

Dulal Nath and Another Vs Muktaram Naskar and Others

Court: Calcutta High Court

Date of Decision: Sept. 6, 1966

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 21 Rule 6, 2(14), 36, 39

Citation: 70 CWN 1091

Hon'ble Judges: Banerjee, J

Bench: Single Bench

Advocate: Chandranath Mukherjee, for the Appellant; Susil Kumar Biswas and Basanta Kumar Panda, for the Respondent

Judgement

Banerjee, J.

For alleged violation of an interim order in Civil Rule No. 622 (W) of 1965, there was an order for payment of costs,

assessed at 20 gold mohurs, made on January 18, 1966, against respondent No. 1, Muktaram Naskar and in favour of the present petitioners

named Dulal Nath and Kalinath. The costs have not been, it is said, paid by the respondent No. 1 abovenamed. The instant application is one for

transfer of the order for payment of costs, to the third court of the Munsif at Basirhat for execution by that court, on the ground that the respondent

No. 1 judgment-debtor resides and has properties within the jurisdiction of the third court of the Munsif at Basirhat.

Now, u/s 39 of the Code of Civil Procedure,

(1) That court which passed a decree may, on the application of the decree-holder, send it for execution to another court,--

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the

local limits of the jurisdiction of such other court, or

(b) if such person has not property within the local limits of the jurisdiction of the court which passed the decree sufficient to satisfy such decree

and has property within the local limits of the jurisdiction of such other court,

(c) * * * ,

(d) if the court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such

other court.

(2) The court which passed a decree may of its own motion send it for execution to any Subordinate Court of competent jurisdiction.

2. The procedure to be adopted in cases where the court desires that its own decrees shall be executed by another court is to be found in order

21, rule 6 of the Code of Civil Procedure.

3. There is no affidavit-in-opposition disputing any of the statements made in the petition. Thus, the position is that there is an unsatisfied order for

costs and the person liable to pay costs has properties within the jurisdiction of the third court of the Munsif at Basirhat.

5. The question that arises for my Consideration, in the first place, is whether an order passed in the Special Jurisdiction of this Court, in which

jurisdiction alone all applications for Contempt are to be heard and decided, amounts to a decree or to an order, which may be executed as a

decree. In the case of Kila Chand Dev Chand & Co. v. Ajudhiaprasad Sukhanand & Co., (I.L.R. 59 Bombay 10 -- Per Kania, J., as his

Lordship then was) it was held that an order of the High Court in contempt proceedings was an order within the meaning of section 2(14) of the

Code of Civil Procedure, capable of execution u/s 36 of the Code, which section was not limited to orders made under the Code but applied to all

orders. The view expressed in Kila Chand's case (supra) was followed by this Court in Sree Sree Iswar Radhakanta Jew and Others Vs. Kshetra

Ghosh Alias Sukumar Ghosh and Others -- Per Majumdar, J.). The Allahabad High Court, however, upheld the power of realisation of costs

directed to be paid in contempt proceedings by a different process of reasoning, in the case of Wahidullah Ahrari v. Emperor, (1935) 33 A.L.J.

1153 -- Per Allsop and Bajpai, JJ., as appears from the passage quoted below :

The next question that arises is whether we have the power to direct the realisation of costs as a fine according to the provisions of the Code of

Criminal Procedure. This question is not without some difficulty, and it is not necessary for us to express an opinion on the point. In any event, if

we have jurisdiction to direct the payment of costs, as indeed we have inherent jurisdiction to order its recovery. We think that the proper method

by which these costs should be recovered should be on lines on which decrees are executed by the civil court. We issue a warrant to the Collector

of Aligarh authorising him to realise the amount by execution against the movable or immovable property of Wahidullah.

