

## **Banaras Bank Ltd., (In Liquidation) vs Jyoti Bhushan Gupta And Anr. on 24 August, 1950**

**Equivalent citations: AIR1951ALL362, [1951]21COMPCAS266(ALL), AIR 1951 ALLAHABAD 362**

### **JUDGMENT**

Bind Basni Prasad, J.

1. This is a decree-holder's appeal arising out of an execution proceeding in which the main point for consideration is whether Article 182 or 183, Limitation Act, 1908, applies to the execution application, dated 22-9-1946. The relevant facts are as follows :

2. The Banaras Bank, Limited, is under liquidation and on 15-9-1942, a payment order for Rs. 95,178-5-9 was passed against the respondent by this Court under Section 186, Companies Act, 1913. By virtue of Section 199, Companies Act, 1913, this order is enforceable as a decree. In 1946 an application for execution was made to this Court and on 12-9-1946, the Registrar transferred the execution to the District Judge of Allahabad. On 23-9-1946, an execution application was made by the Liquidator to the District Judge who transferred it to the Civil Judge. It was in the last mentioned Court that the objection which has to be considered in this appeal was filed by the judgment-debtor. Inter alia it was contended that the execution application was time barred. The judgment-debtor's case was that Article 182, which provides three years' period of limitation applied; while according to the decree-holder Article 183, with twelve years' limitation was applicable. Learned Civil Judge agreed with the judgment-debtor's contention and dismissed the execution application as time barred.

3. Article 182 is applicable to applications "for the execution of a decree or order of any civil Court not provided for by Article 183 or by Section 48, Civil P. C., 1908."

Article 183, applies inter alia to applications for enforcing.

"a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction."

The decree-holder's contention is that the order which was passed by this Court under Section 186, Companies Act, was an order of the nature contemplated by Article 183. The point for consideration thus is whether the said order was one which was passed by this Court "in the exercise of its Ordinary original civil jurisdiction." The Limitation Act in which this phrase occurs does not define this phrase. So one way to look at the matter is to assign the plain literal meaning to the words "ordinary original civil jurisdiction". Another way to look at the matter is to interpret this phrase

with reference to the Letters Patent of this Court, as it is in the Letters Patent that the jurisdictions of the High Courts are provided.

4. We consider the matter firstly from the first point of view. The word "ordinary" means that which happens in the usual course of business. Now so far as the company matters are concerned Sub-section (1) of Section 3, Companies Act provides:

"The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate:

Provided that the Central Government may, by notification in the official Gazette and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district."

It is clear from the above that normally it is the High Court which has the jurisdiction under the Companies Act and it is only by a special order that the District Court may have jurisdiction and that too within the limits prescribed by the said order. It follows, therefore, that ordinarily it is the High Court which has the jurisdiction in company matters.

5. Learned counsel for the respondents conceded that the order passed by this Court on 15-9-1942, was in the exercise of its original jurisdiction. So the order of this Court was both "ordinary" and "original". The only question which remains is whether it was the exercise of a civil jurisdiction or any other kind of jurisdiction. Jurisdiction exercised by Courts may be divided broadly into three classes : (1) Civil, (2) Criminal, and (3) Revenue. All kinds of disputes coming before the Courts fall within one or the other of these three classes. A case is of a civil nature if it relates to property or status. A case is of a criminal nature where the object is to punish a wrong. A case is of a revenue nature where it relates to taxation, e. g., income-tax. In the present case inasmuch as the order passed was for the payment of money it was clearly of a civil nature. It may be noted here that a decree was prepared in this Court following the order passed by it on 15-9-1942 and at the top of that decree, there are the words "Civil Jurisdiction." It shows that this Court purported to exercise civil jurisdiction when it passed this order. The matter is concluded by a Full Bench decision of this Court in Dehra Dun Mussoorie Electric Tramway Co. Ltd. v. President, Council of Regency, Nabha State, 58 ALL. 742 : (A. I. R. (23) 1936 ALL. 826 P. B.). It was held in that case that the proceedings under Section 186 of the Companies Act; are proceedings in a Court of civil jurisdiction.

6. Learned counsel for the respondents contends that the jurisdiction exercised by this Court under the Companies Act is of a special nature and it is neither civil nor criminal. We are unable to agree with this. The Bar Councils Act, 1926, confers certain special powers upon this Court. The jurisdiction exercised by this Court under the Bar Councils Act has been held by the Federal Court as of civil nature, vide Sir Iqbal Ahmad v. Allahabad High Court Bench, A. I. R. (37) 1950 F. C. 71 : (51 Cr. L. J. 1035). An Act may confer special powers upon the Court, but that is not equivalent to saying that it creates any special jurisdiction. There is a difference between the powers and the jurisdiction

of a Court. As already stated above, the nature of the dispute to be dealt with by a Court determines the class of jurisdiction which it exercises, civil, revenue or criminal. If in a case the Court deals with the question of liability for money, as it did in the present case, it exercises a civil jurisdiction, irrespective of the fact whether the power of the Court to deal with such dispute arises from ordinary law or any special statute. Construing the phrase "ordinary original civil jurisdiction" according to its plain literal sense we have no hesitation in arriving at the conclusion that the order of 15-9-1942, was passed by this Court in the exercise of such jurisdiction.

