
Before V.M. Jain, J

HARI SINGH,—*Petitioner*

versus

HARBHAJAN SINGH & ANOTHER,—*Respondents*

C.R. No. 5334 of 1998

31st May, 2000

Limitation Act, 1963—Art. 136—Trial Court decreeing the suit of the plaintiff—Appellate Court upholding the decree—Decree holder filing execution petition after a period of 13 years from the date of decree passed by the trial Court—Whether barred by limitation—Held, no—Limitation for filing execution would be counted from the date of decree of the appellate Court because the decree of the trial Court merges in that of the appellate Court.

Held that the decree dated 18th September, 1994 passed by the trial Court had merged in the decree passed by the Additional District Judge on 10th June, 1986 while dismissing the appeal. Under these circumstances, the execution petition filed by the decree holder on 15th November, 1997 would be within limitation, having been filed within 12 years of the date of the decree passed by the appellate Court. Hence, the execution petition filed by the decree holder could not be dismissed as barred by time.

(Para 9)

Harsh Aggarwal, Advocate for the petitioner.

P.K. Gupta, Advocate for the respondents.

JUDGMENT

V.M. Jain, J.

(1) This is a revision petition against the order dated 7th October, 1998 passed by the trial Court dismissing the objections filed by the judgment debtors in the execution proceedings and ordering issuance of warrants of possession.

(2) The facts which are relevant for the decision of the present revision petition are that Harbhajan Singh, decree-holder, had filed a suit for possession against the judgment debtors. The said suit filed by the plaintiff decree-holder was decreed by the trial Court on 18th September, 1984, regarding possession of the room in dispute and the appeal filed against the same was dismissed by the Additional District

Judge on 10th June, 1986. Subsequently, the decree-holder filed execution petition on 15th November, 1997 for execution of the Civil Court decree in his favour. Against the said execution petition, the judgment debtor Hari Singh filed an objection petition alleging therein that the property sought by the decree-holder in the execution proceedings had already been given to the judgement debtor vide settlement dated 26th September, 1986 and now the decree-holder had no right to claim the property. It was alleged that the judgment debtor had complied with all the terms and conditions of the compromise dated 26th September, 1986. It was further alleged that even otherwise, execution petition had become barred by time, having been filed after more than 13 years of the decree passed by the trial Court. This objection petition was contested by the decree-holder by filing a written reply alleging therein that after the decision of the agreement dated 26th September, 1986 between the parties. However, the judgment debtor did not comply with the said compromise and the same was not acted upon and had lost its validity. It was alleged that the judgment debtor failed to perform the stipulated conditions and after waiting for full 11 years, the decree-holder was compelled to file execution petition in order to save the limitation.

(3) After hearing both the sides and perusing the record, the executing Court, vide order dated 7th October, 1998, dismissed the objection petition of the judgment debtor and ordered the issuance of warrants of possession. Aggrieved against the same, Hari Singh, judgment debtor, has filed the present revision petition.

(4) Notice of motion was issued. Counsel for the parties have been heard.

(5) Learned counsel for the petitioner-judgment debtor has submitted before me that the execution petition filed by the decree-holder was barred by limitation and was not executable. It was submitted that the trial Court decree was dated 18th September, 1984, whereas the execution petition was filed on 15th November, 1997, after a gap of more than 13 years and that the limitation for filing the execution was only 12 years. Reliance was placed on *Diwan Singh v. Om Parkash* (1), *Bharat Nidhi Ltd. v. M/s Sehgal Bros and others* (2) and *Radhey Sham Jaiswal v. Smt. Ram Dulari Devi and others* (3).

(6) On the other hand, learned counsel for the decree-holder respondent submitted that against judgment and decree dated

(1) 1998 (2) RCR 423

(2) 1979 RLR 199

(3) JT 1996 (5) SC 620

18th September, 1984 passed by the trial Court, the defendants had filed an appeal, which was decided by the Additional District Judge on 10th June, 1986, dismissing the appeal. It was submitted that the decree passed by the trial Court merged with the decree of the appellate Court and it was only the decree of the appellate Court which was executable and that being so, it is the decree of the appellate Court which is to be executed and as such the execution petition filed within 12 years of the decree passed by the appellate Court would be within limitation. Reliance was placed on *Ramji Dass v. Tilak Raj* (4). It was further submitted that by virtue of the agreement dated 26th September, 1986, the judgment debtors had acknowledged the existence of the Civil Court decree against them and that being so, the execution petition filed on 15th November, 1997 would be within limitation from the date of the acknowledgement by the judgment debtors.

