(2000) 08 CAL CK 0026

Calcutta High Court

Case No: Civil Appellate Jurisdiction, G.A. No. 1943 of 1999, A.P.O.T. No. 312 of 1999, G.A. No. 1260 of 1999 and C.S. No. 2 of 1997

UCO Bank		APPELLANT
	Vs	
Amalgamated Coalfields Ltd.		RESPONDENT

Date of Decision: Aug. 21, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 11
- Constitution of India, 1950 - Article 226
- Limitation Act, 1963 - Article 136

Citation: (2000) 3 CALLT 492 : 105 CWN 73 : (2000) 2 ILR (Cal) 204 : (2001) 2 RCR(Civil) 359

Hon'ble Judges: Vinod Kumar Gupta, J; Arunabha Barua, J

Bench: Division Bench

Judgement

V.K. Gupta, J.

This Appeal is directed against the order dated 5th May, 1999 passed by a learned single Judge of this Court whereby the execution application filed by the Appellant, UCO Bank was dismissed on the ground that it was barred by limitation. Brief facts leading to the filing of the Appeal are that in the year 1977, recklessly on 3rd January, 1977 the Appellant Bank filed a suit against the Respondent Amalgamated Coalfields Ltd. Inter alia claiming a decree for a particular amount of money along with Interest. The said suit filed by the appellant was finally heard and disposed of by a Judgment and Decree passed on 24-6-1968 by a learned trial Judge of this Court The following operative portion of the aforesaid Judgment may be re-produced hereunder for ready reference. It reads thus :

"It appears that the Bank preferred a claim before the Commissioner of payments in respect of the compensation payable to the Amalgamated Coal Fields Ltd. By the order dated June 12. 1980 the Commissioner of payments admitted the claim of the plaintiff Bank to the tune of Rs. 43,77,862.00 p. The said sum Includes Interest from

May 1, 1973 to October 31, 1974 amounting to Rs. 2,47,803.54p. Having regard to the facts and circumstances of this case and by consent of the parties the suit is disposed of by the following decree and order :

There will be a decree for the sum of Rs. 43,77,862/-. The plaintiff will also be entitled to Interest from November 1, 1974 @ 4%per annum till the date of the suit and @ 6% per annum from the date of the suit till the date of the decree on the sum of Rs. 43.77.862/-. The plaintiff will also be entitled to interest on Judgment @ 6% and cost assessed at Rs. 15,000/--"

2. As will be noticed the Judgment and Decree above mentioned provided for payment of interest on the principal sum @ 4% per annum from 1st November 1974 till the date of the filing of the Suit and @ 6% per annum from the date of the filling of the Suit till the date of the passing of the decree. It is the admitted case of the parties, particularly that of the appellant that pursuant to the passing of the aforesaid consent decree, the appellant received a total amount of Rs. 74,84,712 in two parts, one for Rs. 43,77,862/- and another of Rs. 31,06,850/-. It is also the admitted case of the parties, particularly that of the appellant that the aforesaid amount included the principal sum awarded in the decree and the entire interest entitlement calculated thereupon, both for the period from November 1, 1974 till the date of the filing of the Suit at the rate of 4 per cent p.a. and from the date of the filing of the Suit till the date of the passing of the decree at the rate of 6 per cent These amounts were received by the appellant in 1987 and 1992. Undoubtedly therefore, the decree stood satisfied in all respects since the appellant decree holder had received the entire amount awarded in the Decree which was passed in its favour.

3. It appears that some time in 1994 the Respondent filed a writ petition under Article 226 of the Constitution of India in this Court wherein it prayed, infer alia for the issuance of a writ of mandamus, commanding the appellant and others to pay an amount of Rs. 9,13,921/- to the Respondent which the appellant purportedly received from the respondent by way of alleged excess payment towards the interest entitlement @ 6% p.a. whereas as per the Coal Mines (Nationalisation) Act, 1973 such entitlement could not exceed at any rate more than @ 4 per cent per annum. This writ petition was allowed by a Judgment of a learned single Judge of this Court delivered on 11th July, 1997. The following operative portion of the Judgment will Indicate the relief granted by this Court in the aforesaid writ application in favour of the Respondent which admittedly was against the appellant:

