(1991) 09 AHC CK 0098

Allahabad High Court

Case No: Civil Revision No. 349 of 1991

Mahabir Prasad		APPELLANT
	Vs	
Sampat Lal		RESPONDENT

Date of Decision: Sept. 24, 1991

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 1, Order 21 Rule 2, Order 21 Rule 2(2A), Order 21 Rule 2(3), 115
- Limitation Act, 1908 - Article 174
- Limitation Act, 1963 - Article 125
- Provincial Small Cause Courts Act, 1887 - Section 25

Citation: (1992) 1 AWC 14

Hon'ble Judges: B.L. Yadav, J

Bench: Single Bench

Advocate: Udai Karan Saxena, for the Appellant;

Final Decision: Allowed

Judgement

B.L. Yadav, J.

Whether the word ''or'' used on Article 125 of the Limitation Act, 1963 (for short the Act) in the column ''time from which period limitation begins to run'' was disjunctive ''or'' used in column 3 (time from which period begins to run) has to be read as ''and'' or just ''or'', is the short but significant question for determination in the present revision u/s 115 of the Code of Civil Procedure, 1908, (for short the Code), filed by the Defendant judgment debtor against the Plaintiff Respondent, the decree holder. The civil revision was directed against the order dated 20-4-91 passed by Sri D.R. Singh, District Judge, Jalaun, rejecting the judgment debtor''s application under Order 21 Rule 2, as time barred and the objections u/s 47 of the Code and directing execution case No. 13 of 1980 to proceed.

2. Facts of the case are almost admitted. The opposite party Sampat Lal, the Plaintiff had filed a suit in the Court of Judge Small Causes for the relief of ejectment and arrears of rent and damages, from the premises in suit. The suit was decreed on 20-12-79 and revision filed by the Defendant-judgment-debtor u/s 25 of the Provincial Small Cause Courts Act was rejected on 18-5-80. By that time a sum of Rs. 3278.33 had become due from the judgment debtor, against whom execution application was made and it was registered as Execution Case No. 13 of 1980. The judgment debtor filed objection u/s 47 of the Code. On view of the provisions of Order 21 Rule 1 of the Code all money payable under a decree was to be paid by depositing in the court, whose duty is to execute the decree, or the amount has to be sent to that court by postal money order etc. In case the payment is made out of court to the decree holder by postal money order or through bank, or by any other means wherein payment is evidenced in writing, or otherwise as the court executing the decree directs. In case payment was made by depositing in court or otherwise, as to the court directs, in view of Rule 1(a) and (c), the judgment debtor must give a notice to t he decree holder either through court or otherwise. In case of payment to Bank or Money Order the original suit No. etc. has to be given. Rule 2 of Order 21 indicates payment out of court to the decree holder. It provides that where any money payable under a decree of any kind is paid out of court to the decree holder, or a decree of any kind is otherwise adjusted in whole, or in part to the satisfaction of the decree holder, he must certify such payment or adjustment to the court and the court shall record the same accordingly. Sub-rule (2-A) of Rule 2 provides that no payment or adjustment shall be recorded at the instance of the judgment debtor unless the payment is made in the manner provided under Rule 1 or the payment or adjustment is proved by documentary evidence. Sub-rule (3) of Rule 2 provides that any payment or adjustment which has not been certified or recorded as aforesaid, was not to be recognised by any court executing the decree. In view of this provision the payment or adjustment was to be certified by the decree holder.

