

Kishori Lal Rana Vs Bharat Nidhi Ltd. and Another

Court: Patna High Court

Date of Decision: Dec. 5, 1962

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 21 Rule 53, 48

Citation: AIR 1963 Patna 209

Hon'ble Judges: U.N. Sinha, J

Bench: Single Bench

Advocate: Prem Lal and Parmeshwar Prasad Sinha, for the Appellant; S.C. Mukherji Adv. and Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

U.N. Sinha, J.

This appeal has been filed by one Kishorilal Rana, who will hereafter be described as Rana. The appeal arises out of an

order passed by the learned Subordinate Judge on the 29th of June, 1961, in Miscellaneous case No. 14 of 1961. An application had been filed

by Rana in Execution Case No. 41 of 1959, under the provisions of Section 151 of the Code of Civil Procedure, which was numbered as

Miscellaneous case No. 14 of 1961. That application has been dismissed by the learned judge, the result of which is that Execution Case No. 41

of 1959 will proceed.

2. The facts given below represent the substance of certain connected cases, in which the appellant, Rana, and the respondent, namely, Bharat

Nidhi Limited, were concerned. Bharat Nidhi Limited will hereafter be referred to as the Bank. On the 28th of May, 1946, the Bank had obtained

a money decree against Rana, in Money Suit No. 1 of 1946, in the Court of the Subordinate Judge of Hazaribagh, On the 25th of January, 1952,

the Bank started Execution case No. 2 of 1952, to execute the decree passed in that money suit. On the 12th of August, 1955, "Rana had

obtained a money decree against the State of Bihar, in Money Suit No. 12 of 1950, in the Court of the first Additional Subordinate Judge of

Hazaribagh. The decree was for about a sum of Rs. 41000/-. In the same year, in Execution Case No. 2 of 1952, an amount of Rs. 9368/14/3

was attached by the Subordinate Judge, under Order 21, Rule 53 of the Code of Civil Procedure, out of the decree passed in Money Suit No. 12

of 1950. Ultimately, on the 28th of August, 1958, Execution Case No. 2 of 1952 was dismissed by the Court, keeping the attachment made

earlier alive. It appears that by the order dated the 28th of August, the Bank, was permitted to execute the decree passed in Money Suit No. 12 of

1950, for the realisation of its dues. In the meantime, on the 25th of November, 1955, the State of Bihar had filed an appeal in this Court against

the decree passed in Money Suit No. 12 of 1950. This appeal was numbered as F. A. No. 516 of 1955. A cross-objection had been filed in that

appeal by Rana. Thereafter, on the 29th of August, 1959, the Bank filed Execution Case No. 41 of 1959, under the provisions of Order 21, Rule

53 of the Code of Civil Procedure. The application was for executing the attached decree for the realisation of Rs. 9368/14/3. It may be

mentioned here that Execution case No. 41 of 1959 had to be started in the Court of the Subordinate Judge, Hazaribagh, as the Court of the first

Additional Subordinate Judge, Hazaribagh, was then no longer in existence. To this application for execution, the appellant objected on the ground

that the Bank's execution was barred by limitation, as the execution case was hit by the provisions of Section 48 of the Code of Civil Procedure.

This point has been decided by the learned Subordinate Judge against the appellant.

3. Learned counsel for the appellant has contended that as the Bank had instituted Execution Case No. 41 of 1959 on the 29th of August, 1959,

in effect, to execute its own decree dated the 28th of May, 1946, passed in Money Suit No. 1 of 1946, the execution case was not maintainable in

view of Section 48 of the Code of Civil Procedure. That is to say, it is urged that the application filed on the 29th of August was a fresh

application, really to execute the decree passed in Money Suit No. 1 of 1946, and as the application for execution was filed beyond twelve years

of the 28th of May, 1946, the application was barred by limitation. According to the learned counsel for the appellant, a decree-holder can

execute his decree in various ways u/s 51 of the Code of Civil Procedure. Reliance is placed on Section 51, Clause (e), which says, that the Court

may, on the application of the decree-holder, order execution of the decree "in such other manner as the nature of the relief granted may require.

It is argued that under the provisions of this clause, in an appropriate case, a decree-holder takes steps under Order 21, Rule 53 of the Code of

Civil Procedure. Thus, according to learned counsel for the appellant, the Bank was really executing the decree passed in its favour on the 28th of

May, 1956, by proceeding under Order 21, Rule 53. The Bank was, therefore, executing its own decree although it was by the attachment of the

decree passed on the 12th of August, 1955 in Money Suit No. 12 of 1950. But, it is urged, that nonetheless the execution was of the Bank's

decree of the year 1946. According to learned counsel, therefore, the application filed on the 29th of August, 1959, was beyond twelve years

from the decree passed in Money Suit No. 1 of 1946, and, therefore, Execution Case No. 41 of 1959 is barred by limitation, provided by Section

48 of the Code of Civil Procedure. For the reasons given below. I am of the opinion that the contention raised by learned counsel for the appellant

must be rejected. In this case, the Bank is really proceeding under the provisions of Order 21, Rule 53, Sub-rules (2) and (3) which read thus:

(2) Where a Court makes an order under Clause (a) of Sub-rule (1), or receives an application under sub-head (ii) of Clause (b) of the said sub-

rule, it shall, on the application of the creditor who has attached the decree or his judgment debtor, proceed to execute the attached decree and

apply the net proceeds in satisfaction of the decree sought to be executed.

