

(1964) 03 PAT CK 0004
Patna High Court
Case No: A.F.O.O. No. 201 of 1960

Prahlad Rai Tulsian

APPELLANT

Vs

Kumar Daulat Singh
and Others

RESPONDENT

Date of Decision: March 31, 1964

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Limitation Act, 1908 - Article 182(2), 182(5)

Citation: AIR 1964 Patna 514

Hon'ble Judges: V. Ramaswami, C.J; R.K. Choudhary, J

Bench: Division Bench

Advocate: K.K. Sinha and Girindra Nath Mukherjee, for the Appellant; Ugra Singh, Birendra Mohan Singh and Birendra Prasad Sinha, for the Respondent

Final Decision: Allowed

Judgement

CHOUDHARY, J.

The decree-holder is the appellant. He obtained a money decree against the respondents for about Rs. 71,000/- on the 28th of April, 1953. The decree was put in execution on the 4th of January, 1954, in Execution Case No. 2, of 1954 in the Court of the Subordinate Judge at Madhipura. The property of the judgment-debtor-respondents was sold in that execution case and purchased by the appellant on the 2nd of May, 1955, and the sale was confirmed on the 3rd of June, 1955. The sale was, however, set aside on the 6th of July, 1955 for default of the appellant to file necessary stamps etc. for preparation of the sale-certificate, and the appellant was asked to take steps in the execution case. He, however, did not take any further steps in the execution case and the same was dismissed for default on the 13th of July, 1955. Thereafter, on the 13th of August 1955, he made an application u/s 151 of the CPC for recalling the order, dated the 6th of July, 1955, whereby the sale had been set aside for default in filing stamps etc. as stated above.

That application was dismissed on the 2nd of March, 1956. The appellant came up to this Court in Civil Revision No. 606 of 1956, but the same was also dismissed in limine on the 21st of September, 1956. A fresh execution petition for realisation of the decretal dues was made on the 19th of September 1959. An objection was raised by respondent No. 1 (hereinafter to be referred to as the respondent) to the execution of the decree on various grounds, but the only ground that was pressed in the Court below and with which we are concerned in this appeal was of limitation. It was contended on behalf of the respondent that, the execution case having been dismissed on the 13th of July, 1955, the execution petition filed on the 19th of September, 1959 was barred by limitation as having been filed beyond three years of the dismissal of the previous execution case. On behalf of the appellant it was contended that the period of three years would be counted from the 21st of September, 1956 when the civil revision application was dismissed by this Court. The executing Court rejected the contention of the appellant and gave effect to the plea taken by the respondent and held the execution case to be barred by limitation. Being thus aggrieved the present appeal has been filed by the decree-holder.

2. Counsel for the appellant has put forward an argument that the application filed on the 13th of August, 1955 for recalling the order dated the 6th of July, 1955, by which the sale was set aside as well as the civil revision application filed in this Court were steps in aid of execution within the meaning of Clause (5) of Article 182 of the Limitation Act and the period of three years for filing a fresh execution would start from the 21st of September, 1956 on which date the civil revision application was dismissed by this Court,

3. Clause (5) of Article 182 of the Limitation Act lays down that the period of limitation for execution of a decree or order of any Civil Court, not provided for by Article 183 or by Section 48 of the Code of Civil Procedure, 1908, is three years from 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 steps in aid of execution of the decree or order. For the application of the above provision, it is, therefore, necessary that some steps in aid of execution of the decree must have been taken in accordance with law in the proper Court. The expression "step in aid of execution" means

"step taken in furtherance of the execution or to facilitate the execution or the execution sale."

The necessary ingredients for the application of this provision, therefore, are--

- (1) that the steps taken should be in furtherance of execution of a decree;
- (2) that the application taking the step must be in accordance with law; and
- (3) that the application must be made to the proper Court.

Unless, therefore, the step taken advances or furthers the execution of the decree to some extent, it is not a step in aid of execution. It is too well settled by now that the question whether a particular proceeding is or is not a step in aid of execution depends largely upon the circumstances of a particular case, and if the facts show that the proceeding has the effect of facilitating or advancing the execution to any extent or removing some obstacle from the way of execution it may well be regarded as a step in aid of execution. If any authority is needed, reference may be made to a Bench decision of this Court, in [Darogi Mandal and Others Vs. Kameshwar Singh Bahadur](#), .

