West Bengal Essential Commodities ... vs Swadesh Agro Farming And Storage Pvt. ... on 14 September, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3421, 1999 (8) SCC 315, 1999 AIR SCW 3401, 2000 (1) UJ (SC) 107, (1999) 3 PUN LR 618, 2000 (1) LRI 606, 2000 UJ(SC) 1 107, (1999) 3 KER LT 89, 1999 (5) SCALE 504, 1999 (7) ADSC 805, (1999) 6 JT 599 (SC), 1999 (9) SRJ 382, 1999 (123) PUN LR 618, (2000) 2 WLC(RAJ) 331, (1999) 4 ALL WC 2768, (2000) 1 LANDLR 364, (2000) 1 MAD LW 587, (1999) 37 ALL LR 340, (1999) 3 CIVILCOURTC 269, (1999) 4 CURCC 145, (2000) 1 MAD LJ 44, (2000) 1 ORISSA LR 201, (2000) 1 RAJ LW 74, (1999) 7 SUPREME 629, (1999) 4 RECCIVR 645, (2000) 1 ICC 1, (1999) 5 SCALE 504, (2000) 1 ANDHWR 13, (2000) 4 CIVLJ 697

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Bench: K. Venkataswami, Syed Shah Mohammed Quadri

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           CASE NO.:
Appeal (civil)  5005 of 1999

PETITIONER:
WEST BENGAL ESSENTIAL COMMODITIES SUPPLY CORPORATION

RESPONDENT:
SWADESH AGRO FARMING AND STORAGE PVT. LTD. AND ANR.

DATE OF JUDGMENT: 14/09/1999

BENCH:
K. VENKATASWAMI & SYED SHAH MOHAMMED QUADRI

JUDGMENT:
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JUDGMENT 1999 Supp(2) SCR 399 The Judgment of the Court was delivered by SYED SHAH MOHAMMED QUADRI, J. Leave is granted.

The short but a question of some significance which arises for consideration in this appeal, is whether the period of limitation, under Article 136 of the Limitation Act, 1963, will start from the date of the decree or from the date when the decree is actually drawn up and signed by the judge.

The facts giving rise to the question may be noticed here.

On June 11, 1980, the appellant filed Suit No. 504 of 1980 in the High Court of Judicature at Calcutta against the respondents for recovery of a sum of Rs. 82, 933.80 with interest. On March 8,

1982, the High Court decreed the suit ex-parte for the said amount with interest thereon at the rate of 6% per annum. However, the decree was actually drawn up and signed by the learned Judge on August 9, 1983. The appellant filed application, G.A. No. 374 of 1995, for execution of the decree before the High Court on June 5, 1995. The learned Executing Judge ordered execution of the decree. But, on appeal by the respondents, the Division Bench of the High Court set aside the order of the learned Executing Judge holding that the execution petition was barred by limitation under Article 136 of the Limitation Act and thus allowed the appeal on September 30, 1997. That judgment and order is challenged by special leave, in this appeal.

Mr. Tapas Ray, learned senior counsel appearing for the appellant, has argued that for purposes of Article 136 of the Limitation Act, the starting point of limitation is not the date of the decree but the date when the decree becomes enforceable; it was only when the decree was actually drawn up and signed, after a lapse of one year and three and three months of delivering the judgment, that it became enforceable, and from that date the appellant was entitled to the benefit of full period of limitation; so its application for execution could not be held to be barred by limitation. According to Mr. Ray, for an application under Order XXI Rule 11(2) of the Code of Civil Procedure, a copy of the decree must be available and the period of limitation must be reckoned from the date when the Court was in a position of making a copy of the decree available as it was on that date the decree became executable. The learned counsel urged that Rule 11(2) of Order XXI must be read with Rules 6 and 7 of Order XX C.P.C. and so read, for purposes of execution, the decree would come into existence only when it was actually drawn up and signed and not on the date when the judgment was pronounced.

Mr. P. Bhaskar Gupta, learned senior counsel for the respondents, has submitted that under Rule 6A(2)(b) of Order XX C.P.C, for purposes of execution of the decree the last portion of the judgment itself will be treated as a decree, irrespective of the date when the decree is actually drawn up and signed and that under Rule 7 of Order XX C.P.C. the decree has to bear the date of the judgment; from the date of the judgment till the expiry of the period of limitation, the decree holder had the opportunity of executing the decree so he cannot have any grievance for late drawing up of the decree and stamping the date of the judgment on it. Learned senior counsel invited our attention to sub-rule (3) of Rule 11 of Order XXI C.P.C. and contended that the Executing Court might require the applicant seeking execution of the decree under sub-rule (2) to produce a certified copy of the decree, but the execution petition need not be accompanied by a certified copy of the decree. Sections 12(2) and 5 of the Limitation Act, submitted the learned counsel, did not apply to execution petitions and if the contention of the appellant were to be accepted then it would amount to rewriting those provisions so as to provide for excluding the time for preparation and signing of the decree; therefore, that contention is liable to be rejected.