In a later decision in Ch. Shyam Sunder Vs. Daw Dayal Khanna, -- Per Desai and Asthana, JJ.), the same High Court made more definite

observations dissenting from the views expressed by the Bombay and Calcutta High Court referred to above. According to this decision, contempt

jurisdiction is an inherent jurisdiction, invested in all High Courts as Courts of Records, and is not governed either by the Civil or by the Criminal

Procedure Code. As such, an order made in this jurisdiction cannot be enforced as a sentence of fine by applying provisions of the Criminal

Procedure Code or as an order by applying the provisions of the Civil Procedure Code. Further, according to this decision,

Section 2(14) defines the word "order" to mean the formal expression of any decision of a civil court which is not a decree. The word is used in

the Code not to mean any order or decision as understood by a layman ; it is used to mean what is popularly known to the legal public as a formal

order. The word is used in contra-distinction to decree and must be distinguished from "judgment", which is separately defined in the Code to

mean a statement of reasons. The order that is usually passed in contempt proceedings is a judgment and not an order as defined in the Code.

* * * * Under the CPC a judgment of a civil court is followed up by a decree or an order which can be put into execution ; a judgment in

contempt proceedings is not required to be followed up by a decree or an order.

Even if a High Court does prepare a decree or an order in pursuance of the judgment, since it cannot be said to have been prepared by a civil

court (the High Court having acted as a Court of Records in contempt proceedings), and since the CPC does not govern the matter at all, the

definition contained in section 2(14) of it cannot be applied to it and it cannot be held to be an order within the meanings of sections 2(14) and 36

of the Code.

In the view taken, the inherent jurisdiction of the High Court was invoked by their Lordship so as to make orders for costs, passed in contempt

proceedings, enforceable, with the following observations :

The power to enforce it must be deemed to have been implied in the power to pass it. Therefore, a High Court has inherent jurisdiction to enforce

it. There are no limits to its power to enforce it ; it can be enforced in any manner it deems proper. It can itself recover the costs or can authorize

anybody, a District Magistrate, a Collector, a Munsif, a District Judge or anybody else to attach and sell property of the person from whom the

costs have to be recovered, if he does not pay them on his demand.

The view expressed by the Allahabad High Court, although generally opposed to the view expressed by this Court, does not disentitle a High

Court from choosing the authority through which its order, passed in a contempt of court proceeding, may be enforced in any manner that the High

Court may deem to be proper. Thus, even according to the Allahabad view, it is possible for this Court to authorise the third court of the Munsif at

Basirhat to enforce the order for costs, made by this Court, in a contempt proceeding, in the manner prescribed by the Code of Civil Procedure.

In my reading of the Allahabad High Court judgment, the power of a High Court to authorise a subordinate court, or any other authority, to

enforce its order, made in a contempt of court proceeding, in such manner as directed, was not doubted but the procedure to be adopted in that

respect was differently laid down. The view of the Bombay High Court, as adopted by this Court, is that an order made in a contempt of court

proceeding, is an order within the meaning of the CPC and as such is executable as a decree, under the provisions of section 36, read with the

other provisions contained in the CPC for execution of decrees, without any special authorisation. Allahabad High Court, however, does not treat

such orders as orders under the Code and insists upon a special authorisation to any court or authority to enforce its orders passed in contempt of

court proceedings. Since, the power is there, in any event, I need not, in this case, express my views whether an order passed in a contempt of

court proceeding, is an order within the meaning of the Code of Civil Procedure.

5. I exercise my powers, as a Court, and send the order for costs, dated January 18, 1966, made in Civil Rule No. 622 (W) of 1965, for

execution and enforcement by the third court of the Munsif at Basirhat, according to the manner as in Order 21 of the Code of Civil Procedure.

6. Let a copy of the order, dated January 18, 1966, and a certificate of non-satisfaction and a copy of this order for execution be sent to the

learned Munsif, third court, at Basirhat, in the manner prescribed by Order 21, rule 6 of the Code of Civil Procedure.

7. I have, I admit, proceeded on the line of least resistance and have tried to make an order which reconciles the opposing views. I do not want,

however, to be understood that I feel bound by the Allahabad view. Costs of this application, assessed at 2 gold mohurs, will be costs in the

execution, which will be started at Basirhat, and may be recovered by the same process of execution.