(7) After hearing learned counsel for the parties and perusing the record, in my opinion, the present revision petition is without any merit and is liable to be dismissed. As referred to above, the trial Court passed the decree on 18th September, 1984 and the same was upheld by the Additional District Judge on 10th June, 1986. The execution petition was filed on 15th November, 1997 and if the limitation is counted from the date of the decree of the trial Court i.e. 18th September, 1984, the present execution petition would be time barred. However, in case the limitation is counted from the date of the decree passed by the Additional District Judge i.e. 10th June, 1986, the present execution petition filed on 15th November, 1997 would be within the period of limitation i.e. within 12 years of the date when the decree became enforceable and as such the execution petition was within limitation.

(8) In 1988 CCC, 588 (supra), it was held by this Court as under :—

“A decree for possession by way of pre-emption was passed by the trial Court in favour of the decree holder respondent and against the judgment debtor petitioner on 4th October, 1968. An appeal filed by the petitioner against the same was dismissed on 19th March, 1970. The respondent filed an application for execution of the said decree on 28th March, 1981. The petitioner filed objections, *inter alia*, to the effect that the execution application had been filed more than 12 years after the decree of the trial Court and, therefore, it is barred by time. The appeal of the petitioner was dismissed by the trial Court on 19th March, 1970. The decree of the trial

(4) 1988 CCC 588 (P&H)

Court merged in the decree of the appellate Court. It is, thus, the decree passed by the appellate Court, which is to be executed. The execution application has been filed well within the period of limitation from the date of the decree of the appellate Court.”

(9) In view of the law laid down by this Court in this case, it would be clear that the decree dated 18th September, 1994 passed by the trial Court had merged in the decree passed by the Additional District Judge on 10th June, 1986 while dismissing the appeal. Under these circumstances, the execution petition filed by the decree holder on 15th November, 1997 would be within limitation, having been filed within 12 years of the date of the decree passed by the appellate Court.

(10) Similar view was taken by this Court in *Ram Kirpal v. Jain Sweitamna Temple Buildings and others* (5), in which it was held that the date of the final order of the appellate Court is the starting point of the limitation for execution of the decree against the judgment debtors. In *Kirpal Shah Sant Singh v. Sh. Harkishan Das Narsingh Das* (6), it was held by a Division Bench of this Court that where an appeal is dismissed in default under Order 41 Rule 17, CPC, then it is the final order under Article 182 of the Limitation Act (1908) which affords a fresh starting point for execution.

(11) Reliance was placed on the law laid down by the Hon'ble Privy Council in the case reported as *Abdulla Asghar Ali and others v. Ganesh Das Vig* (7) in which it was held as under :—

“When an order is judicially made by an appellate Court which has the effect of finally disposing of an appeal, such an order gives a new starting point for the period of limitation prescribed by Article 182(2) of the Limitation Act (1908).”

(12) Similar view was taken by the Hon'ble Privy Council in the case reported as *Nagendra Nath Dey and another v. Suresh Chandra Dey and others* (8), in which it was held as under :—

“So long as there is any question sub judice between any of the parties, those affected shall not be compelled to pursue the so often thorny path of execution which, if the final result is against them, may lead to no advantage. Nor in such a case as this is the judgment debtor prejudiced. He may indeed obtain the boon of delay, which is so dear to debtors...”

