

Amitava Das Gupta vs Nath Bank Ltd. on 21 October, 1970

Equivalent citations: AIR1971SC218, [1971]41COMPCAS159(SC), (1970)3SCC727, 1971(III)UJ65(SC), AIR 1971 SUPREME COURT 218

Author: A.N. Grover

Bench: A.N. Grover, J.C. Shah, K.S. Hegde

JUDGMENT

A.N. Grover, J.

1. These appeals have been brought to this Court by certificate from a judgment of the Patna High Court.

2. The facts may be stated. The respondent Nath Bank Limited-brought a money suit against the appellant, Amitava Das Gupta, and one Benoy Kumar Sen Gupta in the Patna Courts on March 3, 1949 The Bank, however, went into liquidation as a result of a petition filed by two of its creditors in March 1950, in the Calcutta High Court. The Reserve Bank of India was appointed the official liquidator of the said Bank. The Banking Companies (Amendment) Act 1950 received the assent of the President on March 15, 1950. Under Section 11 of the said Act where any proceeding, whether civil or criminal, which had arisen out of or in the course of such winding up, was pending in any Court immediately before the commencement of the Act it was to stand transferred to the Court which would have had jurisdiction to entertain such proceeding if the Act had been in force on the date on which the proceeding had commenced. By virtue of Section 11 the suit which was pending in the Patna Court was transferred to the Calcutta High Court. The records were accordingly transferred to the Calcutta High Court where the suit was renumbered as Original Trial Suit No. 122 of 1951. After trial it was decreed against the appellant and the other defendant. The decree holder then applied for execution of the decree in the Calcutta High Court and prayed for attachment of a house in Patna A precept was sent by the Calcutta High Court to the District Judge Patna followed by the transfer of decree to the Court of the District Judge for execution case was placed before a Subordinate judge before whom a number of objections were raised. Two Miscellaneous cases arose out of the objections filed under Order 21, Rs. 50 and Section 151 of the CPC which were dismissed. The appellant filed an application on June 3, 1959 Under Section 47 of the Code that the decree sought to be executed was null and void and was incapable of execution. He filed another objection alleging that the decree-holder had suppressed certain material facts. The learned subordinate judge held that the decree passed by the Calcutta High Court was null and void and it was barred by limitation when the execution was taken out. The matter was taken in appeal to the High Court.

3. The High Court took the view that the registered office of Nath Bank Ltd., was situate in Calcutta and therefore the Calcutta High Court would be the Court where winding up proceeding could be started Under Section 45(b) of the Banking Companies Act 1949, as amended by the Banking Companies (Amendment) Act 1950 the High Court of Calcutta where the winding up proceedings were going on was competent to decide all claims of the company in liquidation. Reliance was also placed on the amendment made by the Banking Companies Act (Act 52 of 1953) which incorporated Section 45(c) with regard to the jurisdiction of the High Court to dispose of the suit. The claim of Nath Bank, therefore, against the appellant and Benoy Sen Kumar Gupta was fully within the jurisdiction of the Calcutta High Court. An argument was raised on behalf of the judgment debtors that after the transfer of the suit to the Calcutta High Court it should have issued a notice to them of such transfer so that particular objections to the plaintiff's claim could be made there. Since no notice was issued to them they were precluded from prosecuting the suit properly in the Calcutta High Court. The learned judges of the Patna High Court were, however, of the view that the burden lay upon the judgment debtors to establish that notice of the original Trial Suit No. 122/51 had not been issued by the Calcutta High Court to them. The order sheet of the suit had not been brought on the record and in the absence of that document, it was said, the judgment debtors could not raise any objection on the ground of want of notice. At any rate it was not considered necessary that a fresh notice be issued when an order had been passed by the Patna Court in the presence of the judgment debtors transmitting the records to the Calcutta High Court.

4. The next question which had been argued before the High Court was one of limitation. The point which fell for decision was whether Article 183 of the Limitation Act 1908 was applicable. For the applicability of Article 183 it had to be decided whether the decree passed on the original side of the High Court after the suit had been transferred, as a result of the operation of the Banking Companies Act, could be regarded as a decree passed on the ordinary original side of the High Court or in its special jurisdiction. The judgment debtors maintained that the jurisdiction conferred by the Banking Companies Act on the High Court was a special jurisdiction and the High Court was not exercising its ordinary original civil jurisdiction while disposing of the suit that had been transferred from Patna by virtue of the special provisions of the Banking Companies Act. This contention was repelled and it was held that in the present case the High Court had exercised its ordinary original jurisdiction while disposing of the suit which had been transferred to it. Consequently Article 183 of the Limitation Act applied and the execution proceedings were within time.

5. Before us two main contentions have been sought to be raised. The first relates to the question of limitation and the second to no notice having been issued by the Calcutta High Court to the judgment debtors on transfer of the suit to that Court. As regards the first point it is not disputed that if Article 183 of the Limitation Act 1908 was applicable the execution proceedings would not be barred by time. The period of limitation prescribed by that Article is 12 years to enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction. The original jurisdiction of the Calcutta High Court has been defined in Clauses 11 and 12 of the Letters Patent of that Court. The argument which has been raised on behalf of the appellant is that the jurisdiction which was derived under the companies Act or the Banking Companies Act was not covered by Clause 12 of the Letters Patent. It had, therefore, to be regarded as the special jurisdiction of the High Court. Reliance has been placed on *Navivahoo and Ors. v. Turner* (Official

Assignee) and Ors. 16 I.A. 156 in which it was laid down that the ordinary jurisdiction of the High Court embraces all such as exercised in the ordinary course of law and without any special step being necessary to assume it. The special Step, in the present case, could be found in Section 11 of the Banking Companies (Amendment) Act 1950. An identical question came up for consideration before the Madras High Court in P.T. Munia Servai v. The Hanuman Bank Ltd. Tanjore ILR (1958) Mad. 685 in liquidation). Applying the test laid down by the Privy Council it was held that the jurisdiction conferred on the High Court by the Banking Companies Act was part of its ordinary original jurisdiction within the meaning of Article 183 that jurisdiction had to be exercised in the ordinary course of law without any special step being necessary to assume it. The Madras decision was referred to with approval by this Court in Jyoti Bhushan Guptu v. The Banaras Bank Ltd. (1962) Supp. 1 S.R.C. 73. In fact that decision concludes the matter so far as applicability of Article 183 is concerned. It must, therefore, be held that Article 183 was applicable and the execution proceedings were within time.

6. As regards the other contention about no notice or opportunity having been given to the appellant to prosecute the suit when it was transferred to the Calcutta High Court we can derive no assistance from the printed record. It was necessary to send for the original records of the Calcutta High Court relating to Original Trial Suit No. 122 of 1951 in which the money decree was granted in favour of Nath Bank Ltd. Let those records be called as expeditiously as possible and the appeal placed for further hearing before this Court as soon as the record is received.