

## Sridhar Upadhyaya vs Lakshmi Prasad on 9 May, 1952

**Equivalent citations: AIR1953ALL106, AIR 1953 ALLAHABAD 106**

### JUDGMENT

Mushtaq Ahmad, J.

1. This is a decree-holders' appeal and it raises only a question of limitation.
2. The suit in which the decree was passed had been filed in the Court of the City Munsif Azamgarh. It was then transferred to the Additional Munsif who later became Munsif Haveli, Azamgarh. As Munsif Haveli he passed the decree in question on 28-8-1942. The decree was affirmed in appeal on 3-6-1943.
3. On 23-10-1945, the decree-holders made their first application for execution in the Court of the City Munsif, Azamgarh, instead of in the Court which had passed the decree, namely that of the Munsif Haveli, Azamgarh. The judgment-debtor objected to this application on several grounds, though not on the ground that the Munsif City Azamgarh had no jurisdiction to execute the decree. On 12-12-1945 the said application for execution was dismissed for default.
4. On 13-2-1946 the decree-holders made their second application for execution again in the Court of the City Munsif Azamgarh. Then also objections were taken by the judgment-debtor, and inter alia it was pleaded that this learned Munsif had no jurisdiction to execute the decree which had been passed by the Munsif Haveli. The learned City Munsif allowed this objection and returned the application for presentation to the proper Court on the ground that he had no jurisdiction to proceed with it. The same day, 20-7-1946, the aforesaid second application for execution was presented by the decree-holders to the Munsif Haveli with a prayer inserted in the application that a certificate of transfer of the execution case to the City Munsif might be issued, as the judgment-debtor's property against which the decree-holder wanted to proceed lay only within the jurisdiction of that Munsif. There was also a separate application made by the decree-holders to that effect. The judgment-debtor objected to this request for a transfer-certificate on the ground that the application for execution, taking it to be the application of 20-7-1946 presented to the Court of the Munsif Haveli, was barred by time. The decree-holders met the objection by invoking Section 14, Limitation Act. The question, therefore, was whether under this section the decree-holders were entitled to exclude the period between 23-10-1945, when they made their first application for execution to the Court of the City Munsif and 20-7-1946, when they subsequently presented their second application for execution in the Court of Munsif Haveli.

5. The execution Court, answering the above question in the affirmative and holding that the decree-holders were entitled to exclude the above period, held that the application for execution was within time, and it ordered the execution to proceed. The lower appellate Court reversed this order and dismissed the application as time-barred. Section 14, Limitation Act, according, to that Court, did not apply mainly because Mr. Bishnabh Singh, the lawyer through whom the decree-holders had filed all the applications, should have known that a decree passed by the Munsif Haveli could not be executed by the City Munsif and that there was no good faith or due diligence on the part of the decree-holders in filing their application for execution each time in the Court of the City Munsif. Another ground on which this section was held inapplicable was that the relief in the application made to the Munsif Haveli on 20-7-1946 was not the same as that in the application for execution.

6. Learned counsel for the decree-holders has challenged the findings of the lower appellate Court as erroneous. In anticipation of an argument to that effect by the judgment-debtor he contended that the finding against the decree-holders' good faith within the meaning of Section 14, Limitation Act, though apparently one of fact, should not be upheld by this Court. The learned Civil Judge, relying on the definition of 'good faith' in Section 2 (7), Limitation Act, that "nothing shall be deemed to be done in good faith which is not done with due care and attention" and holding that Mr. Bishnath Singh, counsel for the decree-holders in the Courts below had not acted with due care and attention in filing the applications for execution in the Court of the City Munsif, although the decree had been passed by the Munsif Haveli, came to the conclusion that there was no 'good faith' within the meaning of Section 14 of the said Act, in the decree-holders having filed those applications in a wrong Court.

This reasoning, in my view, was essentially wrong. If any one with due care and attention takes a certain step in a wrong Court honestly believing that he is seeking relief in the right Court but subsequently finds himself to have gone to a wrong Court, it can hardly be said that he was guilty of want of good faith. A firm conviction in the correctness of a certain procedure may reduce the degree of care and attention, but it can in no sense suggest a negation or absence of the same. Applying this rule to the present case, if Mr. Bishnath Singh was honestly convinced that he had filed the applications for execution in the right Court, namely the Court of the City Munsif Azamgarh, it cannot be necessarily argued that he was guilty of want of care and attention.