3. The judgment debtor alleged that while he was trying to file a writ petition in this Court some respectable persons of the locality intervened and persuaded the parties to come to an amicable terms. On 30-5-80 the decree was adjusted between the parties in these terms that the judgment debtor delivers possession of the premises to the decree holder on 2-7-80. As on the date of adjustment between the parties on 30-5-80, the judgment debtor had no money to make payment to the decree holder, the payment was made on 21-9-80, and a fresh contract of tenancy was created in lieu of payment of monthly rent of Rs. 40/- and the decree holder, the opposite party, has put the judgment debtor, the applicant, in possession of the accommodation in pursuance of fresh contract of tenancy and a lease deed was also executed The decree holder, however, denied the averments made by the judgment debtor about the adjustment of decree, creation of fresh tenancy, delivery of possession or enhancement of rent and also alleged that the application under Order 21 Rule 2 was time barred. The application in execution was struck off

regarding the relief of ejectment. Against that order the opposite party decree holder preferred two revisions (Civil Revision Nos. 343 and 344 of 1985) in this Court. Both these revisions were allowed by order dated 12-12-88, and this Court directed, that in view of the provisions of Order 21 Rule 2 the satisfaction of decree was to be recorded by obtaining certificate from the decree holder. It was further observed by this Court that without recording adjustment the objection u/s 47 could not be allowed. This Court ultimately directed that the application under Order 21 Rule 2 (filed by judgment debtor on 13-10-80) for certificate to be obtained from the decree holder was to be decided. This much was admitted to the judgment debtor applicant that the decretal amount was paid and receipt in respect of the same was obtained from the decree holder on 21-9-80. The question arose as to whether the application dated 13-10-80 filed by applicant judgment-debtor, for certificate to record adjustment and satisfaction of the court below was within the period of 30 days, and whether that 30 days was to be counted from the date the adjustment of decree was made, i.e. 30-5-80 or was it to be counted from the date, the payment of entire decretal amount was made by the judgment debtor applicant on 21-9-80, the application under Article 125 would be within time if limitation was counted from 21-9-80. In this connection it may be stated that the compromise and adjustment between the parties was arrived at on 30-5-80 to the effect that monthly rent may be enhanced to Rs. 40/- and a sum of Rs. 2000/- may be paid by judgment debtor towards the satisfaction of decree. That amount, however, was paid not on that date, rather in pursuance of that adjustment dated 30-5-80 the judgment debtor vacated the possession of the premises on 2-7-1980 and paid in full satisfaction of the decree the entire amount on 21-9-80 and obtained receipt in writing from the decree holder. Under Article 125 the period was 30 days from the date of payment or adjustment if made.

4. Learned Counsel for the applicant urged that the application was within time and the period of 30 days may be counted from the date when the entire payment was made i.e. 21-9-80 and not from the date when the adjustment was made on 30-5-80. In case limitation is counted from 21-9-80, it shall be within time. This argument leads to the conclusion that the word ''or'' used in column 3 of Article 125 was not disjunctive, but the same was conjunctive. Learned Counsel for the opposite party, on the other hand, urged that the period of 30 days under Article 125 has to be counted from the date adjustment was made, i.e. 30-5-80 and not from the date payment was made and the word ''or'' used in column 3 cannot be read as the word ''and''. Article 125 of the Limitation Act is set out below:

125. To record an adjustment or satisfaction of a decree.	Thiry days	When or ad made.

5. Before coming to actual interpretation some cardinal rules of interpretation of statutes pertaining to limitation may be noticed. The statutes of limitation are

disabling enactments and its different articles may be construed on their plain language. The statute of limitation is, as a matter of fact, a statute of repose and the main object of the law of limitation is not to keep indefinitely alive the controversy. The language employed has to be interpreted in such a way so that there may remain alive the right to proceed with the cause of action. As the period of limitation puts an end to the remedy, even though the rights remain alive, hence in view of the peculiar circumstances the interest of both sides have to be balanced, so that substantial justice may be done. The provisions of different articles in the Limitation Act have to be benevolently considered in favour of the party whose right has to be kept alive so that right of a party against'' a particular cause of action may not be barred. At the same time it can also be stated that just on equitable grounds the period of limitation cannot be enlarged or postponed or introduce an exception not recognised by it. (See AIR 1941 6 (Privy Council) .

