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Raja Kirtyanand Singh Vs Raja Prithi Chand Lal Chaudhury

Court: Bombay High Court

Date of Decision: Nov. 22, 1931

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 145
Limitation Act, 1908 â€" Section 15(1)

Citation: (1933) 35 BOMLR 526

Hon'ble Judges: Tomlin, J; Thankerton, J; Lancelot Sanderson, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Tomlin, J.
This is an appeal from a decree of the High Court at Patna, which affirmed an order dated September 19, 1927, of the Court of

the Subordinate Judge of Monghyr.

2. The question arises in this way. On April 1, 1914, a decree was made in certain rent suits by which by consent the present appellants, or their

predecessors, obtained a decree for Rs. 1,84,521, besides further interest thereon at eight annas per cent, per month.

3. It was provided by the decree that the plaintiff should not take out execution of the decree until March 1915, so that there was a year''s

suspension.

4. The respondent was a consenting party to the decree in his capacity as surety. The result of that apparently is that the decree can u/s 145 of the

CPC be executed against him as though he were a party to the suit and the principal debtor.

5. The plaintiffs thereafter made a number of applications for execution.

6. The first was made on June 23, 1915, and apparently was struck off on June 24, 1916. without there being any satisfaction of the decree.

7. A second application was made on September 10, 1918, and that again was struck off on March 25, 1919, without any satisfaction of the

decree.

8. A third application was made on April 10, 1919; but in the meantime the defendants in the rent suits who apparently were, or claimed to be,

interested in the Srinagar Raj, as one of their principal assets, had a suit commenced against them by a lady of the family, the nature of which does

not very clearly appear but which was evidently a suit for the protection of the property in the interests of the family.

9. In the course of that suit apparently in January 1920, a receiver was appointed, and on January 31, an application was made in that suit by the

appellants in the absence of the judgment-debtors and of the surety, which resulted in an order in that suit for payment of Rs. 9,000 half-yearly by

the receiver in that suit to the appellants in respect of their judgment debt in the rent suits.

10. In fact, the receiver paid nothing.

11. On February 24, 1920, the third application for execution in the rent suits which was uptil that moment pending, was struck out. About this

time it appears that at the instance of the receiver in the Raj suit the proceedings in the rent suits were transferred from Monghyr, where they had

theretofore been conducted, to Bhagalpore, where the Raj suit was proceeding; and presently an application was made by the appellants in the Raj

suit asking in effect that either the receiver might pay their debt, or that they might levy execution on the property of the Raj in the hands of the

receiver.

12. That application seems to have come before the Subordinate Judge on many occasions and on each occasion he saw fit to postpone decision,

and ultimately, according to the order sheet, on September 16, 1922, he made an order that the appellants were to wait for some time for payment

of the larger decree, and he directed an account of the smaller decree. That only means that the compromise decree was made up of two separate

sums, a bigger sum and a smaller sum ; so that the result of that was that they were left with nothing in the main to satisfy their debt. At that moment

when that order was made, it is to be observed that there were in fact no execution proceedings pending at all. The appellants appealed against the

last-mentioned order and on April 16, 1923, that is seven months afterwards, the order was set aside.

13. On May 15, 1923, that is, a month after the order was set aside, the appellants made their fourth application for execution in the rent suits.

That was struck off on June 8, 1923, and there is no information as to why it was so struck off, although it appeal"s that in the meantime some sum

had been paid to the appellants by the receiver in the Raj suit.

14. On June 11, 1923, that is, three clays after the fourth application was struck off, the appellants made a fifth application for execution, and that

was struck off on March 30, 1926. But in the meantime, in some way or another, they had succeeded in getting an order for the sale of Raj

property, presumably in the Raj suit, and the Raj property was in fact sold and something over a lakh of rupees was realised and paid to them in

satisfaction pro tanto of their judgment debt. But there remained a substantial sum still owing to them.

15. On June 15, 1925, they made a sixth application for execution in the rent suits. Their Lordships have no particulars of that application, or what

happened to it, it probably suffered the fate of its predecessors and was struck off without any particular result.

16. On July 13, 1927, there followed a seventh application for execution in the rent suits. It is to be observed that the six applications which have

been mentioned up to this point were all applications against the judgment-debtors. The seventh application was, however, an application against

the surety. This application founds the present appeal before their Lordships" Board, because objection was taken to it that it was out of time. That

objection was upheld in both Courts below, and it is against that conclusion that the present appellants have appealed to His Majesty in Council.

17. Now two points are made by the appellants. The first is that though u/s 48 of the CPC it is prima facie barred, because a period of twelve

years has run, it is saved by the order of January 31, 1920, by which the receiver was ordered to make half-yearly payments to the appellants, on

the ground that that order is within the meaning of Section 48 (1) (b) a subsequent order directing payment of money.

18. The section is as follows :-

Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree

shall be made upon any fresh application presented after the expiration of twelve years from-

(a) the data of the decree sought to be executed, or,

(b) 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, the data of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

19. Their Lordships are of opinion that on the true construction of the section the subsequent order must be an order in the suit in which the decree

is made, and an order which directs payment by the debtor or the surety of money in respect of the judgment debt. The order of January 31,

1920, satisfies none of these conditions. It is an order made at a time when some of the property which was believed to be the property of the

debtors was the subject of some suit in the nature of an administration suit, in which a receiver had been appointed. The application for the order

made in that suit was made in the absence of the judgment-debtors and in the absence of the surety, and the order for payment was an order OH

the receiver in that suit. That, in their Lordships" opinion, is not such an order as is contemplated by Section 48 (1) (b) at all, and that point,

therefore, fails.

20. The second point depends upon Section 15 (1) of the Indian Limitation Act, 1908, which is in these terms :-

(1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which

has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day

on which it was withdrawn, shall be excluded.

21. The point made by the appellants is this. They say that on September 16, 1922, the Judge in the Raj suit ordered, according to the note in the

order paper-their Lordships have not the order before them-that the decree-holders were to wait for some time for payment. That order was set

aside on April 16, 1923. Therefore, there was an interval of seven months during which the order of September 16, 1922, was in operation. The

appellants say that was a stay, and those seven months saved the situation for thorn, because if those seven months are not counted the present

application was in time.

22. Now the first thing to be observed is that at the time when that order was made, there was in fact no application for execution pending at all. It

was an order, again, made in the Raj suit and not in the rent suits; it way an order made on an application by the decree-holders seeking leave to

proceed against property in the hands of the receiver, in the Raj suit. It was an order which did not stay execution at all, but simply said that so far

as that application in that suit was concerned the appellants were to wait. That seems to their Lordships not to be in any sense within the meaning

of the section a stay of the execution by injunction or order. This point also fails.

23. A number of other points were discussed in the Courts below, including the relation between Section 48 of the CPC and Section 15 of the

Indian Limitation Act, 1908 ; also the relation between Section 48 of the CPC and Article 182 of the Indian Limitation Act. Having regard to the

view which their Lordships take of the two points that have been raised, those matters do not fall to be considered at all. The result must be that

their Lordships will humbly advise His Majesty that this appeal should be dismissed and the appellants must pay the costs.