(1987) 01 PAT CK 0012

Patna High Court

Case No: Civil Revision No. 472 of 1984

Jokhan Rai		APPELLANT
	Vs	
Baikunth Singh		RESPONDENT

Date of Decision: Jan. 9, 1987

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 7, 96
- Limitation Act, 1963 - Article 136

Citation: AIR 1987 Patna 133 : (1987) 35 BLJR 298 : (1987) PLJR 172

Hon'ble Judges: S.S. Sandhawalia, C.J; S.B. Sanyal, J; S. Ali Ahmad, J

Bench: Full Bench

Advocate: Asghar Hussain, Moinuddin Ahmad and M. Hasibuddin, for the Appellant; Sheo Dayal Singh, Kamla Prasad Ray, Shivshanker Prasad and Nawal Kishore Sharma, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Sandhawalia, C.J.

Whether the terminus a quo for computing the period of limitation of 12 years under Article 136 of the Indian Limitation Act, 1963 is the date of the original decree alone or in the event of an appeal that of an appellate decree as well --is the somewhat significant question necessitating this reference to the Full Bench.

2. The chequered history of the litigation has completed its silver jubilee. The decree-holder filed Title Suit No. 161 of 1961 against the judgment-debtor which was dismissed by the 2nd Additional Munsif, Patna, way back on the 25th of January, 1964. A title appeal was preferred against the same in which the judgment and decree of the lower Court was set aside and the suit decreed vide judgment dated the 23rd of December, 1969. The judgment-debtor thereafter filed Second Appeal No. 121 of 1970 which ultimately came to be dismissed after a decade on the 21st of March, 1980.

3. The opposite party decree-holder filed Execution Case No. 7 of 1983 in the Court of the Execution Munsif, Patna. Therein petition under Order XXI, Rule 23 of the CPC (hereinafter called the ''Code'') and Article 136 of the Indian Limitation Act (hereinafter to be referred to as the ''Act'') was preferred by the judgment-debtor taking the stand that the execution proceedings were beyond period of twele years from the grant of the decree on the 23rd of December, 1969. Basic reliance was placed on Kali Prasad Bajpayee and Others Vs. Bhagwat Prasad and Another, . The execution Court, however, rejected the petition of the judgment-debtor.

4. Aggrieved thereby, the present civil revision was preferred. At the threshold stage of admission, the learned single Judge noticed the divergence of opinion in Kali Prasad Bajpayee''s case with a long line of contrary precedent and, therefore, directed the case to be disposed of by a Division Bench. Before the Division Bench again a frontal conflict betwixt Kali Prasad Bajpayee''s case and Posani Ramachandraiah Vs. Daggupati Seshamma, and Shyama Pada Choudhury Vs. Saha Choudhury and Co. and Others, , Posani Ramachandraiah v. Daggupati Seshamma and Shyama Pada Choudhury v. Saha Choudhury & Co. respectively taking a contrary view was noticed and the matter was referred to the Full Bench for an authoritative decision.

5. Ere one examines the rival contentions, it seems apt and, indeed, necessary to notice the legislative history of the provision which also tends to provide a clue to the problem. Prior to the enactment of the Limitation Act, 1963, the relevant provisions governing the field were Section 48 of the CPC and Articles 182 and 183 of the old Limitation Act, 1908. It is somewhat manifest that the language of Article 182 of the old Limitation Act had created a hornet''s nest of controversy and a deep cleavage of judicial opinion. This was noticed by the Law Commission for repealing the said article and enacting the present Article 136 in the following terms : --

"Art. 182 (old) has been a very fruitful source of litigation and is a weapon in the hands of both the dishonest decree-holder and the dishonest judgment-debtor. It has given rise to innumerable decisions. The commentary in Rustomji''s Limitation Act (5th Edition) on this article itself covers nearly 200 pages. In our opinion the maximum period of limitation for the execution of a decree or order of any Civil Court should be 12 years from the date when the decree or order became enforceable (which is usually the date ''of the decree) or where the decree or subsequent order directs any payment of money or the delivery of any property to be made at a certain date at recurring periods the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree. There is, therefore, no need for a provision compelling the decree-holder to keep the decree alive by making an application every three years. There exists a provision already in Section 48 of the CPC that a decree ceases to be enforceable after a period of 12 years. In England also the time fixed for enforcing a judgment is 12 years. Either the decree-holder succeeds in realising his decree within this period or

he fails and there should be no provision enabling the execution of a decree after that period. To this provision an exception will have to be made to the effect that the Court may order the execution of a decree upon an application presented after the expiration of the period of 12 years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within the twelve years immediately preceding the date of the application. Section 48 of the CPC may be deleted and its provisions may be incorporated in this Act." (Extracted from R. Mitra''s Limitation Act, 1963, 1964 Edition at page 794).

