the date of the final order passed on an application made in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree or order, or 6.....
7.....◆◆.....◆.."

The aforequoted portion of Article 182 was, in our opinion, the relevant portion deserving consideration in relation to the matter of limitation that has arisen for determination between the parties.

5. There were two aspects of this matter falling for consideration in respect of the application of Article 182 one, the final order passed in an application made for execution, and secondly, a step in aid of execution of decree or order.

6. We have already noticed that there were objections to the execution alter the sale had taken place. Though the objections were by a decree-holder, nevertheless the objections were u/s 47 and were in a sense made by a decree-holder who under the circumstances then prevailing occupied the situation of a judgment-debtor and these objections were determined finally when the execution second appeal of Beni Ram Ganesh Prasad was dismissed by this Court on the 29th January 1943. It was contended by Mr. K.G. Saksena that the objection which was made to the sale and which culminated in the final decision of the second appeal was an ancillary matter and could not endure to the benefit of the appellant arm in respect of their execution case. This argument in our opinion was unsubstantial for it overlooked the fact that the objections, even though they were as against Beni Ram Ganesh Prasad arose out of the execution which had been initiated by the appellant firm Sukhanand Mathura Prasad and related to that execution because, as we have noticed earlier, Beni Ram Ganesh Prasad continued the execution which had been initiated by Sukhanand Mathura Prasad in terms of Order 21, Rule 53(3) C. P. C. and it is interesting to note that the Court allowed Beni Ram Ganesh Prasad to continue the application for execution of Sukhanand Mathura Prasad, which had been pending, as a representative of Sukhanand Mathura Prasad. The fact that Sukhanand Mathura Prasad had occasion to challenge a sale which had taken place in execution of the decree did not alter the basic position, namely that the execution was the execution initiated by Sukhanand Mathura Prasad and it was that execution which went on till finally disposed of by the order in second appeal on the 29th January 1943. It has to be clearly noticed that there was no separate application for execution by Beni Ram Ganesh Prasad as against Baikunth Nath who was the judgment-debtor and whose property was put up for sale and sold on the 20th July, 1939. The fact that there was in a sense a "controversy" within a controversy did not alter the basic legal position, namely that an execution which had been initiated had ultimately been disposed of by a final order passed in respect of that application on the 29th of January 1943. when the execution second appeal was decided by this Court.

7-8. Mr. Babu Ram Avasthi, appearing on behalf of the appellant, contended that even if it be held that the final order of the 29th January 1943, made in the execution second appeal could not be taken advantage of by the appellant firm, they could take advantage of the fact that there was an objection filed by them to the sale and that objection having been upheld in their favour they could treat it as a step-in-aid of their execution.

9. Mr. Saxena, on behalf of the respondent, in answer to Mr. Avasthi's contention, contended that in order to be a step-in-aid or execution it has to be a step that

murmured execution proceedings and helped execution to come to a satisfactory close rather than hinder execution and, in a sense, put the hands of the clock back. Mr. Saxena contended that the effect of the objections which had been made by Sukhanand Mathura Prasad to the sale was that the sale had been set aside and the execution had become infructuous at any rate, for the tune being. Therefore, it was not a step in furtherance of an execution, but a step that retarded and balked execution. In our opinion, this argument was attractive on its face only, for if examined a little more carefully, the true position revealed itself. *Prima facie*, of course, the step taken by Sukhanand Mathura Prasad is preferring the objections to the sale was a hindrance to the execution, but this hindrance put to the execution was to benefit neither the judgment-debtor nor the attaching creditor of the appellant but was to enure to the ultimate benefit of the appellant's execution. The fact that so far as Beni Ram Ganesh Prasad interests were concerned a clog was put on their interests in the execution, but clogging their interests was a step which really aided the execution of the appellant. The step which was taken by the creditor in challenging the sale was in substance a step which furthered the execution of the appellant. In our view, when one seeks to discover whether a certain step was a step in aid of execution or not one has to look as to whether or not the step was a step in furtherance of the execution initiated by the person who had taken the step and not whether it was a step to further the execution initiated by his rival even though the rival had, because of certain provision of law, the right to continue an execution application as an attaching creditor.

10. There was no direct authority cited before us which could determine the question which we have dealt with above, one way or the other. A few cases were cited at the Bar, but the majority of the cases did not even indirectly assist in the determination of the question and, therefore, we have not thought it necessary to advert to all those cases, except referring to three decisions to which we shall presently refer: one of the Calcutta High Court, the other of the Patna High Court and the third of the Supreme Court.

11. In *Umesh Chunder Dutta v. Soonder Narain Deo* ILR Cal 747 a Bench of the Calcutta High Court held that in order to be a step in aid of execution the application has to be for obtaining "some order of the Court in furtherance of the execution of the decree". What is to be observed is that it is the furtherance of the execution of the decree that was required and the furtherance of the claims of any particular application for execution.

12. In [Bhubneshwar Narayan Singh Vs. Lokenath Dhandhania and Others](#), Imam, C. J. and Kamla Sahai, J. held that the provisions of Article 182 of the Limitation Act do not speak of the execution by any particular decree-holder but they speak of execution of a decree.

13. The observations of their Lordships of the Supreme Court in [Rm. NL. Ramaswami Chettiar and Others Vs. The Official Receiver, Ramanathapuram At Madurai and](#)

Others, would also lend support to what we have said above, for their Lordships pointed out that what Article 182 of the Limitation Act required was an application for execution of a decree to be made within three years of the final order on a previous application made in accordance with law for the execution of the same decree. In Rm. NI. Ramaswami Chettiar and Others Vs. The Official Receiver, Ramanathapuram At Madurai and Others, the execution had been initiated by one M who was competent to execute the decree and the result of that application in regard to limitation was taken advantage of by the Receiver.

14. What the learned single Judge in this case did was to hold that execution in respect of a portion of the decree namely that the portion which related to the sum fetched at the sale of the house held on the 20th July, 1939, i.e., Rs. 680/-, was not barred by limitation, while the other portion of the decree, namely the balance of the decree of Sukhanand Mathura Prasad was barred. We have been unable and we say this with great respect to the learned Judge--to see the basis in law, for the learned Judge having drawn the distinction that he did between one part of the decree and the other. In our view a decree has to be executed as a whole and the fact that various simultaneous modes of execution provided under the law are taken resort to did not make the decree so many different decrees because different modes had been employed for execution. A decree is either barred in whole or not, except in those cases where the decree provides payment by instalments and it is clear that in respect of each instalment time begins to run separately.

15. Before we make the operative portion of our order in this appeal we think it desirable to point out that there was a cross-objection on behalf of the respondent. A preliminary objection was taken to our hearing the cross-objection and this preliminary objection was based on two grounds, first, that an appeal, which had been filed by the respondent covering the same field which has now been covered by the cross-objection, was dismissed as barred by limitation and secondly that there was no right of cross-objection in a special appeal. The second ground was sustainable by what has been held in this Court in Mt. Daroupadi Debi and Another Vs. S.K. Dutt and Another, wherein this Court held that the right to file a cross-objection was not available in respect of a Letters Patent Appeal, which enjoys the same position as do Special Appeals now under the Rules of this Court, and indeed, the present appeal was filed as a Letters Patent Appeal and was converted into a Special Appeal after the Amalgamation order came into being. We have, therefore, seen no adequate reason to entertain the cross-objections which must fail and are hereby dismissed.

16. In the result, we allow this appeal and set aside the order of the learned single Judge by holding that the execution application which had been initiated by firm Sukhanand Mathura Prasad was not barred by time. The parties will bear their own costs of this appeal.