7. We proceed now to examine the meaning of this phrase with reference to the Letters Patent. In Clause 11, Letters Patent of the High Courts at Calcutta, Bombay and Madras, there is provision for "ordinary original civil jurisdiction". There is no such provision in the Letters Patent of this Court. Learned counsel for the respondents contends that as this Court has no ordinary original civil jurisdiction under its Letters Patent it cannot be held that the order of 15-9-1942, was passed by it in the exercise of any such jurisdiction. It is argued that this Court can exercise only those kinds of jurisdiction which are expressly provided for in its Letters Patent and of no other kind. We are unable to agree with this. Clause 35, Letters Patent of this Court provides that its provisions shall be subject to the powers of the Legislature. This means that although the Letters Patent does not expressly confer original civil jurisdiction upon this Court, it is open to the Legislature to confer such jurisdiction. By the enactment of Section 3, Companies Act, ordinary original civil jurisdiction has been created for this Court so far as company matters are concerned.

8. It is contended for the respondents that the jurisdiction exercised by this Court in respect of companies is a special jurisdiction akin to what has been separately provided for in the Letters Patent for testamentary intestate and matrimonial matters. The mere fact that the testamentary and matrimonial jurisdictions have been dealt with in the Letters Patent of this Court under separate headings and not under the heading of "Civil Jurisdiction of the Court" does not imply that testamentary, intestate and matrimonial matters are not of civil nature. Matrimonial disputes between Hindus and Muhammadans go in ordinary civil Courts. The Letters Patent made an exception to this general rule by providing in Clause 26 that matrimonial disputes between persons professing Christian religion shall be dealt with by the High Court. Similar exception has been made as regards the class of civil cases relating to testamentary and intestate matters. Clauses 25 and 26 in effect provide that notwithstanding the fact that this High Court shall have no original civil jurisdiction, it will have such jurisdiction, in these special types of cases of civil nature. They are really provisos to Clause 9, Letters Patent, which provides for extraordinary original civil jurisdiction.

9. The point under consideration is covered by authorities. The proposition that the order dated 15-9-1942 was passed by it in the exercise of its original jurisdiction is conceded by the learned counsel for the respondents and is also supported by, (i) *Shiva Narain v. Hon'ble Judges of the High Court Allahabad*, 1934 A. L. J. 722 : (A. I. R. (21) 1934 ALL. 898) in which the order was passed by this Court under the Bar Councils Act which confers special powers on this Court, and (2) *The Governor-General in Council v. Shiromani Sugar Mills Ltd.*, (1946) 8 P. C. R. 40 : (A. I. R. (33) 1946 F. C. 16) in which it was held that when a High Court passes an order under the Companies Act it exercises an original jurisdiction.

10. The proposition that the Court exercised civil jurisdiction is supported by (1) Dehra Dun Mussoorie Electric Tramway Co. v. President, Council of Regency, Nabha State, 58 ALL. 742 : (A.I.R. (23) 1936 ALL 826 F. B.) in which it was held that the proceedings under Section 186 are proceedings in a Court of civil jurisdiction; and (2) Sir Iqbal Ahmad v. Allahabad Court Bench, A. I. R. (37) 1950 P C. 71 : (51 Cr.L.J. 1035) referred to above in which this Court exercised the special powers conferred by the Bar Councils Act.

11. Lastly there is the case of Candas Narrondos v. C. A. Turner, 13 Bom. 520 : (16 I. A. 156) in which their Lordships of the Judicial Committee pointed out the distinction between "ordinary" and "extraordinary" jurisdiction in the following words :

"The expression 'ordinary jurisdiction' embraces all such as is exercised in the ordinary course of law and without any special step being necessary to assume it; and that it is opposed to extraordinary jurisdiction, which the Court may assume at its discretion upon special occasions and by special orders."

12. From the above authorities, it follows that the jurisdiction exercised by this Court was "ordinary," "original" and "civil".

13. Learned counsel for the respondents contends that the last mentioned case is distinguishable because it relates to the Letters Patent of the Bombay High Court which confers upon that Court "ordinary original civil jurisdiction" and no such jurisdiction is provided for in the Letters Patent of this Court. A perusal of the judgment will show that the decision was not based upon any provision peculiar to the Letters Patent of the Bombay High Court, but upon the meaning which was assigned to the words "ordinary jurisdiction." Inasmuch as the jurisdiction under the Companies Act "is exercised by this Court in the ordinary course of law and without any special step being necessary to assume it"

this Court in passing the order under consideration should be held as exercising "ordinary original civil jurisdiction."