On the above contentions, we shall commence the determination of the question by first reading Article 136 of the Limitation Act which is as follows:

> "136. For the execution of Twelve years [When] the decree or order any decree (other than a becomes enforceable or decree granting a mandatory where the decree or any injunction) or order of any subsequent order directs any Civil Court. payment of

money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment or delivery in respect of which execution is sought takes place:

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation."

From a perusal of the Article, extracted above, it is clear that for execution of any decree (other than a decree granting a mandatory injuction) or order of a civil court, a period of 12 years is prescribed; Column 3 contains two limbs indicating the time from which period of limitation begins to run, that is, the starting point of limitation; they are: (i) when the decree or order becomes enforceable and (ii) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment or delivery in respect of which execution is sought, takes place. The proviso says that there shall be no period of limitation for enforcement or execution of decree granting a perpetual injuction. We are concerned here with the first of the above-mentioned starting points, namely, when the decree or an order becomes enforceable. A decree or order is said to be enforceable when it is executable. For a decree to be executable, it must be in existence. A decree would be deemed to come into existence immediately on the pronouncement of the judgment. But it is a fact of which judicial notice may be taken of that drawing up and signing of the decree takes some time after the pronouncement of the judgment; the Code of Civil Procedure itself enjoins that the decree shall be drawn up expeditiously and in any case within 15 days from the date of the judgment. If the decree were to bear the date when it is actually drawn up and signed then that date will be incompatible with the date of the judgment. This incongruity is taken care of by Order XX Rule 7 C.P.C. which, inter alia, provides that the decree shall bear the date and the day on which the judgment was pronounced.

To enable a person who would like to execute the decree before it is actually drawn up, Rule 6A is inserted in the Code by the Amendment Act, 1976 (Act 104/76), which is extracted hereunder:

"6-A. Last paragraph of judgment to indicate in precise terms the reliefs granted-

(1) The last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment.

(2) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible, and, in any case, within fifteen days from the date on which the judgment is pronounced; but where the decree is not drawn up within the time aforesaid, the Court shall, if requested so to do by a party desirous of appealing against the decree, certify that the decree has not been drawn up and indicate in the certificate the reasons for the delay, and thereupon-

(a) an appeal may be preferred against the decree without filing a copy of the decree and in such a case the last paragraph of the judgment shall, for the purposes of Rule 1 of Order XLI, be treated as the decree; and

> (b) so long as the decree is not drawn up, the last paragraph of the judgment shall be deemed to be the decree for the purpose of execution and the party interested shall be entitled to apply for a copy of that paragraph only without being required to apply for a copy of the whole of the judgment; but as soon as a decree is drawn up, the last paragraph of the judgment shall cease to have the effect of a decree for the purpose of execution or for any other purpose:
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> Provided that, where an application is made for obtaining a copy of only the last paragraph of the judgment, such copy shall indicate the name and address of all the parties to the suit."

Rule 6A enjoins that the last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment. It has fixed the outer time limit of 15 days from the date of the pronouncement of the judgment within which the decree must be drawn up. In the event of the decree not so drawn up, clause (a) of sub-rule (2) of Rule 6A enables a party to make an appeal under Rule I of Order XLI C.P.C. without filing a copy of the decree appealed against and for that purpose the fast paragraph of the judgment shall be treated as a decree. For the purpose of execution also, provision is made in clause (b) of the said sub-rule which says that so long as the decree is not drawn up, the last paragraph of the judgment shall be deemed to be a decree. Clause (b) has thus enabled the party interested in executing the decree before it is drawn up to apply for a copy of the last paragraph only, without being required to apply for a copy of the whole of the judgment. It further lays down that the last paragraph of the judgment shall cease to have the effect of the decree for purposes of execution or for any other purposes when the decree has been drawn up.

It follows that the decree became enforceable the moment, the judgment is delivered and merely because there will be delay in drawing up of the decree, it cannot be said that the decree is not enforceable till it is prepared. This is so because an enforceable decree in one form or the other is available to a decree holder from the date of the judgment till the expiry of the period of limitation under Article 136 of the Limitation Act.

In Rameshwar Singh v. Homes-war Singh, AIR (1921) PC 31 it was held:

> "They (Their Lordships) are of opinion that in order to make the provisions of the Limitation Act apply, the decree sought to be enforced must have been in such a form as to render it capable in the circumstances of being endorsed."

There may, however, be situations in which a decree may not be enforceable on the date it is passed. First a case where a decree is not executable until the happening of a given contingency, for example, when a decree for recovery of possession of immoveable property directs that it shall not be executed till the standing crop is harvested, in such a case time will not begin to run until harvesting of the crop and the decree becomes enforceable from that date and not from the date of the judgment/decree. But where no extraneous event is to happen on the fulfilment of which alone the decree can be executed it is not a conditional decree and is capable of execution from the very

date it is passed (Yeshwant Deorao v. Walchand Ramchand, AIR (1951) SC 16). Secondly, when there is a legislative bar for the execution of a decree then enforceability will commence when the bar ceases. Thirdly, in a suit for partition of immoveable properties after passing of preliminary decree when, in final decree proceedings, an order is passed by the court declaring the rights of the parties in the suit properties, it is not executable till final decree is engrossed on non- judicial stamp paper supplied by the parties within the time specified by the Court and the same is signed by the Judge and sealed, It is in this context that the observations of this court in Shankar Balwant Lokhande (Dead) by Lrs.v. Chandrakant Shankar Lokhande & Anr., [1995] 3 SCC 413 have to be understood. These observations do not apply to a money decree and , therefore, appellant can derive no benefit from them.

