

Mst. Ram Dulari vs B. Udai Bhan Pratap Singh on 17 October, 1951

Equivalent citations: AIR1954ALL98, AIR 1954 ALLAHABAD 98

JUDGMENT

P.L. Bhargava, J.

1. We see no force in this revision which is directed against an order restoring an application for execution, which was dismissed for default in prosecution in the following circumstances :

2. It appears that the decree passed in Suit No. 28 of 1929 was put in execution. The decree-holder had obtained another decree in Suit No. 42 of 1933 and in order to realize the amount due thereunder he applied for rateable distribution out of the proceeds which were to be realised in execution of the earlier decree. The execution of the earlier decree had been transferred to the Collector, and a 'robkar' in connection with the second application was sent to the Collector requesting that the decreeholder, for satisfaction of the second decree, may be allowed rateable distribution.

3. While execution proceedings were pending before the Sales Officer, an objection was filed on behalf of the judgment-debtor to the effect that the execution of the second decree had become time-barred. This objection along with execution case was adjourned from time to time. On 25-7-1944, the objection was heard and orders were reserved. The cases were next set down for hearing on 28-7-1944. On the last mentioned date the orders were not ready and the cases were postponed to 1-8-1944. On that date the objection was allowed and the second execution was held to be barred by time. In the main execution case 16-9-1944 was fixed and the decree-holder was directed to pay process fee etc. for the issue of a sale proclamation. The decree-holder or his general agent was not present on that date and the Court directed that the decree-holder's agent be informed of the date fixed and the steps to be taken.

4. When the case was taken up on 16-9-1944, neither the decree-holder nor the judgment-debtor was present and the Court, without looking into the record to see whether the decree-holder had been informed of the date fixed for hearing dismissed the application for execution for default in prosecution.

5. Later on, the decree-holder filed an application supported by an affidavit in which he alleged that he had no intimation of the date fixed in the execution case and for that reason he was absent on the date fixed. He prayed for the restoration of the main execution case. The Court, acting under Section 151, Civil P. C. restored the execution case.

6. The judgment-debtor has now come up to this Court in revision. It has been contended on his behalf that the decree-holder was bound to appear on 1-8-1944, and to acquaint himself with the next date for hearing and that the Court was not bound to give notice of the date fixed for hearing. In our opinion the decree-holder or his agent was not bound to appear on 1-8-1944, which was fixed only for pronouncing orders in the objection case, and that position was realised by the Court when it directed that a notice of the next date fixed for hearing be given to the decree-holder. The Court should have satisfied itself whether in pursuance of the direction issued on 1-8-1944, the notice for the next date of hearing had been served upon the decree-holder or his agent.

7. It has been next contended on behalf of the applicant that the Court had no jurisdiction to set aside the dismissal acting under Section 151, Civil P. C. In support of his argument the learned counsel has invited our attention to a number of rulings of other Courts but we find, that the late Chief Court of Avadh in --'Bajrang Bahadur v. Suraj Narain', AIR 1945 Oudh 210 (A) had laid down that although Order 9 Civil P. C. does not govern execution proceedings, the Court has jurisdiction to restore an execution application dismissed for default under the inherent powers even though a fresh application has become time-barred and we hold the same view.

8. As far as the facts of the present casa are concerned, as pointed out above the order of dismissal was passed by the Court in ignorance of the fact that the notice which was ordered to be served upon the decree-holder was not actually served upon him or his agent and he had no notice of the date fixed for hearing. The order of dismissal having been passed in such circumstances, the Court in our opinion, had the jurisdiction to make the order under Section 151, Civil P. C., and there is no reason whatsoever to interfere with that order in revision.

9. The application is accordingly dismissed with costs.