"For the reasons aforementioned, this application is allowed to the extent aforementioned and the Commissioner of Payment is directed to refund the balance amount of Interest upon calculating the same at the rate of 4% per cent per annum''and further directed the said respondent to pay the aforementioned sum of Rs. 27,100/- and odd which is lying in this hand towards the amount of claim which was not allowed in favour of the Commissioner of Provident Fund. It will be open to

the Commissioner on Payment to direct the respondent Bank to refund the excess amount to it at an early date and preferably within a period of 8 weeks from the date of communication of the dictated order. In default whereof the respondent Bank shall pay interest to the petitioner at the rate of G per cent annum. This application is allowed to the extent mentioned hereto before but without any order as to costs. All parties are to act on signed xerox copy of this dictated order on the usual undertaking."

4. On 21.11.97 the aforesaid Judgment dated 11.07.97 was modified to a limited extent by passing the following orders;

"The Court: Having heard the learned counsel for the appellant a clarification is made to the effect that the Commissioner of payments will realise the excess amount paid to the Bank and then refund the same to the petitioner in terms of the order dated 11.7.97.

The application is disposed of."

5. It is the admitted case of the parties, particularly that of the appellant that this Judgment was not appealed against by the Appellant and that it had assumed finality in all respects. Not only that, it is also the admitted case of the Appellant that in implementation of the aforesaid Judgment the Commissioner of Payments under the Coal Minas (Nationalisation) Act, 1973 in fact recovered the amount of Rs. 9,13,921/- from the appellant and made it over to the Respondent. Uptil now, up till this stage, the facts appear to be in conformity with the usual course of events. We now come to a lightly a peculiar stage.

6. On 17th July, 1998 the Appellant filed an application in terms of Order 21 Rule 11 of the CPC for execution of the decree passed on 24-6-1986. In the application the appellant inter alia prayed for attachment of the account of the Respondent to the extent of Rs. 9.13,921/-, since this amount was lying with the Appellant Bank at that stage. The learned single Judge of this Court vide Judgment dated 5-1-99 disposed of the aforesaid execution application of the appellant by passing the following operative Order:

"There cannot be any dispute that the decree passed in favour of the decree-holder herein in an executable decree and the same can be executed until the full amount thereunder is paid or realised. But that decree can only be exercised to realise the decretal dues from the assets belonging to the Judgment-debtor. The sum in question, since does not belong to the judgment-debtor, cannot be attached nor any direction can be given in the plaintiff Bank to appropriate the same.

In the event the sum or any portion thereof is refunded by the decree-holder to the Commissioner of Payment in terms of the order of this Court and if that sum or any other sum becomes payable by the Commissioner to the judgment-debtor, then that sum could become an asset belonging to the judgment-debtor/Company

against which the decree-holder can take recourse to execute the decree provided, however, on calculation it is believed that any sum is in fact due and payable under the decreed by the judgment-debtor is the decree-holder.

The application is thus disposed of."

7. On 22nd March ''99 the appellant admittedly paid to the respondent approximately the amount of Rs. 9,13,921/- along with interest. On 26th March ''99, and this is an important event, the appellant filed a second application for execution of the decree passed on 24th June, 1986. Vide Order dated 5-5-99 under challenge in this Appeal the learned single Judge dismissed the aforesaid application on the simple ground that it was time barred. Undoubtedly Article 136 of the Schedule to the Limitation Act provides a period of 12 years as the limitation period for filing an application for execution of the decree and this period of 12 years starts running from the date the decree becomes enforceable. Undoubtedly the decree in question was passed on 24th June, 1986 and the second execution application was filed beyond the period of 12 years on 26th March ''99.

8. While assailing the order under challenge in this Appeal the learned Advocate appearing for the appellant has broadly raised two questions. Firstly; that while disposing of the first execution application on 5.1.99 the learned single Judge had given liberty to the appellant to file another execution application and that actually, in other words, the second execution application was an extension of the first execution application and therefore on both counts, either by construing the liberty given in the order dated 5-1-99 or by construing the second application as an extension of the first execution application, the limitation period should not count beyond 17th June, 1998 when the first execution application was filed which admittedly was in time. The second argument is that it was only on 11th July, 1997 when the writ application filed by the respondent was allowed by the learned single Judge of this Court. That right to enforce the decree passed on 24-6-1986 accrued to the appellant and therefore the limitation period should start running from that date. We are unable to agree to any of the aforesaid two arguments for the reasons that we indicate here in below.

