Ghafoor Darzi vs Ram Nath Misir And Anr. on 4 April, 1950

Equivalent citations: AIR1950ALL655, AIR 1950 ALLAHABAD 655

JUDGMENT

Mushtaq Ahmad, J.

1. This is a decree-holder's appeal and it raises an interesting question of limitation. The decree in execution was for money passed on 16th November 1983. On 6th November 1936, it was put into execution, but the application for execution was struck off on 23rd November 1936, Another application for execution was made by the decree-holder on 17th March 1944. Objection was taken to this by the judgment-debtors on the score of limitation. This objection was allowed, although in view of the decree having meanwhile been amended under the Debt Redemption Act on 9th September 1945, the Court observed in its order that the question of the effect of the amendment under the said Act was left open. Then the application for execution of the amended decree, out of which the present appeal has arisen, was made by the appellant on 29th April 1945 (1948?). The judgment-debtors-respondents again objected to the execution on the ground of limitation. The execution Court dismissed the objection, holding that the application being within three years of 9th September 1945, when the decree had been amended, it was within time under the provisions of Article 182 (4), Limitation Act. The lower appellate Court, disagreeing with this view, held that the decree having already become time-barred before it was amended on 9th September 1945, it could not be put into execution, even though the application for execution was within three years of the date of the amendment of the decree, which in this case, as we have said, was 9th September 1945. The only question emerging for decision, therefore, in this appeal is whether, in a case where the decree sought to be executed had already become time-barred before it was amended, the application for execution of the amended decree being within three years of the date of the amendment, such an application is or is not within time.

2. There can be no doubt that, before the passing of the present Limitation Act, there was a conflict of judicial opinion on the question whether a decree which had already became time-barred but was subsequently amended could be put into execution on an application made within three years of the amendment. The cases in which this point arose were decided with reference to the provisions of Article 179, Limitation Act of 1877. That article did not include any provision analogous to Clause (4) of Article 182 of the present Limitation Act, In order, presumably, to settle this conflict the legislature added the said clause to the present Article 182, and the question is whether, on a correct interpretation of the same, it would still be open to us to hold that, although the application for execution is within three years of the date of the amendment of the decree, it should be held as time-barred on the ground that the amendment of the decree had been made after the decree had become 'dead', as the learned counsel for the judgment-debtors has argued.

3. Fortunately, we have a decision of the Judicial Committee, namely the case in Nagendra Nath Dey v. Suresh Chandra Dey, A. I. R. (19) 1932 P. C. 165: (60 Cal. 1) which furnishes a safe guide for ascertaining the true legal position in this case. At page 167 of the report their Lordships said:

> "But in construing such provisions equitable considerations are out of place and the strict grammatical meaning of the words is, their Lordships think, the only safe guide."

4. Now Clause (4) of Article 182 of the Act provides that where a decree has been amended, an application for execution of the decree can be made within three years of the amendment. In the present case, the decree had been amended admittedly within three years of the date of the application for execution, out of which this appeal has arisen. On the literal meaning of the words of the clause, there can thus be no doubt that the application for execution was within time, and no objection can be validly taken on the score of its being time-barred. Cases decided by the different Courts in this country prior to the said decision of the Judicial Committee would not be of much avail, particularly if that decision was neither cited nor considered in those cases. Instances of this are furnished by a number of rulings cited by the learned counsel for the judgment debtors-respondents. The lower appellate Court also cited oases which had been decided long before the Privy Council case. These were Rabiuddin v. Ram Kanai Sen, 59 I. C. 186 : (A. I. R. (7) 4920 Cal. 769) and Jhamman Lal v. Daulat Ram, 73 I. C. 461 : (A. I. R. (11) 1924 Lah. 329). Other cases in support of the view taken by the lower appellate Court but wholly contrary to a vast majority of cases may be founded in Anandram v. Nityananda Barham, A. I. R. (3) 1916 Cal. 511: (32 I. C. 744), Ahammad Kuty v. Kottakkat Kuti A. I. R. (20) 1933 Mad. 315: (56 Mad. 458) and Haidri Khanam v. Bhawani Shankar, A. I. R. (21) 1934 Oudh 43: (147 I. C. 815). Barring the last two, the other cases were, of course, of periods prior to the Privy Council decision we have just cited. In none of those that decision appears to have been noticed. In the last two cases which, no doubt, are of subsequent dates, no reference to that decision again is to be found. Indeed, all these decisions are based on the view taken in Rabiuddin v. Ram Kanai Sen, 59 I. C. 186 : (A. I. R. (7) 1920 Cal. 769) and Jhamman Lal v. Daulat Ram. 73 I. C. 461: (A. I. R. (11) 1924 Lah. 329) already mentioned by us above.