In the instant case, the decree is a money decree. The decree became enforceable immediately on the pronouncement of the judgments as thereupon a deemed decree came into existence. It cannot, therefore, be said that the delay in drawing up of the decree renders it unenforceable from the date of the judgment.

The next contention of Mr. Ray is that due to the court taking more than a year and three months to draw up and sign the decree, the period of limitation of 12 years, available to the appellant, is cut short so the starting point of limitation has to be computed from the date of signing of the decree to avert hardship and prejudice to him. The submission appears to be attractive, but falls to scrutinizing. The argument is obviously based on the maxim "actus curiae beminem gravabit" (an act of the court shall prejudice no man). It would apply to relieve a party of the hardship or prejudice caused due to the act of the Court. But to invoke this maxim it is not enough to show that there is delay in drawing up of the decree, it must also be shown that the appellant has suffered some hardship or prejudice due to the delay of the Court. In other words, there must be a nexus between the act of the court complained of and the hardship or prejudice suffered by the party.

In Raj Kumar Dey & Ors. v. Tarapada Day & Ors. [1987] 4 SCC 398, the Calcutta High Court had quashed the registration of the award on the ground that it was presented for registration beyond time. This Court applying, inter alia, the above maxim held that the High Court was in error in quashing the registration of the award. There, during the material period, the award was in the custody of the Court and the arbitrator, inspite of his efforts, could not have got it registered; it was presented for registration the very next day it was returned to the arbitrator.

In Gursharan Singh & Ors. v. New Delhi Municipal Committee & Ors., [1996] 2 SCC 459 this Court granted interim directions in favour of the appellants to pay licence fee at the concessional rate. At the time of final disposal, it was found that the appellants were not entitled to the concessional rate. Applying the maxim "actus curiae neminem gravabit", the respondents were ordered to be paid the balance amount together with interest.

In these cases, as can be seen, there was nexus between the action of the Court and the prejudice suffered by the party. But, in the instant case, there is no nexus between drawing up of the decree after more than a year from the date of the judgment and its execution petition getting barred by limitation. It may be noticed here that the scheme of the Code, having taken note of the delay in

preparation and signing of the decree, provides enough safeguards to the parties to execute the decree from the date of the judgment/ decree till the expiry of the period of limitation.

The decree-holder could have enforced the money decree immediately on the pronouncement of the judgment by making an oral application under sub-rule (I) of Rule 11 of Order XXI C.P.C. For filing an application under sub-rule (2) of Rule 11 C.P.C., a copy of the decree need not be enclosed. What all sub-rule (3) of the said Rule says is that the Court may require the applicant under sub-rule (2) to produce a certified copy of the decree. On being required to do so, it could have produced the last portion of the judgment which has the effect of the decree under Rule 6A of Order XX C.P.C. It is not a case where the appellant lost the period of limitation because of any act of the Court but it is a case where the appellant failed to apply for execution of the decree for reasons best known to it and how seeks to take advantage of the fact that the Court took time for drawing up and signing the decree. In our view, the delay in drawing up and signing the decree did not cause any prejudice to him. There is no nexus between the late drawing up of decree by the Court and the filing of the execution petition by the appellant after the expiry of the limitation.

Under the scheme of the Limitation Act, execution applications, like plaints have to be presented in the Court within the time prescribed by the Limitation Act. A decree holder does not have the benefit of exclusion of the time taken for obtaining the certified copy of the decree like the appellant who prefers an appeal, much less can he claim to deduct time taken by the Court in drawing up and signing the decree. In this view of the matter, the High Courts of Patna and Calcutta in Sri Chandra Mouli Deva v. Kumar Binoya Hand Singh & Ors., AIR (1976) Patna 208 and Sunderlal & Sons v. Yagendra Nath Singh & Anr., AIR (1976) Calcutta 471 have correctly laid down the law; the opinion to the contra expressed by the High Court of Calcutta in Ram Krishna Tarafdar v. Nemai Krishna Tarafdar & Ors. AIR (1974) Calcutta 173 is wrong. Section 5 of the Limitation Act has no application; Section 12(2) of the Limitation Act is also inapplicable to an execution petition. If the time is reckoned not from the date of the decree but from the date when it is prepared, it would amount to doing violence to the provisions of the Limitation Act as well as of Order XX and order XXI Rule 11 C.P.C. which is clearly impermissible.

In the result, we hold that the period of limitation under Article 136 of the Limitation Act runs from the date of the decree and not from the date when the decree is actually drawn up and signed by the Judge. We, therefore, do not find any illegality in the impugned judgment of the High Court. The appeal fails and it is accordingly dismissed. No costs.