6. In the present revision the point for determination was as to whether the word ''or'' which is normally disjunctive, can be read as ''and'' which is conjunctive. In case the word ''or'' is read as ''and'' the period of thirty days would be counted from the date of payment, i.e. 21--9-80, and application dated 13-10-80 to record the adjustment or satisfaction by the decree holder shall be within time. But in order to interpret the specific provision, the intention of legislature has to be ascertained. Even if the word ''or'' was treated to be ''and'' in that event also thirty days was to be counted either from the date of adjustment i.e. 30-5-80 or from the date of payment i.e. 21-9-80 when the expression in the third column (time from which period begins to run) can be counted from both the period from the adjustment and also from the payment. The elementary rule of interpretation of the period of limitation was to interpret it in such a way so as to make the right of a party affected by limitation alive and for that purpose benevolent construction is required to be placed. In case the word ''or'' was to be read in the present case to be just disjunctive and not to be substituted by the word ''and'', in that event it would lead to absurd consequences which has to be avoided and that can be possible only by reading the word ''or'' and ''and'' so that the intention of legislature may also be carried out and limitation of 30 days may be counted only from the date of payment as the, same may be counted from adjustment and also payment. In other '' words, in case the adjustment or payment was made on the same date, the period of limitation of 30 days has to be counted from that date and in case the adjustment was made earlier and payment was made subsequently, limitation may be counted from the date payment was made. In my opinion, according to the legislative intention and with a view to interpret the third column so as to make limitation of 30 days available both from the date of adjustment and also from the date of payment, it appears just that the word ''or'' which is disjunctive, may be read as the word ''and'' which is conjunctive. This construction would be in keeping with the legislative intention manifested by the scheme of the Act and the language employed to express the intention. (See Joint Director of Mines Safety Vs. Tandur and Nayandgi Stone Quarries (P) Ltd., .

7. The matter can be viewed from another perspective. Assuming that the adjustment has been arrived at between the parties on 30-5-80, that cannot be actually deemed to be an adjustment unless that was carried forward and the payment was also made by the judgment debtor to the decree holder. In other words, till the full payment was made, even the agreement for adjustment would remain an inchoate agreement. To put it differently, adjustment in fact, is a transaction which satisfies the decree in whole or in part and the expression adjustment cannot mean just a part adjustment. Unless full payment was made as contemplated, the decree cannot be deemed to have been adjusted. Consequently the payment is an essential part of adjustment and this can be done only by reading the word ''or'' as ''and'' under Article 125. The legislative history of Article 125 has also to be kept in mind and the present article is wider in scope than its corresponding Article 174 in the Indian Limitation Act, 1908 and the word ''code'' has also been omitted which obviously means to cover applications in other statutes also when the adjustment or satisfaction is to be entered or recorded. Application may also be by any one, either the decree holder or the judgment debtor or their representative. In the first column the word "payment'' is also absent, rather the only reference is to adjustment or satisfaction of the decree. Consequently the first column cannot be restricted to money decrees only. Just by adjustment the object cannot be attained unless follow up action was taken by making actual full payment contemplated in the adjustment. The legislature has used the word ''or'' which is disjunctive, but as the interpretation has to be made textual and contextual and the legislative history requires that the object of legislature can be attained only by reading and substituting the word ''or'' as the word ''and'', under Article 125.

8. I am accordingly of the view that as the word ''or'' in Clause 3 of Article 125 has to be read as the word ''and'', hence the application to record adjustment or satisfaction moved on 21-9-80 would become within time. The learned District Judge has acted illegally and with material irregularity in exercise of jurisdiction in treating the application under Article 125 to be time barred obviously by reading the word ''or'' as disjunctive and not substituting it with the word ''and'' which is conjunctive.

9. In view of the premises aforesaid, the impugned order cannot be sustained.

10. In the result, the present revision succeeds and is allowed. The application of the judgment debtor dated 21-9-80 shall be treated to be within time. There shall be no order as to costs. The interim stay is vacated.