Om Prakash vs Sm. Tahera Begam And Ors. on 22 December, 1954

Equivalent citations: AIR1955ALL382, AIR 1955 ALLAHABAD 383

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. This is an appeal against the dismissal of the judgment-debtor's objection to the maintainability of a second application for execution during the pendency of the first application for execution We have heard learned counsel for the appellant and are of opinion that there is no force in this appeal.

2. Learned counsel for the appellant refers us to Order 21, Rule 11 (2) Clause (f) which provides that every application for execution of a decree will state whether any, and (if any) what, previous applications have been made for the execution of the decree, the, dates of such applications and their results. It is contended that the necessity of noting the result of the previous execution application means that so long as one execution application has not been finally disposed of no second execution application can be filed, and that therefore this provision of the Code of Civil Procedure operates as a bar to the presentation of a second execution application during the pendency of the first. It is further submitted that when the law contemplated simultaneous execution of a decree in several ways it provided for it and reference in this connection is made to Rule 39 of Order 21, Civil P. C. which is:

> "Every decree for the payment of money including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both".

Rule 21 of this Order is:

> "The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor".

3. There is nothing in the Code of Civil Procedure or in any other law which lays down positively that several applications for execution of a decree cannot be filed simultaneously and it appears to us that unless such a right to apply for execution of a decree in any of the modes permissible by law is

not definitely restricted such a bar should not be inferred from the requirements of the contents of an application for execution. The bar to a certain legal right should be clearly laid down by statute and is not to be inferred. In a case where it is to be inferred there should be no other conclusion possible except the conclusion that the other provisions necessarily imply that such a bar should come in existence. There is nothing in the provisions of Order 21, Rule 11 (2), Clause (f) to lead to such an inference. In fact it is clear that the requirements of this clause cannot be complied with with respect to the result of the previous execution application in case simultaneous applications for the arrest of the judgment-debtor and for the realisation of the decretal amount by attachment of property were made and to which type of applications no objection is raised or suggested by the learned counsel for the appellant. There is no exception mentioned in Rule 11 with reference to the applications which may come under Rule 30 of Order 21, Civil P. C. It must follow, therefore, that the provisions of Rule 11 (2), Clause (f) do not mean that in case the result of a previous application cannot be noted on account of its not coming to an end the non-mentioning of the result would either make the application bad in law or must lead to the result that the second application must be considered to be barred by law during the pendency of the previous application.

4. Rule 30 of Order 21, Civil P. C. does provide for the execution of a decree for the payment of money by detention of the judgment-debtor or by the attachment and sale of his property, or by both. Even these two modes of execution are mentioned as alternative to other reliefs which were available to the decree-holder. It is not laid down therein that those two modes could be availed of only when no relief is being sought in any other manner. Rule 21 which precedes Rule 30 is general in its terms' and is not restricted to the decrees for the payment of money; it contemplates that execution of a decree against the person and property of the judgment-debtor can proceed simultaneously. In fact its implication is that in the absence of such a rule the Court may not have had any discretion to refuse the simultaneous applications for execution by arrest of the judgment-debtor and by the attachment and sale of his property.

5. We are, therefore, of opinion that it cannot be held that the provisions of Order 21, Rule 11 (2), Clause (f), Civil P. C. bar simultaneous execution applications. The case law on the point fully supports the view that several execution applications can be in progress at one & the same time. We may refer to the esses reported in -- 'Sarasti Prasad v. People's Industrial Bank Ltd.', AIR 1917 All 129 (A); -- 'Makkhan Lal v. Mt. Bhagwanai Kuer', AIR 1936 All 655 (B), and -- 'Morarjee Gokuldas and Co. v. Shoiapur Spinning and Weaving Co Ltd.', AIR 1941 Bom 37 CO. (8) We therefore, dismiss this appeal summarily.