9. Article 136 in the Schedule to the Limitation Act, 1963 reads thus :

Description of suit	period of limitation	Time from which period begine to run

136. For the execution of anya decree granting a mandatory injunction or order of any 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 of 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."

10. Undoubtedly the period of limitation for filing an application for execution of a decree-starts running from the date the decree becomes enforceable. The decree becomes enforceable in normal and usual circumstances, unless any contrary intention is indicated in the decree itself, from the date the decree is passed by the trial Court. In this case the decree was passed on 24th June. 1986 and in the absence of any indication to the contrary in the decree itself, it became enforceable right from the very date it was passed. The Judgment of this Court passed on 11th July, 1997 in the writ application filed by the Respondent had nothing to do whatsoever with the passing of the decree on 24th June, 1986 or its enforceability from that very date. This Judgment was a new cause of action to both the parties because it was in this Judgment that this Court declared that the Appellant was not entitled to receive Interest @ 6% per annum because of a particular provision contained in the Coal Mines (Nationalisation) Act 1973. This Judgment, specifically and explicitly decided a question of law against the Appellant and by Issuing a writ in the nature of mandamus commanded the payment of a specified amount to the Respondent

because the Respondent had illegally been deprived of that amount and because the Appellant had illegitimately received that amount, in excess of its entitlement based on a particular rate of interest payable by the Respondent under the Coal Mines (Nationalisation) Act 1973. This Judgment, therefore, was an entirely different cause of action altogether and if the Appellant even felt aggrieved of this Judgment in any manner it was open to it to challenge the same in an appropriate Appeal. The Appellant did not choose to do so; it instead abided by the Judgment and facilitated its implementation by payment the amount in question to the Respondent it cannot therefore be said, by any stretch of any imagination, that it was on the passing of this Judgment that the decree dated 24th June 1986 became executable.

11. Actually speaking, there was no question of execution of the decree dated 24th June, 1986. There was no question at all of its execution in any manner. We are saying as for the simple and plain reason that the decree stood satisfied in all respects because the Appellant had received the decretal amount in Its entirety in the years 1987 and 1992. If a Decree Holder receives the entire decretal amount and the decree is satisfied in all respects, there is no question of executing the decree. A decree is put to execution only If the decree is not satisfied and the Decree Holder does not got the relief given to it in the decree.

12. The decree therefore, undoubtedly did not become executable on or from 11th July. 1997. It had become executable on and from 24th June, 1986 when it was passed. The period of limitation thus, as per Article 136 (supra) started running from 24th June 1986 Itself. Therefore, when the second application for execution was filed by the Appellant on 26th March, 1999, the limitation for filing the same had already stated expired. We have very carefully gone through the Order date 5th January 1999 passed by the learned single Judge. This Order nowhere suggests that the appellant was at liberty to file another execution application or that the first execution application filed by the appellant was kept pending in any manner. The Order dated 5/01/99 clearly, categorically and unequivocally disposed of the first execution application and concluded the proceedings in all respects. That Order cannot in any manner be construed to mean that either the first execution application was kept pending of that the learned Judge in any manner indicated in that Order that the appellant was at liberty to files another execution application. That liberty was neither asked for nor was it granted the second execution application. Therefore on all counts it was time barred. This is apart from the fact that in this particular Case there was no need or requirement for filing any execution application at all because the decree had stood satisfied in all respects in the years 1987 and 1992. The execution applications, both first and second therefore were not even maintainable. It appears that the appellant took a totally mis-conceived and unfounded subterfuge in the garb of the aforesaid execution applications to cover up Its lapse of not appealing against the Order of the learned single Judge passed on 11th July, 1997 in the aforesaid writ application. By this we should not be construed to have expressed any opinion about the merits of that

order.

For the foregoing reasons therefore the Appeal is dismissed with costs throughout.

Later:

Let a xerox copy of this Judgment, duly counter-signed by the Assistant Registrar of this Court be given to the parties upon their undertaking to apply for and obtain certified copy of the same upon usual undertakings.

A. Barua, J.

13. I agree.

14. Appeal dismissed