4. It has, therefore, to be examined whether, in the facts and circumstances of the present case, the application for recalling the order setting aside the sale and the civil revision application filed in this Court could be said to be steps in aid of execution of the decree. From the facts stated above, it is abundantly clear that the sale was held in execution of the decree on the 2nd of May, 1955 and it was confirmed on the 3rd of June 1955. But it was set aside on the 6th of July, 1955. The application made on the 13th of August, 1955 for recalling the order setting aside the sale had, in my opinion, the effect of taking a step to have the execution sale restored which could very well be said to be in furtherance of or for advancing the execution of the decree. Had the application been allowed, the sale would have been revived and thus the cause of execution would have been advanced by having an effective sale. The application for restoration of sale, therefore, in my opinion, was a step in aid of execution, and, that being so, the limitation for a fresh execution could very well start from the date of the final order passed on that application.

5. The above view gains support from a Bench decision of the Calcutta High Court in *Kartik Nath Pandey v. Juggernath Ram Marwari* ILR 27 Cal 285. In that case it was held that an application for review of an order striking off an execution, case and for its restoration to the file is undoubtedly a step in aid of execution within the meaning of the Limitation Act (XV of 1879), Schedule II, Article 179, which is equivalent to article 182 of the present Limitation Act. Following the principle of law laid down in this case, another Bench, of that Court, in *Chandra Kumar Dhar v. Ramdin Dhar*, 64 Ind Cas 727 (Cal), took the view that an application for the revival of a previous proceeding for execution of a decree is a step in aid of execution within the meaning of Clause (5) of article 182 of the Limitation Act.

6. On behalf of the respondent it was, however, contended that an application to take some step in aid of execution of a decree should be made in the course of execution proceedings and any application made in a collateral proceeding does not amount to a step in aid of execution. The argument is exactly in the teeth of a Bench, decision of this Court in [Jagdeo Narain Singh Vs. Rani Bhubaneswari Kuer](#), . In that case, the decree under execution had been passed on the 24th of March, 1922. The first application for execution was made on the 6th of June, 1922, and some properties belonging to the judgment-debtor were sold on the 19th of

September 1922 and purchased by the decree-holder. The decree however, was not realised in full and a balance of Rs. 9,840/8/6 still remained to be realised. After the sale of the properties the judgment-debtor made an application on the 23rd of October, 1922 for setting aside the sale under Order 21, rule 90, of the Code of Civil Procedure, and the 26th of May, 1923 was the date fixed for the hearing of that case. On that date, the decree-holder filed hazri with a list of witnesses in attendance. The application under Order 21, rule 90, was, however, dismissed for default on that date, and the sale was confirmed on the same day. On the 29th of May, 1923, the judgment-debtor made an application for re-hearing under Order 9, Rule 9, of the Code of Civil Procedure, which was also, dismissed for default on the 4th of July, 1923. On the 6th of July, 1923, the judgment-debtor made an application for review of the order of the 26th, of May, 1923 dismissing the application for setting aside the sale for default. This application for review was also dismissed for default on the 27th of July, 1923. On the 7th of September, 1923, the judgment-debtor made a second application for review, and in the course of the trial of this application, the decree-holder filed a list of witnesses on the 14th of December, 1923 and a petition of objection to the review on the 12th of January, 1924. The application for review was dismissed by the Court on the 19th of January, 1924. Thereafter, an application for execution was made for realisation of the balance of the decretal dues on the 15th of May, 1926. The question that was raised for consideration was whether the application for execution made on the 15th of May, 1926, could be within the period of limitation because of the hazri filed on behalf of the decree-holder on the 26th of May 1923 in the case for setting aside the sale and the filing of the list of witnesses on the 14th of December, 1923 and the petition of objection filed on the 12th of January, 1924 in the last review application. It was contended on behalf of the decree-holder that the filing of the hazris on two occasions as well as the filing of the objection to the review application were steps in aid of execution within the meaning of Clause (5) of Article 182 of the Limitation Act and, as such, the execution petition filed on the 15th of May, 1926 was within time. On behalf of the judgment-debtor, however, it was contended that none of these steps was taken in any execution proceeding and, as such, the limitation could not be saved by such steps which were taken in collateral proceedings. It was held that Clause (5) of article 182 of the Limitation Act did not require that the application to take some steps in aid of execution of the decree should be made in the course of the execution proceedings, and that all that it required was that an application should be made to take some step in aid of execution of the decree. It was further pointed out that such an application could be made in connection with any other proceeding which may not, strictly speaking, be a proceeding in execution of the decree but which affects the execution of the decree. In that view of the matter, it was held in that case that the hazri or list of witnesses in attendance filed in the case for setting aside the sale amounted to taking a step in aid of execution which saved the application for execution from being barred by limitation. Their Lordships also felt inclined to hold that the hazri and the objection petition filed in the review

