

79 CWN 546

Calcutta High Court

Case No: C.R. 1728 and 1841 of 1974

Amaresh Chandra
Sanyal

APPELLANT

Vs

Robindra Nath Moitra
and Another

RESPONDENT

Date of Decision: Sept. 13, 1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 21 Rule 11, Order 21 Rule 14, Order 21 Rule 17, Order 6 Rule 17, 115

Citation: 79 CWN 546

Hon'ble Judges: Amal Krishna De, J

Bench: Single Bench

Advocate: Snehansu Sekharaswar Roy and Namita Ghosh, for the Appellant; Tapas Kumar Mukherjee, for the Respondent

Judgement

A.K. De, J.

A common question fails to be determined in these two cases. A. C. Sanyal is the Judgment Debtor in both Money Execution

Case No. 70 of 1970. The Decree Holder in these two Money Execution Cases filed two applications for execution against A. C. Sanyal with a

prayer for his arrest and detention in prison. After some time each of the two decree holders asked for assistance of the executing court for

realisation of the decree-tal sum by attachment and. sale of immovable property of the Judgment Debtor, though that prayer was not initially made

in any of the two applications for execution. That prayer was allowed when attachment of the two immovable property of the Judgment Debtor

was made the Decree Holders came to know that the said property was subject to attachment in execution of another decree for a large amount.

The decree holders, thereafter, applied again before the executing Court for amendment of his execution application seeking assistance of the

Court by attachment and sale of movable property of the decree holder. This prayer in both the money execution cases was objected to by the

Judgment Debtor.

2. The Learned Munsif, by his order No. 54 dated 18.2.74 in Money Execution Case No. 69 of 1970 and by order No. 55 dated 27.2.70 in

Money Execution Case No. 70 of 1970, has allowed the prayer. Challenging these two orders, the Judgment Debtor, A. C. Sanyal, has filed these

two Revision applications giving rise to C.R. 1728 of 1974 and C.R. 1841 of 1974. These applications have been filed u/s 115 of the Civil

Procedure Code.

3. The question for consideration is whether there may be an amendment of the execution application by the decree holders. Mr. S. S. Roy

Learned Advocate appearing for the judgment Debtor/Petitioner submits that there cannot be any amendment of an application for execution filed

under order 21 Rule 11 of the Code, as the provisions of order 6 Rule 17 of the Code providing for amendment of pleadings in a suit are not

applicable to amendment of application for execution. Order 21- rule 17 of the Code lays down the procedure that has to be followed by the

Court on receiving an application for execution of decree. It states that the Court on receiving such an application shall ascertain -whether the

requirements of rules 11 to 14, as may be with and may reject the application or allow time to the decree holder to remedy the defects, if it is

noticed that the requirements of rules 11 to 14 have not been complied with. In the instant cases the Learned Munsit did not notice that any of the

requirements of rules 11 to 14 of order 21 had been complied with when the application for execution was filed initially and necessarily did not

make any order allowing the decree holders to remedy defects. In the application for execution as originally filed the only assistance that the decree

holders required under the code was arrest and detention of the Judgment (debtor. Subsequently when that assistance was not adequate for the

purpose of realisation of decretal dues he applied for adding a prayer for assistance of the Court by attachment and sale of immovable properties

of the judgment debtor. That prayer was allowed inspite of objection. The decree holders took steps in terms of that added prayer. Even that was

found inadequate whereupon the decree holders again applied for adding a prayer for assistance from the court to realise the decretal sums by

attachment and sale of movable properties. This prayer has also been allowed though objected to by the Judgment debtor. This prayer for

additional assistance from the Court, if treated as a petition for amendment, is one not made under order. 21 rule 17. It has been treated by the

Learned Munsif as one u/s 151 and 153 of the Code of Civil Procedure. In exercise of such power, the learned Munsif has allowed the prayer for

assistance of the Court in another additional mode to be added in the execution. In the case of Rohini Kumar Roy v. Krishna Prasad Roy

Chowdhury reported in 39 C.W.N. 1144, a Division Bench of this Court speaking through R. C. Mitter, J. held that the Court has inherent power

u/s 151 and 153 of CPC to allow the amendment of petition of execution of a decree in the interest of Justice. In a later case, namely, the case of

Kalipada Sinha Vs. Mahalaxmi Bank Ltd., , the same question came up for consideration and the Division Bench speaking through Sir ha, J.

observed that there is ample power in the executing Court to grant an amendment in exercise of its inherent jurisdiction u/s 151 and 153 of the

CPC in the interest of Justice. Mr. Roy refers to the case of Ramkarandas Radhavallabh Vs. Bhagwandas Dwarkadas, and submits that there is no

scope for the executing court to resort to section 151 of the CPC for granting amendment of an application for execution. This case is not of any

aid to Mr. Roy. The decision in, that case is that the inherent powers are to be exercised by the Court, in very exceptional circumstances, for

which the Code lays down no procedure.

4. In the facts of that case, their Lordships noticed that there were ex-press provisions in order 37 of the Code for setting aside a decree passed

under that order of the code and on that footing held that there was no scope to resort to section 151 for setting aside a decree made under that

order. It has already been pointed out that there is no specific provisions in the Code for amendment of an application for execution by seeking

additional assistances from the court for realisation of the decreetal dues. That being so, it cannot be said that application of Section 151 of the

Code in these cases is not permitted. Mr. Roy points out that it is possible for the decree holder to make a fresh independent application for

execution of the decree by attachment and sale of movable properties as there is no question of limitation and that being the position, the

amendment should not have been allowed. I am not impressed with this argument. To compel the decree holder to take recourse to such a

procedure will mean only multiplicity of litigations. The decree holder when filing applications initially may have asked for all or any of the five

modes of assistance provided in Clause (F) of Sub-Rule (2) of Rule 11. He, however, asked for assistance by only one of those several modes.

That should not be any ground, when he could have asked for all time five modes of assistance to be given to him initially and has asked for

additional assistance failing to have the achieved result from the assistance, initially asked for, from the court. For these considerations, I am not

satisfied that there has been any wrong exercise of jurisdiction by the Learned Munsif in allowing the prayer for assistance.

5. Mr. Mukherjee, appearing for the opposite party, submits that there should not be any interference in this application u/s 115 of the CPC as the

orders passed by the Learned Munsif are discretionary orders. There is force in this contention if a Court of first instance allows an amendment. It

will be idle to ask this in its revisional application to interfere with the order. In the case of Abdullah v. Ganesh, reported in (1933) 60 LA. 83

(same as 142 I.C. 326) the Privy Council held that when a court of first instances allows an amendment and the Court of first appeal thinks that the

discretion has been properly exercised. There should be no interference by the Privy Council. In this view of the matter also the orders of the

Learned Munsif cannot be challenge. In the premises, I discharge the Rules in each of these two cases. There will be no costs of hearing.

Let the records go down as early as possible, if lying here. The 13th September, 1974.