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- (5) 1965 PLR 481
(6) AIR 1957 Punjab 273
(7) AIR 1933 Privy Council 68
(8) AIR 1932 Privy Council 165

(13) In *Kharak Singh v. Harbhajan Singh* (9), the trial Court had passed the decree for specific performance on 31st October, 1963. An appeal against that judgment and decree was dismissed by the District Judge on 12th March 1964. On these facts, it was held by this Court as under :—

“It is not disputed that an appeal was filed against the judgment and decree dated 31st October, 1963 to the District Judge, Hoshiarpur, which was dismissed by him on 12th March, 1964. This is an established principle of law that the decree of the trial Court merges in that of the appellate Court and after passing of the decree by the appellate Court, it is the decree of that Court which is executed. The decree holder is entitled to take limitation for execution from the date of decree of the appellate Court. On 1st January, 1964, Indian Limitation Act, 1908 was repealed by the Limitation Act, 1963. By virtue of the Limitation Act of 1963 a period of 12 years was prescribed for executing the decree. Thus, the decree holder became entitled to execute his decree till March 1976. The present execution application was filed by him somewhere in 1973. The application is, therefore, clearly within limitation.”

(14) In *Y. Chandrashekara Hegde v. Omayya Shetty* (10), the final decree was passed by the trial Court on 18th April, 1955. On these facts, it was held by the Karnataka High Court as under :—

“The time to file the execution petition commences to run from 31st August, 1959, on which date the said appeal was disposed of. The execution petition filed on 13th July, 1960 was, therefore, in time. The finding of the lower appellate Court that the execution petition was barred by time is liable to be set aside.”

Similar view was taken by a Division Bench of Calcutta High Court in *Shyama Pada Choudhury v. Saha Choudhury and Co. and others AIR 1976 Calcutta 122*, in which it was held that where the decree passed by the trial Court on 1st May, 1959 was affirmed by the appellate Court with some modification on 7th June, 1962, an application for execution of the decree filed on 2th May, 1977 would not be barred by limitation. It was further held that the decree of the trial Court dated 1st May, 1959 had merged in the decree of the appellate Court dated 7th June, 1962 and the starting point of limitation for application for execution of the decree would be the date of

(9) C.L.J. (P&H) (Civil) 470

(10) AIR 1978 Karnataka 29

the appellate Court decree and not the date of the trial Court decree.”

(15) Similarly, in *Posani Ramachandraiah v. Daggupati Seshamma* (11), it was held by a Division Bench of Andhra Pradesh High Court that under Article 136 of the Limitation Act (1963), the period of limitation begins to run when the decree or order become enforceable. It was further held that the period of limitation can be reckoned from the date of the appellate decree even though there is no stay in the appeal. It was further held that if there is an appeal, the decree that can be enforced is that of the appellate Court and the period of limitation has to be reckoned from the date of that decree.

(16) Similarly in *PPAR RM Periakaruppan Chettiar and another v. KAP CT CT Chidambaram Chettiar* (12), it was held by a Division Bench of Madras High Court that the date of the decree which furnished the starting point of the limitation would be the decree of the appellate Court and not of the trial Court and hence the execution petition filed within the prescribed period from the appellate Court decree was not barred by limitation.

(17) Similarly, in *Sayed Abdul Rauf v. Nurul Hussain and others* (13), it was held by the Rajasthan High Court that under Article 136 of the Limitation Act, period provided for execution of a decree is 12 years from the date on which it becomes enforceable and if the appeal had been preferred, the decree would become enforceable after the dismissal of the same and it was immaterial that there was no order staying the execution of the decree. It was further held in the said authority that in appeal, the decree of the trial Court gets merged with the decree of the appellate Court and the latter supersedes the decree of the trial Court and, therefore, the execution application having been filed within 12 years of the date of dismissal of the second appeal would be well within time even though there was no stay order granted in the second appeal.

(18) Similarly, in *Nacharammal and others v. Veerappa Chettiar and others* (14), it was held by a Division Bench of Madras High Court that when an appellate Court passes a decree, it takes place of the decree of the trial Court and it is the decree of the appellate Court only which becomes capable of execution and consequently, the period of 12 years commences from the date of such appellate Court decree and not from the date of the decree of the trial Court.