3. The holder of a decree sought to be executed by the attachment of another decree of the nature specified in Sub-rule (1) shall be deemed to be

the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder

thereof." The Bank, being the holder of the decree passed in Money Suit No. 1 of 1946, shall be deemed to be the representative of the holder of

the attached decree, that is to say of the appellant. Under Sub-rule (3), the Bank is entitled to execute the attached decree in any manner lawful for

the holder thereof, that is to say, again, the appellant. It appears to me, that in the circumstances, the appellant cannot plead the bar of Section 48

of the Code of Civil Procedure, on the ground that the application filed on the 29th of August, 1959, was beyond twelve years of the passing of

the decree in Money Suit No. 1 of 1946. A similar point had arisen in the case of Firm Rambux Mal v. Firm Mansaram Murlidhar AIR 1947 All

174. Learned counsel has contended that in the decision of the Allahabad High Court, no reference had been made to Section 51 of the Code of

Civil Procedure; and, therefore, the view taken by the Allahabad High Court ought not to be followed. For his own contention based on Section

51 of the Code of Civil Procedure, learned Counsel for the appellant has relied upon the decision in Pirthi Raj Ganesh Das Vs. Balmakund

Marwari, . The interpretation of Section 51 in general and Clause (e) of that section in particular, as argued by learned counsel, is beyond

controversy, but, in my opinion, it is not possible to accede to the contention that the application giving rise to Execution case No. 41 of 1959 was

a fresh application for the execution of the decree passed in Money Suit No. 1 of 1946, on the 28th of May, 1946. In my opinion, the decision of

their Lordships of the Allahabad High Court supplies the correct answer to the question that has arisen in this case. I respectfully agree with their

Lordships of the Allahabad High Court for the conclusion that Section 48 cannot be imported in this case, for the purpose of dismissing Execution

Case No. 41 of 1959.

4. Considerable arguments were advanced by the learned counsel for the parties upon the wordings of an order dated the 28th of August, 1958,

passed in Execution Case No. 2 of 1952, to which the learned counsel for the appellant has referred. According to the learned counsel for the

appellant, Execution Case No. 2 of 1952 was dismissed and finally disposed of on the 28th of August, and the present application filed on the 29th

of August, 1959, is a fresh application for executing the decree passed in Money Suit No. 1 of 1946. According to the learned Counsel for the

Bank, that order was merely a routine order relegating Execution Case No. 2 of 1952 to the record room, permitting the Bank to proceed with the

execution of the decree passed in Money Suit No. 12 of 1950. I am in agreement with the submissions made by the learned counsel for the Bank

in this respect. In Execution Case No. 2 of 1952 an order of attachment of the decree passed in Money Suit No. 12 of 1950 had been made on

the 8th of September, 1955, and that attachment was permitted to continue for the purpose of executing the decree passed in Money Suit No. 12

of 1950. The application filed on the 29th of August, 1959, cannot, therefore, be taken to be a fresh application for executing the decree passed in

Money Suit No. 1 of 1946.

5. I have then been asked by the learned counsel for the appellant to take note of certain further facts for coming to the conclusion that Execution

Case No. 41 of 1959 should be dismissed at this stage. As indicated above, First Appeal No. 516 of 1955 had been filed by the State of Bihar in

this Court, arising out of the decree passed in Money Suit No. 12 of 1950. By the judgment and the decree passed by this Court, on the 19th of

September, 1961, the appeal has been substantially allowed. The cross-objection filed by Rana has also been allowed, with the result that a fresh

decree has been drawn up by this Court to the tune of about Rs. 29000. It is, therefore, contended that the decree passed originally in Money Suit

No. 12 of 1950 is now non-existent and, therefore, Execution Case No. 41 of 1959 must be dismissed as infructuous. In my opinion, this point

should not be decided at this stage on the facts mentioned above, as there is no bar to the appellant taking this objection in the execution case

itself, where the point may be agitated between the parties. Some other facts have also been mentioned in this Court, to the effect that the appellant

has started execution of the decree passed in his favour by his Court, in Execution Case No. 9 of 1962. My attention has been further drawn to an

order passed by this Court in Miscellaneous Judicial Case No. 1189 of 1962, on the 7th of November, 1962. All these matters may be

considered if and when an objection to the execution of the original decree passed in Money Suit No. 12 of 1950 is taken in the appropriate Court

in future. In my opinion, the appeal must fail on the question raised by learned Counsel for the appellant; and it is dismissed without costs.

6. Learned counsel for the respondent has raised a preliminary objection to the effect that no appeal lay in this Court, inasmuch as the order under

appeal was passed on an application filed by the appellant under the provisions of Section 151 of the Code of Civil Procedure. It is also

contended that the appellant was not a party to Execution Case No. 41 of 1959; and, therefore, he had no right to come up to this Court in

appeal. On the first point taken by learned counsel for the respondent in this context he has relied upon the decision of Ramnandan Pandey and

Others Vs. Jagarnath Rai, . In my opinion, the preliminary objections taken by learned counsel for the respondent are of no force. It is clear

beyond doubt that the appellant was a party to the proceeding numbered as Execution Case No. 41 of 1959. In the application filed by the Bank

under the heading ""names of parties"", the name of Rana was specifically mentioned, along with the name of the Bank described as the decree-

holder attaching creditor. In any event, it appears to me that under the provisions of Order 21, Rule 53, Sub-rule (5), the holder of the attached

decree was before the Court executing the decree and, therefore, it cannot be held that he was a stranger to the proceeding in the Court below.

Although the application filed by Rana was u/s 151 of the Code of Civil Procedure, the objection taken by him was really one covered by Section

47 of the Code of Civil Procedure. The objection was in relation to the execution of a decree, which was urged to be the execution of the decree

passed in Money Suit No. 1 of 1946. The order passed by the learned Subordinate Judge is, therefore, an appealable order. Furthermore, no

objection had been taken before the learned Subordinate Judge that the appellant had no locus standi to apply before the Court for relief. The

preliminary objections are, therefore rejected.