Ganesh Vinayak Athavale Vs Bhau Babbana Mhaisaie

Court: Bombay High Court

Date of Decision: Aug. 26, 1968

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 47
Limitation Act, 1963 â€" Section 29, 3

Citation: (1969) 71 BOMLR 284 : (1969) MhLj 456

Hon'ble Judges: Wagle, J; Patel, J

Bench: Division Bench

Judgement

Patel, J.
This revisional application arises under the Bombay Agricultural Debtors Relief Act. The petitioners are creditors and the

opponents are debtors, In several applications that were heard by the Civil Judge, Senior Division, being Nos. 3046, 3083, 2188, 4915, 1264

and 576 of 1049 the debts of the opponents were settled under the scheme of the Act and an order with regard to certain transaction was made in

favour of the petitioners'' father, the creditor. This award was passed on July 6, 1953. Though the creditor paid the Court-fees, the award was

sent for registration by the learned Judge concerned much later i.e. on August 22, 1961, and it was registered on August 28, 1961. As the

opponents did not pay the amount as per the installments ordered, the petitioners filed an application to the Court, being Application No. 52 of

1961 for an order for recovery of the amount due through the Collector, The learned trial Judge held that as the award was of 1953 and the

application for recovery was made in 1961, two installments were barred by limitation. He accordingly directed that the papers be sent to the

Collector for recovery of the installments for the years 1956 to 1960.

2. The petitioners filed an appeal to the District ''Court under the provisions of the B.A.D.K. Act read with Section 47 of the Civil Procedure

Code. The office apparently raised two objections (1) that the Court-fee stamp paid was not proper and (2) that the appeal itself was not

competent. The learned Judge held that Section 47 of the CPC was not applicable and the appeal, therefore, was not competent. On the basis of

this conclusion he also held that, the Court-fee stamp paid on the appeal which was equivalent to the stamp paid on the original application for

recovery of the amount there was deficit of 36 paise in the stamp. The learned Judge dismissed the appeal as being not maintainable. The petitioner

comes to this Court.

3. Fortunately for the petitioner the question as to whether the appeal is competent or not has been decided in his favour by a Division Bench of

this Court in Yadneshwar Madhav v. Mango (1967) 70 Bom. L.R. 438 to which my learned Brother was a party. The learned Judge was not right

in holding that the appeal was incompetent.

4. Once it is held that Section 47 of the CPC is applicable, evidently on the finding made by the learned Judge, the Court-fee paid is proper. If

there were any deficit, we would have given time to the petitioners to make up the deficit.

5. Ordinarily as the Court declined jurisdiction in the matter, we would have remitted the appeal for being heard by the learned appellate Judge.

As, however, the question involved is only one of law, viz. that of limitation and remitting the appeal to the lower Court would mean further waste

of time, we have heard the merits of the second point also.

6. Section 38(7) of the Act requires every award where debts are charged on the property of the debtor to be registered. By Sub-clause (3)

special mode of execution is provided. Sub-clause (3)(m) says that if the award directs delivery of property, the Court shall on application execute

the order as if it were a decree passed by it. Section 46 of the Act applies mutatis mutandis the provisions of the Registration Act. Unless therefore

the award is registered it is ineffective. In the present case even if it is assumed that Article 182 applies, the application for execution is within three

years of the registration of the award. However we are not prepared to hold that Article 182 can have any application. Section 38(5) does not say

that award is deemed to be a decree. Clause (3) merely provides for the mode of execution but does not make it a decree. Moreover it does not

say that the Limitation Act would apply. This view was taken by Mr. Justice Datar in Bagho Vedu Patil v. Tanaji Ravji Kunte (1958) Civil

Revision Application No. 1666 of 1956, decided by Datar, J., on February 26, 1958 (Unrep.).

7. A similar question arose before Mr. Justice Chandrachand in Vishwanath Dnyanoba Patil v. Shankar Ravaji Mokashi (1964) Civil Revision

Application No. 388 of 1004, decided by Chandrachud J., on February 27, 1964 (Unrep.). It was contended that Section 29 of the Limitation

Act had the effect of applying the first schedule of the Limitation Act to an application for execution of the award and u/s 3 of the Limitation Act

the Court was bound to dismiss the application if it is barred. The learned Judge negatived the contention that first Schedule applied to the

execution of the award made under B. A. D. E. Act. Section 3, therefore, could not apply. lie also held that Section 29 had no application at all.

He also repelled the contention as Mr. Justice Datar did, that by reason of the provisions of Section 38(3), Clause (m) the award must be deemed

to be a decree.

8. Again a similar question arose, under the provisions of the Hyderabad Agricultural Debtors Belief Act which are similar to the provisions of the

Bombay Agricultural Debtors Belief Act before me in Dattu Apparao v. Digambar (1967) 70 Bom. L.R. 80. I held that the Court dealing with

applications under the said Act is not a "Civil Court and as Article 182 applied to applications for execution of decree or order of any Civil Court

it did not apply to applications for execution of the award, the award itself not being called a decree or order of a Civil Court. The same reasoning

must apply to cases arising under the present Act.

9. Mr. Joshi relied upon a decision of a Division Bench of this Court in Maratha Co-operative Credit Bank, Dharwar v. Keshav (1937) 40 Bom.

L.R. 889 where it was held that an application u/s 59 of the Bombay Co-operative Societies Act for execution of an order made under the Co-

operative Societies Act, 1925, was governed by Article 182(5) of the Limitation Act. In Dattu Apparao v. Digambar above referred to, a similar

decision of this Court in Muppanna v. Gajanan Urban Co-operative Bank (1946) 49 Bom. L.R. 108 was relied upon. Both these cases depend

upon the language of Section 59 of the Co-operative Societies Act. Both Section 59 as un-amended and Section 59 as amended read that

Every order passed by the Registrar or his nominee...under Section 54...shall, if not carried out-(a) on a certificate signed by the Registrar or a

liquidator, be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court...

It is in view of the language of the section, that it was held by this Court that Article 182(5) of the Limitation Act was applicable to such an

application. The language of the provision in the present Act is entirely different and obviously on the reasoning adopted in all those three cases

referred to above, with which we agree, Article 182(5) of the Limitation Act is not applicable.

10. We, accordingly, make, the rule absolute and modify the order of the learned trial Judge by a direction that in the said order for the years

1956 to 1960"" the years ""1954 to 1960"" be substituted. The petitioners to get their costs from the opponents of this Court and of the appellate

Court.