(11) AIR 1978 AP 342

(12) AIR 1962 Madras 391

(13) AIR 1992 Rajasthan 3

(14) AIR 1946 Madras 231

(19) In view of the law laid down by the Hon'ble Privy Council, our own High Court and various other High Courts, referred to above, in my opinion, the execution petition filed by the decree holder on 15th November, 1997 would be within limitation from the date of the decree passed by the appellate Court in appeal on 10 June, 1986 and the execution petition could not be dismissed on the ground that it was barred by limitation. The authority 1998(2) RCR, 423 (supra) relied upon by learned counsel for the petitioner, in my opinion, would have no application to the facts of the present case. In this authority, reliance had been placed on *Bharat Nidhi Ltd. v. M/s Sehgal Brothers and others* 1979 RLR, 199 (supra), in which the question before the High Court was as to whether the period during which the decree was declared unenforceable and the period during which its execution remained stayed under the orders of the LPA Bench be deducted from the period of 12 years or not. After holding that the said period could be deducted from the period of 12 years, it was held by this Court that the execution application would be deemed to be within limitation. There is no dispute with this proposition of law. However, in view of the law laid down in the various authorities referred to above, the limitation would start from the date when the appellate Court decree was passed inasmuch as the trial Court decree would merge in the appellate decree and as such the execution filed within 12 years from the date of the appellate Court decree would be clearly within time. Thus, the law laid down in *Bharat Nidhi's case* (supra) would have no application to the facts of the present case. For the same reasons, the law laid down in *Diwan Singh's case* (supra) would also have no application to the facts of the present case. The authority JT 1996(5) SC 620 (supra) relied upon by learned counsel for the petitioner, in my opinion, would also have no application to the facts of the present case. In the reported case, the order under execution was passed on 29th October, 1949, whereas the execution application was filed on 16th November, 1961 and it was under those circumstances that it was held by their lordships of Supreme Court that it was clearly beyond the period of 12 years and was barred by limitation. Thus, the law laid down by their Lordships of Supreme Court in *Radhey Sham Jaiswal's case* (supra) would be of no help to the petitioner.

(20) In view of my detailed discussion above, in my opinion, the execution petition filed by the decree-holder on 15th November, 1997 could not be dismissed as barred by time, as the same was filed within 12 years from the date of the decree of the appellate Court. Accordingly, I affirm the order dated 7th October, 1998 passed by the trial Court.

(21) No other point has been urged before me in this revision petition.

(22) For the reasons recorded above, the present revision petition fails and the same is dismissed. No costs.

S.C.K.

Before R.S. Mongia & K.C. Gupta, JJ

P.N. VERMA,—*Petitioner*

versus

THE CHAIRMAN, FCI AND OTHERS,—*Respondents*

C.W.P. No. 14309 of 1998

10th July, 2000

Constitution of India, 1950—Art. 226—Food Corporation of India (Staff) Regulations, 1971—Regs. 58 & 59—Enquiry Officer exonerating the petitioner from all charges in the regular departmental enquiry—Disciplinary authority disagreeing with the findings of the Enquiry Officer and imposing penalty of reduction in rank after considering comments of the petitioner on the report—Reasons for disagreement not conveyed to the petitioner—Appellate authority rejecting appeal of the petitioner—Whether non-supply of the reasons for disagreement prejudiced the petitioner—Held, yes—It amounts to complete denial of reasonable opportunity and violates principles of natural justice—Impugned orders quashed with liberty to the Corporation to proceed against the petitioner under law.

Held, that if the Enquiry Officer is not himself the Disciplinary authority, the principles of natural justice require that enquiry report must be supplied to the delinquent official to show to the Disciplinary authority that he should not agree with the Enquiry Officer. Conversely also, if the Disciplinary authority is in disagreement with the report of the Enquiry Officer, the rules of natural justice would require that the delinquent official must know as to why Disciplinary Authority is not agreeing with the findings recorded by the Enquiry Officer and should be given a chance to persuade the Disciplinary Authority not to do so. This is the minimum requirement of the rules of natural justice.

(Para 7)

Further held, that the non-supply of the reasons for disagreement with the enquiry report has clearly prejudiced the petitioner inasmuch as before the award of punishment, he never knew as to what has weighed with the Disciplinary Authority to disagree with the Enquiry Officer's report.

(Para 7)