One of the reasons that may, have prompted a false belief in the mind of that gentleman was, as pointed out by the execution Court, that the suit had been initially filed in the Court of the City Munsif. It is no doubt conceivable that different Courts may come to different conclusions on this point after exercising their minds on all its aspects. But there is one thing which I cannot avoid taking into account as a feature of foremost importance. It is said that Mr. Bishnath Singh is a lawyer of good standing and long experience. Nothing is suggested about him in the nature of a general habit of carelessness on his part in the discharge of his professional duties.

In this perspective it is rather difficult to understand why a lawyer of such a position should have filed the applications for execution in a wrong Court if he was not actually convinced that he was doing so in the right Court. And once it is assumed or found that Mr. Bishnath Singh filed these applications in the Court of the City Munsif under an honest belief that that Court had jurisdiction

to entertain them, the question of want of care and attention would assume a less serious aspect in the sense that an honest and firm belief in the correctness of a certain procedure may itself render it unnecessary for the person concerned to take any particular care to ascertain whether the procedure adopted was wrong.

In this view of the matter I am unable to accept the contention of the learned counsel for the judgment-debtor that the finding with regard to the absence of good faith in this case should be affirmed by me as a finding of fact binding on the decree-holders.

7. The main question argued by the learned counsel for the parties was whether Section 14, Limitation Act, did or did not apply in the present case. Of course, the conditions necessary for the application of this section are that the applicant should have prosecuted the previous proceeding with due diligence, in good faith, and for the same relief. Mr. Bishnath Singh as a witness for the decree-holders stated that he had filed and prosecuted the applications for execution in the Court of the City Munsif in good faith and with due diligence, and the execution Court accepted his version.

The lower appellate Court simply remarked that 'this statement, as it stands, is not satisfactory to prove good faith'. This was a much too cryptic comment, and it is not clear why the learned Civil Judge without expressly disbelieving Mr. Bishnath Singh felt hesitant to accept his explanation. At all events I cannot conceive why Mr. Bishnath Singh should have presented those applications in that Court unless he believed that it had jurisdiction to entertain them,

8. A number of cases were cited by the learned counsel for the parties on the question of the effect of a lawyer's wrong advice to his client as a matter to be considered under Section 14, Limitation Act. The net result of a study and scrutiny of those cases is that no hard and fast rule can be laid down as to when such a mistake may be excused and may be taken as not amounting to an absence of good faith under this section. A Full Bench of this Court in *Brij Mohan Das v. Mannu Bibi*, 19 ALL. 348 (F.b.) laid down that ignorance of law might afford a good ground for the application of this section, and that case was followed in a much later decision of this Court in *Ahmad v. Ram Chander*, A. I. R. 1937 ALL. 333.

The cases cited by the learned counsel for the judgment-debtor do not lay down, any absolute prohibition against this rule, for instance, in *Ram Dutta v. Mahpal Singh*, A. I. R. 1938 Oudh 112, it was held that 'speaking generally' negligence on the part of counsel could not be relied upon by his client. The word 'generally' itself suggests that there may be exceptions to the rule. Similarly in *Raghavayya v. Vasudevayya Chetty*, A. I. R. 1944 Mad. 47, it was held that in certain cases a counsel's mistake might be condoned, though if he did not act in good faith, that is, with due care and attention, his client would not be entitled to indulgence. This, again, makes the rule depend on the question whether the counsel acted with due care and attention. In the present case, I have already shown that, if the counsel had acted in an honest belief about the correctness of the procedure he adopted, it did not necessarily imply that he was guilty of lack of care and attention.

9. As regards the second ground mentioned by the lower appellate Court for the non-applicability of Section 14, the position is much simpler. Admittedly, the application for execution dated 13-2-1946

had a prayer for the execution of the decree in a certain manner. The same application was ultimately presented to the Court of the Munsif Haveli on 20-7-1946. That is to say, an application was presented to that Court for execution of the decree by attachment and sale of the judgment-debtor's property. As this property was not within the jurisdiction of the Munsif Haveli but within that of the City Munsif, a note was inserted in the application for execution itself that a certificate of transfer to the Court of that Munsif might be issued. This prayer was also made by means of a separate application, supported by an affidavit.

It is not quite clear what the lower appellate Court meant when it said that the first application for execution dated 23-10-1945 had not been made for the same relief as the second application for execution dated 13-2-1946, as presented to the Munsif Haveli on 20-7-1946. As an application for execution, the later application did quite naturally embody a prayer for the execution of the decree. Such was the case in respect of the first application for execution dated 23-10-1945 also.