In consonance with the above, Section 48 of the Code was omitted by Section 28 of the Act. The Bill for the Limitation Act, 1963 itself enumerated the following objects and reasons for the enactment of Article 136 : --

"Existing Article 182 has been a fruitful source of litigation and therefore the proposed Article 135 (now Article 136) in lieu thereof, provides that the maximum period of limitation for the execution of a decree or order of any Civil Court shall be 12 years from the date when the decree or order became enforceable (which is usually the date of the decree or order) or where the decree or subsequent order directs any payment of money or delivery of any property to be made at a certain date or at recurring periods, from the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree or order. There is no reason why a decree should be kept alive for more than 12 years. Section 48 of the Civil Procedure Code, 1908, provides that a decree ceases to be enforceable after 12 years. In England also the time fixed for enforcing a judgment is 12 years. Where, however, the judgment-debtor has, by fraud or force, prevented the execution of a decree within the prescribed period, suitable provisions for extending the period are being made in Clause 16 (now Section 17) of the Bill on the lines of Section 48(2) of the Code of Civil Procedure, 1908.

Existing Article 183, which makes special provision for decrees and orders of Courts established by Royal Charter, is no longer necessary.

It is also provided that the period of 12 years will not apply to decrees granting perpetual injunction."

Article 136 as finally enacted is now in the following terms : --

Description of application	Period of limitation	Time from which period begins to run

136. For the execution of any decree (other than decree granting a mandatory injunction) or order of any Civil Court.	Twelve years	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which, execution is sought, takes place : Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

6. Inevitably the sheet anchor of the learned counsel for the petitioner is the Division Bench judgment in Kali Prasad Bajpayee and Others Vs. Bhagwat Prasad and Another, . This undoubtedly buttresses his stand and relying thereon counsel firmly contended that it is the original decree alone which is executable and consequently time must run from the date of such a decree only. It was submitted that where no stay of the execution of decree had been granted by the appellate Court, there was no impediment in the way of the plaintiff in executing the decree. The learned counsel was compelled to go to the logical extreme of contending that the filing of the appeal and the subsequent rendering of the appellate decree is irrelevant to the issue of execution of the original decree itself. According to him, the terminus a quo begins from the date of such a decree and like a pole star is unchangeable thereafter.

7. It seems to me that the question here is so well covered by principle; language of the statute; and binding precedent; that it would be somewhat wasteful to launch on too elaborate a dissertation. Nevertheless the salient and axiomatic aspects of the issue may be briefly recapitulated. Perhaps what first meets the eye is the fact that the language of Article 136 talks of a decree and its enforceability. It does not limit or constrict itself to the original decree alone. The words employed are "any decree" and "when the order becomes enforceable". To read Article 136 as confined to the decree of the trial Court or the original decree alone would be doing violence to the language of the statute by unceremoniously inserting the words "trial Court" or ''original'' along with the words "decree or order" wherever used in the said article. Thus, even on a plain and meaningful reading of Article 136 as now enacted, it is manifest that it cannot be read as a decree of the trial Court or the original decree alone. Consequently, the somewhat hypertechnical harping of the learned counsel for the petitioner on the stand that the word ''decree'' must be construed as the original decree or that of the trial Court must be categorically rejected.

8. Yet another matter which is axiomatic in our civil jurisprudence is that an appeal under the CPC is a continuation of the suit. Now once this unchallengeable dictum is accepted, it necessarily follows that the moment an appeal is filed, the finality of the judgment and decree is automatically put in a flux and the appeal must be taken as part and parcel of the continuing trial. In essence where an appeal has been preferred, the suit is disposed of truly and finally by the appellate decree and not by the original one.

9. Equally well established it is that in the event of an appeal the decree of the trial Court merges with that of the appellate Court. The doctrine of merger is too well known to call for further elaboration. Indeed, the moment the appellate decree comes into being, the original decree loses its independent entity. Perhaps, one can go to the length of saying that on an appellate decree being passed, the original decree by virtue of merger loses its very existence. In the concept of merger, thereafter it is the appellate decree which subsists. After it is rendered, the decree

which is enforceable is only that of the appellate Court and not of the original Court. To put it tersely, in the event of an appeal the enforceable decree is that of the appellate Court.

10. In the light of the above, the core question is as to which decree is executable in the event of an appeal -- that of the trial Court or of the appellate Court ? I believe the answer is somewhat plain that in the event of an appeal it is ultimately the appellate decree which, becomes enforceable and is to be executed.

11. Now once it is held as above, it follows that the time must necessarily run from the date of the decree which is enforceable one. It is incongruous to hold that though the enforceable decree is the appellate one, time and limitation must run from the date of the original decree alone.