14. Learned counsel for the respondents has referred to Anjuman Imdad Bahmi Qarza v. Imam Din, A.I.R. (34) 1947 Lab. 269: (48 P. L. R. 538). That was a case which arose out of an award given under the provisions of the Co-operative Societies Act, 1912, and in the course of the judgment Mahajan, J. observing that the language employed in Rule 18 (h) framed under the Co operative Societies Act was similar in terms to the language used in Section 199, Companies Act, remarked:

"I can say from experience that it has never been challenged that a payment order made under the Companies Act cannot be enforced within the outside limit of 12 years prescribed by Section 48, Civil P. C., and that Article 182, Limitation Act, is not applicable. The practice in the High Court throughout has been to apply Article 182 for the enforcement of payment order made under Companies Act."

No question arose in that case as regards the precise article of the Limitation Act applicable for the execution of orders passed under the Companies Act by the High Courts. With great respect we venture to say that the above observations were obiter dicta.

15. Reliance has also been placed upon the judgment of a learned Single Judge of the Madras High Court in the matter of Kuppuswami Nayagar, 53 Mad. 237 : (A. I. R. (17) 1930 Mad. 779). That was a case which was referred by a learned Single Judge to a larger Bench, but before the Bench could give the decision there was an amendment of the Act and the point was never decided by the Bench. In that case the learned Single Judge held in a matter arising out of the Succession Act, 1925, that the High Court is a District Court when it does not exercise its ordinary or extraordinary civil jurisdiction conferred by Clauses 11 to 18, Letters Patent of the Madras High Court. Discussing the Privy Council case of Candas Narrondas v. C. A. Turner, 13 Bom. 520 : (16 I. A. 156 P. C.) his Lordship observed :

"I think this case supports the view that for the purpose of determining the meaning of the words Ordinary or Extraordinary Original Civil Jurisdiction in Section 3, Clause 15, General Clauses Act, all that is excluded is the High Court acting under Clauses 11 to 18, Letters Patent, and that the High Court exercising any other Original Jurisdiction would fall within the definition of District Judge."

With great respect, we differ from the above interpretation of Candas's case, (13 Bom. 520 : 16 I. A. 166 P. C.)

16. Learned counsel for the respondents has referred to the Letters Patent of the Madras, Bombay and Calcutta High Courts also to emphasise upon the point that the phrase "ordinary original civil jurisdiction" means the jurisdiction exercisable by those High Courts under Clauses 11 and 12, Letters Patent of those Courts. In other words, his contention is that Article 183, Limitation Act, is not applicable to this Court as it has no ordinary original civil jurisdiction in the sense in which the High Courts at Calcutta, Madras and Bombay have under Clause 11 of their Letters Patent. Article 183 is applicable to all Courts established by Royal Charter while exercising ordinary original civil jurisdiction.

On 15-9-1942, when the order was passed by this Court it was a Court established by Royal Charter. Article 183 in terms is not applicable only to the High Courts of Calcutta, Bombay and Madras.

17. The view taken by the learned Civil Judge is incorrect and we are clearly of opinion that the order which this Court passed on 15-9-1942, was one which was passed by it in the exercise of its ordinary original civil jurisdiction. Article 183 applies.

18. Three other grounds of objection were taken by the judgment-debtors but the learned Civil Judge decided those points against them. Learned counsel for the respondents assails two of those findings. It is, therefore, necessary to deal with them also.

19. The first objection of the judgment-debtors was that the Registrar of the High Court had no power to pass an order transferring the application for execution to the Court of the District Judge. Under Clause (e) of Sub-rule XI of Rule 9, chap. I of the Rules of this Court the Registrar has the power to "send decrees and other orders to other Courts for execution." Learned counsel for the respondents contends that this rule is ultra vires and the Court had no jurisdiction to delegate its judicial function to a ministerial official. The Rules of the Court were made in 1898 and so far as we are aware this provision has been in existence since then without being ever challenged. Inter alia these rules have been framed under Section 122 of the Code. Transfer of decrees for execution to other Courts is an act of ministerial nature. The Code of Civil Procedure does not require the issue of any notice to the judgment-debtor before passing an order of transfer. The judgment-debtor is not deprived of any of his rights to raise his objection to the execution of the decree. We hold that the Registrar was quite competent to transfer the decree for execution to the District Judge.

30. The second contention raised was that the District Judge had no jurisdiction to transfer the execution to the Court of the Civil Judge. Under Section 24, Civil P. C., the District Judge on his own motion has the power to transfer any suit, appeal or other proceeding pending before him for disposal to any Court subordinate to him and competent to try and dispose of the same.

21. We see no illegality in the action which the District Judge took.

22. The third contention was that the official liquidator had no right to take out the execution of the decree without the previous sanction of the High Court. Learned Civil Judge dismissed this contention with the remark that this was a question between the High Court and the liquidator and did not affect any third party. This finding of the learned Civil Judge has not been challenged by the respondents in this Court.

23. The result is that the appeal succeeds and it is hereby allowed with costs. The order of the learned Civil Judge is set aside. The case is remitted to the learned Civil Judge who will restore the execution application to its original number and proceed with the execution of the order, dated 15-9-19-12, according to law.