It is true that by means of a note inserted in the second application for execution and also by a separate application made in that behalf, the decree-holders requested the Munsif Haveli to issue a certificate of transfer of the execution to the City Munsif as the judgment-debtor's property sought to be proceeded against lay only within his jurisdiction, but neither this note nor this application was the real substantive matter for which the application for execution of 13-2-1946, as presented to the Munsif Haveli, had been made. I cannot imagine how it could be said that the decree-holders had asked for a relief in their second application for execution which was not the same as in their first application for execution.

If the learned Civil Judge, in holding that the two reliefs were different meant to say that the request for a transfer certificate made in the note and also in the separate application already referred to was not the same as the prayer for execution either in the earlier or in the later application for execution and that, therefore, Section 14, Limitation Act, did not apply, he put himself under a serious misapprehension. He seems to have imagined that the only part which the Court of the Munsif Haveli was to play was to grant or reject the request for a transfer certificate, the prayer for execution of the decree being meant entirely for the Court of the City Munsif within whose jurisdiction only the judgment-debtor's property lay.

On this assumption alone it is possible to understand the learned Judge's reasoning. But if this, was his view, it certainly proceeded on a wrong assumption. In emphasising his point that Section 14, Limitation Act, did not apply also because of a difference in the reliefs the learned Judge referred to the case of *Maqbul Ahmad v. Pateshri Pratab Narain Singh*, A. i. R. 1929 ALL 677. In that case, first an application for the preparation of a final decree under Order 34, Rule 5, Civil P. C. had been made in a wrong Court and then an application for execution in the right Court, and it was held that the reliefs in the two applications were quite different. These reliefs were on the face of them different, and that ruling afforded no authority for the view taken by the learned Civil Judge.

10. It may be remembered that, even after a certificate of transfer has been issued by the Court in which an application for execution of a decree was first made, that Court continues to have control over the execution proceedings and may exercise its powers in a number of ways, although the

execution is proceeding elsewhere, i. e. in the Court to which the execution was transferred. Under Section 41, Civil P. C., the Court to which a decree is sent for execution has to notify to the Court which passed it the fact of such execution or, where the former Court fails to execute the same, the circumstances attending such failure.

The transferring Court is, therefore, not only a medium through which the decree is transmitted for execution to another Court, but it is really the principal authority in control of the execution, although for a particular reason the same was sent to another Court. The transferring Court, as I have already suggested, can exercise its authority in respect of the decree, even after a transfer certificate has been issued, in a number of ways. For instance, that Court alone is entitled to determine an objection to the executability of the decree, vide *Subramanian Chettiar v. Ramanadhan Chettiar*, A. i. R. 1929 Mad. 199, and a plea of limitation, vide *Subramanian Chettiar v. L. N. Chettyar Firm*, A. i. R. 1941 Rang. 56. The question of substitution of heirs on the death of the decree-holder or of the judgment-debtor is one only for that Court to decide, vide *Swaminatha v. Vaidyanatha*, 28 Mad. 466.

Again, where the judgment-debtor seeks an order for the payment of the decree by instalments, he must approach the transferring Court and not that to which the decree was sent for execution, vide *Gandharap Singh v. Sheodarshan Singh*, 12 ALL 571. All this would show that the Court to which an application for execution is first made is the principal executing agency, and it continues to exercise its control and functions right up to the satisfaction of the decree. In this sonse the second application for execution dated 13-2-1946, as containing an express prayer for execution by attachment of the judgment-debtor's property, shall be deemed to be an application with which the Munsif Haveli was as much concerned, in spite of the transfer of the execution to the City Munsif, as the latter officer was.

This application was actually presented in the Court of the Munsif Haveli on 20-7-1946 and it was bound to come back to it after a report of satisfaction had been made by the transferee Court under Section 11 of the Code. In these circumstances lit is not possible to hold that the relief prayed for in the Court of the Munsif Haveli was in any sense different from the relief in either or both of the applications for execution. Neither of the two grounds on which Section 14, Limitation Act, was held by the lower appellate Court as inapplicable can, therefore, be rightly pressed against the decree-holders in this behalf.

In my view the section applied and the decree-holders, in computing the period of limitation for their second application for execution, were entitled to exclude the entire period between 23-10-1945, the date of their first application for execution, and 20-7-1946, the date on which their second application for execution was presented in the Court of the Munsif Haveli Azamgarh. By this process the second application for execution would fall within time from 3-6-1943, the date of the appellate decree confirming that of the trial Court.

11. For these reasons I allow the appeal, set aside the decree of the lower appellate Court, restore that of the execution Court and send the case back to the latter Court for execution of the decree according to law. In the circumstances of the case I allow the decree-holders appellants only one half

of their costs against the respondent who shall bear his own in all the Courts,

12. Leave to appeal to a Division Bench is granted.