

## APPELLATE CIVIL

Before Shamsher Bahadur, J.

M/s. RAJ MECHANICAL INDUSTRIES,—Appellant.

versus

BHAGWANTI AND OTHERS,—Respondents.

**Execution Second Appeal No. 843 of 1969**

September 3, 1969.

*Code of Civil Procedure (V of 1908)—Sections 24, 37, 38 and 39—Execution proceedings—Whether can be transferred under section 24—East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13 and 17—Order of ejectment passed under section 13—Landlord applying for the execution of the order under section 17 in the Court of a Subordinate Judge—District Judge—Whether has the jurisdiction to transfer the execution proceedings to another Subordinate Judge—Objections regarding jurisdiction of an executing Court not raised at the earliest opportunity—Such objection at a later stage—Whether maintainable.*

*Held*, that the word "suit" in section 24, Code of Civil Procedure, 1908, includes execution proceedings and an execution application, can be transferred under this section. (Para 9)

*Held*, that section 17 of the East Punjab Urban Rent Restriction Act, 1949, in pursuance of which order under section 13 of the Act is executed, empowers any civil Court having jurisdiction in the area to execute it as a decree. The landlord in the first instance chooses the Court for execution of ejectment order. When he files execution proceedings in one Court, that Court cannot be regarded as the Court which passed the decree, having been chosen by the decree-holder to enforce the order of ejectment. If two Subordinate Judges have the same local jurisdiction assigned to them, it is competent for the District Judge to distribute the business among the two officers, though it may not empower the District Judge to make any order in contravention of section 38 of the Code of Civil Procedure. The District Judge has power to assign the work to any of the Subordinate Judges and can transfer the execution proceedings filed in the Court of a Subordinate Judge to the Court of another Subordinate Judge. The subsequent Court to which the matter is transferred under section 24 of the Code is a successor Court and has the requisite jurisdiction to execute that order.

(Para 7)

*Held*, that the Court to whose jurisdiction the subject-matter of the decree is transferred acquires inherent jurisdiction over the same by reason of transfer, and if it entertains an execution application with reference thereto, it would at the worst be an irregular assumption of jurisdiction and not a total absence of it, and if objection to it is not taken at the earliest opportunity, it must be deemed to have been waived, and cannot be raised at any later stage of proceedings.

(Para 11)

*Execution Second Appeal from the judgment of the Court of Shri Gurbachan Singh, District Judge, Ludhiana, dated 24th March, 1969, affirming that of Shri Mewa Singh, Sub-Judge, 1st Class, Ludhiana, dated 15th January, 1969, dismissing the objection petition with costs.*

J. N. KAUSHAL AND ASHOK BHAN, ADVOCATES, for the Appellants.

D. N. AWASTHY, AND R. K. AGGARWAL, ADVOCATES, for the Respondents.

#### JUDGMENT

SHAMSHER BAHADUR, J.—This is an execution second appeal of the judgment-debtor founded solely on the technical plea that the executing Court had no jurisdiction to entertain the matter in controversy.

(2) It was on 13th of May, 1955, that the order, which is now sought to be executed, was passed for eviction of the appellant, Raj Mechanical Industries, Ludhiana, from the suit premises at the instance of the landlords, Ram Sarup, who is now represented in this appeal by respondents 1 to 3 as his legal representatives, and Baldev Singh, respondent No. 4. The application for execution was made to the Senior Subordinate Judge, Ludhiana, sometime in 1957. It may be observed at this stage that under section 17 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act):—

“Every order made under section 10, or section 13, and every order passed on appeal under section 15, shall be executed by a Civil Court having jurisdiction in the area as if it were a decree of that Court.”

Neither the filing of the application for execution nor its entertainment by the Senior Subordinate Judge, Ludhiana, has ever been challenged.

(3) The order for ejection from the building No. B-V-1348 in Madhopuri was made under section 13 of the Act on 13th May, 1955. While the execution application for recovery of premises was still pending, the decree-holder thought it necessary to bring a suit on 1st of February, 1962, for recovery of arrears of rent amounting to Rs. 3,815 in the Court of Shrimati Harminder Kaur, Subordinate Judge. The District Judge, Ludhiana, acting under section 24 of the Code of Civil Procedure transferred both the execution application and the suit for trial before Shrimati Harminder Kaur as a

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common question was involved, this being the plea raised by the judgment-debtor-appellant that a fresh settlement had been reached between the parties bringing into existence a new tenancy between the parties. The Court of the Subordinate Judge overruled the plea of adjustment and dismissed the objections of Raj Mechanical Works filed under Order 21, rule 2, Code of Civil Procedure, holding that the order of the Rent Controller of 13th May, 1965, was executable. The two appeals filed by the appellant were dismissed by the District Judge on 11th of June, and so also in further appeal by the High Court on 15th April, 1966.