application amount-ed to taking step in aid of execution; but as the limitation in that case was saved by the hazri filed in the case for setting aside the sale, they did not think it necessary to decide that question.

7. It was then contended on behalf of the respondent that, in view of the law as laid down above, the period of limitation should be counted in the present case from the 2nd of March, 1956, when the application made on the 13th of August, 1955 for recalling the order setting aside the sale was dismissed. It is contended that the making of an application in revision in this Court against the order of dismissal of the application for recalling the order setting aside the sale would not amount to a step in aid of execution and, therefore, the period of limitation should not be counted from the 21st of September, 1956, when the civil revision application was dismissed. In my opinion, the argument is based on confusion. This Court, in its civil revisional jurisdiction, was quite competent to allow the application, in which case the execution sale that had been set aside on the 6th of July, 1955 could have been restored and that, undoubtedly, would have advanced the execution case in having an effective sale. As was pointed out by a Bench of this Court in [Rajindra Prasad Vs. Indrasan Prasad and Others](#), where the decree holder preferred an appeal against an order of the executing Court directing the properties to be sold in a particular order, but during the pendency of such appeal the execution was dismissed for default and subsequently the appeal was also dismissed, the date of order of dismissal of the appeal, and not the date of the dismissal of the execution, was the final order within the meaning of Article 182 (5) of the Limitation Act, as the appeal could be treated as an application to take a step in aid of execution made to the proper Court. A similar view was taken by the Privy Council in AIR 1945 176 (Privy Council) .

8. The same principle will apply, in my opinion to a civil revision application made to this Court where the order of the court below is not appealable. It was pointed out by the Privy Council in AIR 1932 165 (Privy Council) that there is no doubt that any application by a party to an appellate Court asking it to set aside or revise a decision of a subordinate Court is an appeal within the ordinary acceptation of the term, While considering the provision of Article 182 (2) of the Limitation Act. a Full Bench of the Madras High Court, in [P.P.P. Chidambara Nadar Vs. C.P.A. Rama Nadar \(deceased\) Pichaimani alias Arunachalam by guardian Thillai Ammal as L.R. of the deceased and Others](#), held that the said article applied not only to. appeals but to revision petitions also. Referring to the decision of the Privy Council in the case of AIR 1932 165 (Privy Council) , their Lordships observed--

"True much importance cannot be attached to the word "revise" in this passage, as their Lordships were not advertng to what is technically known as a revision petition; but the view that there is no essential difference between a remedy by way of appeal and by way of revision, is considerably reinforced by the passage in question and its value becomes all the greater when we bear in mind that their

Lordships made these observations in construing the very provision with which we are now concerned."

It is, therefore, manifest that the civil revision application made in this Court by the decree-holder amounted to a step in aid of execution and the limitation of three years would be counted from the final order passed in that civil revision application, namely, from the 21st of September, 1956. That being so, the execution petition under consideration is not barred by limitation.

