Srimati Saudamini Ghose Vs The Jessore Registered Loan Company Limited

Court: Calcutta High Court

Date of Decision: Jan. 15, 1926

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 21 Rule 11(2)(f)

Citation: AIR 1926 Cal 1146 : 96 Ind. Cas. 554

Hon'ble Judges: Mukerji, J; Cuming, J

Bench: Division Bench

Judgement

Cuming, J.
This is an appeal against an order of the learned Subordinate Judge of Jessore disallowing certain objections to execution and

ordering that execution should proceed.

2. The facts appear to be these: The decree-holder obtained a money-decree against the judgment-debtor on the 24th of June, 1911. The decree

was executed a number of times and finally on the 6th June, 1923 the application with which we are now concerned was made. The judgment-

debtor made a number of objections to the execution of the decree. It is unnecessary for me to set out what these objections were, because none

of them has been argued in appeal. The objection in the present appeal is entirely new and was not taken before the Executing Court. The

objection is as follows: The appellant contends that certain specifications which were necessary, under Order XXI, Rule 11 were not set forth in

the application for execution and that being so the whole of the proceeding was a nullity. The particular specification which the learned Vakil for the

appellant contends was not set forth in the application for execution is the specification which will be found under Order XXI, Rule 11, Clause 2,

Sub-clause (f) which runs as follows ""whether any, and (if any) what, previous applications have been made for the execution of the decree, the

dates of such applications and their results."" The learned Vakil has drawn our attention to the application for execution in which under this heading

there is the following entry. ""The date of last application for execution 15th June, 1920, in money Execution Case No. 59 of 1920. On partial

satisfaction struck off on 23rd July 1920."" The learned Vakil for the appellant contends that it is not sufficient to put down the date of the last

application for execution and its result, but that the rule requires that all the previous applications should be noted with their results. No doubt, the

rule does provide that all the previous applications with their dates and their results should be noted in this column, and it is also clear from a

perusal of the application for execution that the dates of all the previous applications with their results were not noted. The point then remains as to

whether this omission to put down in this column all the former applications and their results is a material irregularity such as would render the

whole of the execution proceeding illegal or not. As I have noted before, this point was not taken before the Executing Court. No objection was

made in the Executing Court that this information had not been duly given in the application for execution. This is all the more remarkable because

in the circumstances of the case the judgment-debtor must have been aware that there had been previous applications for execution, and also in the

column, itself the application which was mentioned was described as the last application for execution, therefore, it must have clearly indicated to

her that there had been other applications. The learned Vakil contends, as I have noted before, that this omission, renders the whole of the

execution proceedings illegal and nullity. In support of this contention he has referred us to a number of decisions of this Court. First of all he refers

to the Full Bench case of Asgar Ali v. Troilokya Nath Ghose 17 C. 631 : 8 Ind. Dec 960. The facts of that case were as follows: A certain decree

had been passed on the 6th, September, 1876, and on the 6th July, 1888, an application for execution was made. This application for execution

did not contain a list of properties as prescribed by Section 237 and the decree-holder did not produce the list of properties till the 11th

September 1888. The Court there, held that. the application was defective, because it did not comply with the provisions of Section 237. Mr.

Justice Ghose and Mr. Justice O''Kinealy both of them remarked that the original application was so defective that no relief could be obtained

under it and it was incapable of execution. The ratio decidendi in that decision seems to be this--that the application as it stood was so defective

that it could not be enforced, because the defect in that case was that no list of the judgment-debtor''s properties had been given and hence it was

not possible to attach any of the properties of the judgment-debtor in execution of the decree.

3. The next case we have been referred to is the case of Gopal Sah v. Janki Koer 23 C. 217 : 12 Ind. Dec. 145. In that case an application for

execution was made on the 7th October, 1893, and for certain reasons was returned to the decree-holder as being defective and a week''s time

was allowed to the decree-holder to remedy this defect--the time given for remedying the defect being one week from the 30th October. In the

place of remedying the defect the decree-holder filed a fresh application with the application of the 7th October attached to it. It was held that as

the application of the 7th October was not one made in accordance with law, the execution was barred by limitation. It may be noted that in that

case it was not a question of objection made by the judgment-debtor for the first time in appeal. In that case the Court as provided by Order XXI,

Rule 17 had returned the application for amendment. Rule 17 provides that the Court if the application does not comply with the requirements of

Rules 11 to 14 may either reject the application or may allow the defect to be remedied then and there or within a time to be fixed by it. And in

that case although the application was returned to the decree-holder to be remedied within a week the decree-holder did not avail himself of the

opportunity to remedy the defect.

4. The last case referred to is the case of Mathura Prosad v. Anurago Koer 5 Ind. Cas. 579 : 14 C.W.N. 481. It is unnecessary to deal with this

decision at any length. I may say shortly that I cannot understand its applicability to the present case.

5. None of these decisions to which we have been referred directly meet the point in issue in the present case. I do not think that every omission in

an application for execution is necessarily a material irregularity such as would vitiate the execution proceeding. Whether an omission is or is not

material will depend on the particular facts of the particular case. The fact that the judgment-debtor never took this objection in the Executing

Court will go at once to show that the omission was not a material one. Neither do I think that it was. It is quite clear that on the application as it

stands execution could have proceeded and in the cases to which we have been referred the omission was such that the execution could not

proceed. It has not been shown that the applicant had been in any way prejudiced by this omission. I am, therefore, of opinion that this omission

was not a material one so far as the present case is concerned and that the execution proceedings have not been in any way vitiated by this

omission.

6. The result is the appeal must fail and is dismissed with costs. Hearing fee three gold mohurs.

Mukerji, J.

I agree.