(4) The decree-holder then moved an application on 18th March, 1967, for restoration of his previous application. This was done in the Court of Shri Hardyal Singh, which was the successor Court of Shrimati Harminder Kaur. As no action appears to have been taken on this application the decree-holder felt impelled to submit a fresh application on 2nd of May, 1967, for the same purpose. It had transpired that the original file was not traceable. The Court of Shri Hardyal Singh issued warrant of possession against the judgment-debtor appellant who then filed the objection which is the subject-matter of the present appeal. The point was taken that the Court of Shri Hardyal Singh, which had been abolished and succeeded by the Court of Shri Mewa Singh to whom the proceedings were transferred by the District Judge, Ludhiana, had no jurisdiction. As many as four issues were framed on the pleadings of the parties but the only surviving question for determination is whether the Court of Shri Mewa Singh had jurisdiction to try the execution application, being a successor of the Court of Shrimati Harminder Kaur. Shri Mewa Singh dismissed the objection raised by the judgment-debtor on 15th of January, 1969, and this order having been upheld in appeal by the learned District Judge, Ludhiana, on 24th March, 1969, the judgment-debtor has come again in appeal to this Court.

(5) It has been very strenuously urged by Mr. Kaushal that the District Judge had no warrant to send the execution case to the Court of Shrimati Harminder Kaur when the decree-holder himself had chosen the Court of the Senior Subordinate Judge as the forum for trial of the execution matter. It is further canvassed by Mr. Kaushal that in any event the second application of 2nd of May, 1967, was not entertainable when the first one presented on 18th March, 1967, was still pending. Behind the facade of this technical objection, the

only purpose of the judgment-debtor at this stage could be to have the execution of an admittedly valid order for ejection made on 13th May, 1955 indefinitely delayed. It may be observed in passing that the plea of limitation, if the execution application is tried again should this appeal succeed, will no longer be available to the judgment-debtor as the issue whether the execution application of 2nd of May, 1967 is barred by time has been decided against the appellant and the decision was not challenged before the learned District Judge, Ludhiana, in appeal.

(6) Mr. Kaushal addressed his arguments regarding the competence of the execution application on the basis of sections 37, 38 and 39 of the Code of Civil Procedure. Under section 38, "a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution". The definition of "Court which passed a decree" is contained in section 37 and includes a decree passed by a Court in the exercise of appellate jurisdiction and "where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit". Section 39 provides for the transfer of decrees, and subsection (1) says that "the Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court".

(7) Mr. Kaushal submits, on an interpretation of these sections that the Court which passes a decree can alone send it for execution to another Court. The execution of the decree in the instant case is in pursuance of section 17 of the special Act which empowers any civil Court having jurisdiction in the area to execute the decree. Manifestly, the provisions contained in the special Act would govern a situation which has arisen in the present case. The decree-holder, in the first instance chose the Court of the Senior Subordinate Judge for execution of the ejection decree. Mr. Kaushal does not challenge this. What Mr. Kaushal contends is that the subsequent orders of transfer made by the District Judge are not warranted by the provisions of the Code of Civil Procedure. It may be that a decree may be "sent" to another Court for execution by the Court which passes a decree. But the analogy cannot be pressed into service for the proposition that the Senior Subordinate Judge should be regarded as the Court which passed the decree, having been chosen by the decree-holder to enforce the order of ejection.

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Chitaley in the commentary on the Code of Civil Procedure (1963 edition) Volume I, mentions at page 665 that "a decree may be executed also by the Court to which the execution proceedings may be transferred under the provisions of section 24". There is a Division Bench authority of the Calcutta High Court of B. K. Mukherjee and C. C. Biswas, JJ. in *Atamba Singh v. Gopal Chandra Naha* (1), in support of the proposition that if two Subordinate Judges have the same local jurisdiction assigned to them, it is certainly competent for the District Judge to distribute the business among the two officers, though it may not empower the District Judge to make any order in contravention of section 38, Code of Civil Procedure. In the words of B. K. Mukherjee, J., at page 355:—

".....the only way to regularise the proceeding is to pass an order under section 24 of the Code of Civil Procedure by which the execution case, which must be deemed to be in the eye of law pending in the Court of the regular Subordinate Judge, can be withdrawn from his file and can be transferred to and disposed of by the ex-officio Subordinate Judge. The District Judge in his judgment adverts to such a possibility. As an order under section 24 of the Code can be made *suo motu* without any application by the parties, we think that the only course open to us in these circumstances, is to exercise our powers under that section and to withdraw this execution case from the file of the regular Subordinate Judge at Cachar and transfer it for disposal to the file of the ex-officio Subordinate Judge."