9. Counsel for the respondent has then urged that, under the provision of Order 21, Rule 94, of the Code of Civil Procedure, as amended by this Court, the sale was rightly set aside for non-filing of stamp etc. for preparation of the sale-certificate, and the application for" restoration of the sale was, therefore, not bona fide and thus could not be said to be a step in aid of execution. It is contended that such an application cannot be said to have been made in accordance with law. The expression "in accordance with law", in my opinion means that the contents of the application as well as the manner in which it is presented must fulfil the requirements of law, and if an application fulfils those requirements, it must be said to have been made in accordance with law, even though it may be a very bad case on merits. The question of bona fide or mala fide does not arise for determining the question whether an application has been made in accordance with law or not. It was pointed out by the Judicial Committee in AIR 1934 14 (Privy Council) that, under Article 182 (5) of the Limitation Act, it is sufficient to show that an application was made in accordance with law to the proper Court for execution or to take some steps in aid of execution, and it is not further necessary to show that such an application had been made with bona fide intention to execute the decree or to take such step, and not merely to keep the decree alive. It was further observed that, to hold that it was necessary for the Court to be satisfied that the application was made bona fide and that the decree-holder had the intention of proceeding to execute in pursuance of the said application, would be to impose words into the terms of the article which are not to be found therein and would necessitate the Court embarking upon a difficult, and in some cases impossible, task of finding the motive of the decree-holder in making an application. The above contention raised on behalf of the respondent, therefore, has to be rejected.

10. On behalf of the respondent, reliance has been placed on the cases of *Khakhru Mian v. Salim Momin* 1958 B. L. J. R. 525 [Bhawanipore Banking Corporation, Ltd. Vs. Gouri Shankar Sharma](#), [Rameshwar Prasad Sahu Vs. Parmeshwar Prasad Sahu and Others](#), [Sidheshwar Prasad Singh and Others Vs. Ram Saroop Singh and Others](#), and [Baldeo Thathwari Konhorai Vs. Lachman Lal Pathak and Another](#), . In the case reported in 1958 BLJR 525 an application for execution had been dismissed and an application for setting aside the order of dismissal and for restoration of the application was made, which also was dismissed. A learned Single Judge of this Court held that, for fresh execution to be levied, the starting point of limitation is

not the date of the order on the application for restoration, but the date on which the application for execution was dismissed; and the reason for reaching such conclusion was given by his Lordship that the application for restoration was a collateral proceeding independent of the execution case and any order passed in such proceeding would not be regarded as an order made on an application for execution itself so as to attract the provision of Article 182 (5) of the Limitation Act. Article 182(5) consists of two parts, namely, (i) an application made in accordance with law to the proper Court for execution; and (ii) an application made in accordance with law to the proper Court to take some steps in aid of execution. His Lordship ruled out the consideration of the second part by observing that obviously the application for restoration of the execution case after setting aside the order dismissing the execution case was not a step in aid of execution of the decree, but gave no reasons for making that observation. As a matter of fact, the question that arises for consideration in the instant case falls under part 2 of that article and, as held by a Bench of this Court in [Jagdeo Narain Singh Vs. Rani Bhubaneswari Kuer](#), . any such application made even in a collateral proceeding amounts to taking a step in aid of execution. The attention of his Lordship does not appear to have been drawn to the above Bench decision of this Court, and the observation made, as stated above, with respect to the second part of Article 182(5) of the Limitation Act is not correct. In the cases reported in [Bhawanipore Banking Corporation, Ltd. Vs. Gouri Shankar Sharma](#), , [Rameshwar Prasad Sahu Vs. Parmeshwar Prasad Sahu and Others](#), and 1063 BLJR 802 : ([Sidheshwar Prasad Singh and Others Vs. Ram Saroop Singh and Others](#),), the question that fell to be decided was as to the meaning of the word "appeal" as used in Clause (2) of Article 182. The question of taking any step in aid of execution within the meaning of Clause (5) of Article 182 did not fall to be decided. These decisions have, therefore, no "bearing" on the facts of the present case. In the case reported in AIR 1027 Pat 113, apparently, no step in aid of execution had been taken. That case also, therefore, has no application here.

11. On a consideration of the authorities referred to above and the facts and circumstances of the case, my concluded opinion is that the limitation in the present case would start from the 21st of September, 1956, the date on which the civil revision application was dismissed by this Court, and, on being counted from that date, the present application for execution is well within time.

12. The result, therefore, is that the appeal is allowed with costs, the judgment and order of the Court below is set aside, the objection petition of the judgment-debtor u/s 47 of the CPC is dismissed and it is held that the execution petition filed on the 19th of September, 1959, is not barred by limitation, which will now proceed in due course.

Ramaswami, C.J.

13. I agree.