12. Having noticed the language of the statute and the larger principle, one may now briefly advert to a consistent stream of precedent which is hoary in its origin. It is unnecessary to delve further than (1932) 59 Ind App 283 : AIR 1932 165 (Privy Council) , speaking for the Privy Council, whilst construing analogous provision of Article 182-of the Indian Limitation Act, 1908 and noticing some conflict of precedent on the point held as under: --

"Their Lordships think that nothing would be gained by discussing these varying authorities in detail. They think that the question must be decided upon the plain words of the article : ''where there has been an appeal'', time is to run from the date of the decree of the Appellate Court. There is, in their Lordships'' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say..... It is at least an intelligible rule that so long as there is any question subjudice between any of the parties those affected shall not be compelled to pursue the so often thorny path of execution which, if the final result is against them, may lead to no advantage. Nor in such a case as this is the judgment-debtor prejudiced."

Again in (1932) 60 Ind App 83 : AIR 1933 68 (Privy Council) Privy Council in no uncertain terms held as under:--

"Their Lordships think that when an order is judicially made by an Appellate Court which has the effect of finally disposing of an appeal, such an order gives a new starting-point for the period of limitation prescribed by Article 182(2) of the Act of 1908. They recognize that there has been some difference of opinion upon this question in Indian Courts, but they think that the principle enunciated above is in accordance with the view taken in the majority of cases and is the effect of the decision in Gohur Bepari v. Ram Krisna Shaha (1927) 32 C WN 387 : Gohur Bepari Vs. Ram Krishna Saha and Others, on which both Courts have relied in the present proceeding,"

It is manifest from the above that binding principle has been earlier unequivocal and categorical in holding even under the old Limitation Act that the enforceable decree is the appellate one and time would, therefore, necessarily run from its date in the event of an appeal. Obviously enough in the absence of an appeal the original decree is the only enforceable decree and the period of limitation would be computed from its date. This larger principle has been re-affirmed by the recent binding precedent in Lakshmi Narayan Guin and Others Vs. Niranjan Modak, . Therein Pathak, J. (as the learned Chief Justice then was) who was construing Section 13(1) of the West Bengal Premises 1 enancy Act, has observed : --

"Does the decree here refer to the decree of the trial Court or, where an appeal has been preferred, to the appellate decree? Plainly, reference is intended to the decree which disposes of the suit finally. It is well settled that when a trial Court decrees a suit and the decree is challenged by a competent appeal, the appeal is considered as a continuation of the suit, and when the appellate decree affirms, modifies or reverses the decree on the merits, the trial Court decree is said in law to merge in the appellate decree, and it is the appellate decree which rules."

Even more directly on the point is the decision of the Division Bench presided over by Sabyasachi Mukharji, J., in Shyama Pada Choudhury Vs. Saha Choudhury and Co. and Others, . and the decision of a Division Bench presided over by Chinnappa Reddy, J., Posani Ramachandraiah Vs. Daggupati Seshamma, . The learned counsel for the petitioner could pose no serious challenge to this long unbroken line of precedent.

13. Reverting to the case of Kali Prasad Bajpayee and Others Vs. Bhagwat Prasad and Another, there is no gainsaying the fact that it lends support to the stand taken by the petitioner. However, with respect it may be noticed that the learned Judges apparently erred in launching themselves on a comparison of the old law in Articles 182 and 183 of the Limitation Act, 1908 and Article 136 of the present one. It is not in dispute that the provision applicable and which fell for consideration is plainly enough that of Article 136. As was noticed at the outset, the whole object and purpose of the amendment in the old law was to cut the Gordian knot of controversy raised by the involved language of Article 182 which had created a sharp cleavage of precedent. Despite the legislature having done so by substituting Article 136 thereafter, the learned Judges forsaking the plain highway re-entered the bye-ways in the impassable thicket of old laws and arrived at a conclusion which with respect, seems to be untenable both on the language of the statute and principle. A perusal of the judgment indicates that the axiomatic principle of the theory of merger and the continuation of the suit in the event of the appeal and the enforceability of the appellate decree seem to have all been missed and not projected adequately before the Bench. The long line of precedent noticed above was apparently not placed before the Division Bench. With the deepest deference, the view taken in Kali Prasad Bajpayee v. Bhagwati Prasad (supra) is untenable and

would lead to gravely anomalous results. The judgment is, therefore, overruled.

14. To sum up, the answer to the question posed at the outset is rendered in the terms that the terminus a quo for computing the limitation of twelve years under Article 136 of the Act is the date of the appellate decree in the event of an appeal and not that of the original decree.

15. Once it is held as above, it is plain that there is no merit in this revision petition. The learned Execution Munsif rightly held that time was to run from the date of the dismissal of the appeal by the High Court on the 21st of March, 1980. The execution application was thus plainly within time. The order of the Court below is affirmed and this revision petition is dismissed, however, without any order as to costs.

S. Ali Ahmad, J.

16. I agree.

S.B. Sanyal, J.

17. I have had the privilege of reading the judgment of my Lord the Chief Justice. I propose to do no more than say that I concur and that this revision petition be dismissed.