Clearly, the power to transfer execution proceedings under section 24 was countenanced by the Division Bench of the Calcutta High Court.

(8) Now, what happened in the instant case was that a similar point was raised both in the execution application and the suit which was brought for recovery of arrears of rent. The District Judge could assign the case to one of the Subordinate Judges, all of whom admittedly have jurisdiction to execute the decree under section 17 of the Act. There is no procedural error, so far as I can see, in the order of the District Judge directing that both the suit and the execution application should be heard by the Court of Shrimati Harminder Kaur, although in the first instance the decree-holder had chosen the Court of the Senior Subordinate Judge for execution

(1) (1941) 73 Cal. L.J. 351.

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of the ejectment order. The Court of Shri Mewa Singh, which has now entertained the objection petition under appeal, is a successor Court and there can be no manner of doubt that it has the requisite jurisdiction to adjudicate on the dispute.

(9) It was argued by Mr. Kaushal on the basis of a decision of a Division Bench of Calcutta High Court in *Ranjit Kumar Banerjee v. Gour Hari Mukherji*, (2), that section 24 of the Code of Civil Procedure, which authorises a District Court or a High Court to "transfer any suit, appeal or other proceeding" does not include in the term "other proceeding" an execution application. A contrary view has been taken by a Bench of Walsh, C.J., and Dalal, J., in *Muhammad Habibullah v. R. B. Seth Tikam Chand* (3), where it was held that the word "suit" in section 24, Code of Civil Procedure, will include execution proceedings and that a particular execution application can be transferred under this section.

(10) Mention may also be made of an old Division Bench authority of the Bombay High Court of Chief Justice Westropp and Justice Pinhey in *Balaji Ranchoddas* (4), where it was held that the District Judge has power to withdraw an application for execution of a decree from a Subordinate Court and to dispose of it himself, or to transfer it to another Subordinate Court competent to deal with it. This decision was followed by a subsequent Division Bench of the same Court consisting of Sir Charles Sargent, C.J., and Bayley, J. in *Krishna Velji Marwadi v. Bhau Mansa Ram* (5). All Subordinate Judges have admittedly jurisdiction to execute the order for ejectment and it seems to me that in a situation of this kind the District Judge had power to assign the work to the Subordinate Judge to whom both the matters were sent for disposal.

(11) The matter may be looked at in another way and this is really the ground on which the appeal has been dismissed by the learned District Judge, Ludhiana. Even if it be assumed that the transfer was not validly effected under the provisions of the Code of Civil Procedure, irrespective of what is contained in section 17 of the Act, the judgment-debtor should have raised this objection at the time when the plea of the appellant for adjustment was first repelled and the objection dismissed by Shrimati Harminder Kaur

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(2) A.I.R. 1956 Cal. 655.

(3) A.I.R. 1925 All. 276

(4) I.L.R. 5 Bom. 680.

(5) I.L.R. 18 Bom. 61.

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under Order 21, rule 2. In the appeal preferred to the Additional District Judge, Ludhiana, which was dismissed on 11th June, 1964, such a contention was never raised. Even in the High Court which dismissed the appeal finally on 15th April, 1966, there was no attack on this ground. It was held by the Supreme Court in *Merla Ramanna v. Nallaparaaju and others* (6), that the Court to whose jurisdiction the subject-matter of the decree is transferred acquires inherent jurisdiction over the same by reason of such transfer, and if it entertains an execution application with reference thereto, it would at the worst be an irregular assumption of jurisdiction and not a total absence of it, and if objection to it not taken at the earliest opportunity, it must be deemed to have been waived, and cannot be raised at any later stage of the proceedings. The judgment-debtor should have raised this objection that Shrimati Harminder Kaur was not seized of the jurisdiction which she had assumed on the case being transferred by the District Judge. The point might well have been taken before either of the two appellate Courts and there can be no doubt that on the principle of the Supreme Court decision, the judgment-debtor must be deemed to have waived this objection. No injustice has resulted; indeed it would be miscarriage of justice to accept the technical objection at this stage relating, as it does, to a matter which has been pending for many years in Court and could and should have been raised much earlier.

(12) There is no merit in this appeal which fails and is dismissed with costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MOHINDER SINGH,—Petitioner

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 3683 of 1968

September 3, 1969.

*Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Section 88—Punjab Zila Parishad (Appointment of Secretaries) Rules (1965)—Rules*

(6) A.I.R. 1956 S.C. 87.