5. The preponderance of judicial authority on the point undoubtedly seems to lie the other way. Some of the oases, in which the contrary view, which favours the decree-holders' contention, was taken, expressly relied on the observations of the Judicial Committee, already quoted by us from Nagendra Nath v. Sureshchandra, A. I. R. (19) 1932 P. C. 165: (60 Cal 1). For example, we may refer to the decisions in Imam Din v. Peoples Instalment & Saving Bank Ltd. Lahore, A. I. R. (28) 1941 Lah. 131: (I. L. R. (1941) Lah. 659) and Thiagaraja Thevar v. Sambasiva Thevar, A. I. R. (21) 1934 Mad. 283 ; (57 Mad. 795). The learned Judges in these cases, quite rightly, we respectfully think, relied on the principle laid down by the Judicial Committee, namely, that the words of the statute must be given their literal meaning and that it is not open to a Court to introduce any consideration of public policy or equity to control or restrict the natural meaning of the words used by the legislature. In this view, clause (4) of Article 182 of the Act being explicit that the application for execution can be made within three years of the amendment of the decree, nothing further remains for the execution Court to enquire as to whether or not the amendment itself had been made in circumstances justifying the same. For instance, where the amendment had been made after the

decree had become time-barred or where the amendment was otherwise illegal but the application for execution of the amended decree was itself within three years, it would not be open to the execution Court to refuse to execute the decree on any ground of invalidity of the amendment, that being wholly beyond its jurisdiction. The point expressly arose in a large number of cases where the application for execution was made within three years of the amendment, although the amendment itself had been made after the decree had become time-barred. The only test adopted of the validity of the application for execution was whether it was within three years of the date of the amendment, all enquiry into the circumstances of the amendment being negatived. This would appear from the cases of Manohar Chandra v. Kali Priya Roy, 41 C. W. N. 1330 : (65 C. L. J. 455) ; Narottam Dass v. Atul Chandra, A. I. R. (21) 1934 Oudh 289 ; (150 I. C. 947); Durga Prosad v. Kedarnath, A. I. R. (16) 1929 Cal. 650 : (125 I. C. 292) ; Magan Lal v. Sitaram Panna Lal, A. I. R. (24) 1937 Pat. 316 : (16 Pat. 290) ; Rameshwar Narain v. Raghunandan, A. I. R. (25) 1938 Pat. 57 : (16 Pat. 453) ; Lakskmikanta Rao v. Ramayya, A. I. R. (22) 1935 Mad. 97 : (58 Mad. 743) and Basawa Chambasawraj v. Somashekhararaj, A. I. R. (35) 1948 Bom. 49 : (49 Bom. D. R. 557). In all these cases, it was laid down that once the decree has been amended and the application for execution of the amended decree is made within three years of the amendment, no objection could be taken by the judgment-debtors on any score of limitation. While it may be permissible to the judgment-debtors to object to the amendment of the decree on any ground of fact or law, the occasion for such an objection must arise before and not after the amendment. In the present case, the position is all the more anomalous, as it was on the application of the judgment debtors themselves that the decree was amended under the Debt Redemption Act. Surely, when seeking its amendment under that Act, the judgment-debtors conceded the legal position that a Court could amend the decree even though it might have become time barred. Indeed, by seeking the aid of the Court in having the amount of the decree reduced, the judgment-debtors did, by implication, acknowledge their liability under the decree, though possibly for a smaller amount. It would, in our opinion, be both unfair and illegal to allow them to deny the implications of their own conduct in getting the decree amended, and yet this would be the result if we were to give effect to the objection now taken by them to the execution of the amended decree.

6. It was conceded by the learned counsel for the judgment-debtors that, where a decree has been passed on a claim which was barred by limitation, the judgment-debtor would not be entitled to object to its execution on that ground. But he argued that, if a decree was amended after its execution had become time-barred, it was open to the judgment-debtor to object to the execution of the amended decree even though the application for execution be within three years of the amendment. We do not see any difference in principle between these two cases, and if the judgment-debtor is not entitled to object to the execution of the decree in the one, he is also, by parity of reasoning, not entitled to object to the execution in the other case. The matter, to our minds, is too obvious to pursue.

7. We are, therefore, definitely of opinion that the application for execution of the amended decree in this case was within time and that it should not have been dismissed as barred by limitation.

8. Another point was also urged by the learned counsel for the judgment-debtors respondents, namely, that the previous application for execution having been dismissed as time-barred, the

present application should also be taken to have been rightly dismissed by the lower appellate Court. The previous application, as we have already mentioned, was for execution of the original (unamended) decree, whereas the present application, as we also know, is for execution of the amended decree. The dismissal of the former application can, therefore, have no bearing at all on the decision of the latter application In Administrator-General, Madras, v. Radhakrishna Chettiar, A. I. R. (23) 1936 Mad. 434 : (161 I. C. 969), it was expressly held that although an application for execution of the original decree after its amendment could be dismissed as time-barred, an application for execution of the amended decree could not be refused on the ground of limitation. That is to say, the two applications were subject to different legal incidents, and there was nothing common between them, so far as the question of limitation is concerned. We are not, therefore, inclined to accept this contention also.

9. Accordingly, we allow this appeal, set aside the order of the lower appellate Court, res. tore that of the execution Court and direct the latter Court to proceed with the execution of the decree.

10. The appellant will be entitled to his costs throughout.