

Allahabad High Court

Deoki Nandan Chaurasiya Son Of ... vs Bakshi Brothers A Partnership ... on 15 October, 2004

Author: P Srivastava

Bench: P Srivastava

JUDGMENT Poonam Srivastava, J.

1. Heard learned counsel for the petitioner and Sri planish. Toridon, tor the Caveator respondent No. 1

2. The writ petition arises out of the. execution proceedings in Execution Case No. 26 of 2000, Bakshi Brothers v. Deoki Nandan Chaurasiya in Civil Suit No. 431 of 1988 for recovery of a sum of Rs. 32,654.86/-. According to the petitioner, a compromise was entered into between the parties. They agreed to withdraw the suit after payment of entire amount and interest @ 18% per annum in the court of Civil Judge. Kanpur Nagar, however, the suit was decreed ex-parte on 28.11 1991. The execution case was filed bur it transpires that petitioner who is judgment debtor was living at Jhaasi as such an application for transferring the decree for execution before Jhansi court was moved under Section 39 C.P.C. The kanpur court in pursuance to the provisions of Order 21 Rule 6 C.P.C. issued a certificate transferring the execution proceedings to the court of competent jurisdiction at Jhansi. An objection was filed on behalf of the petitioner that the decree holders respondents have not filed any execution, application before Jhansi court as required under the law. I is only a certificate which has been received at Jhansi court issued by the court of Kanpur Nagar under Order 2 1 Rule 6 C.P.C. and the execution proceedings are not maintainable. Submission of the counsel for the petitioner is that a proper application was liable to be filed by the contesting respondents as required under Order 21 Rule 11 C.P.C., which has not been done and the execution proceedings cannot be continued. Subsequently an amendment application was moved for adding prayer for execution of the decree by arrest, this was also objected by the petitioner, which was rejected. Reliance has been pleased by the counsel for the petitioner in two cases State of Rajsthan v. R Savkasha , At page 181, it has been held that Order 21 Rule 11 C.P.C. of the Court refers to the particulars required for execution in the transferee court are a copy of the decree along with an execution application to be annexed, as such fit was necessary for the decree-holder to file an execution application in the executing court to which the decree was transferred for execution Another decision of a (Division bench of this Court Newazish Ali Khan v. Raja Bhanu Pratap, Singh, . in para 5 and 6 a Division Bench has held that the Order 21 Rule 10 C.P.C. lays:

(5) Learned counsel for the appellant has drawn our attention to Order 21, Rule 10. C.P.C. and has urged that an application under Section 39 can in no circumstances application for execution and after the decree is transmitted to another Court an application for execution has to he made to that Court. He has also drawn our attention to Rule 181 of the oudh Civil Rules which is as follows:

"A decree received for execution from another Court shall be entered in the Register of Non-Judicial Miscellaneous Cases. As soon as an application for execution of the same is made, along with such application the documents mentioned in Order 21, Rule 6, shall he laid be fore the Court."

This rule makes it clear that a fresh, application for execution has to be made to the court to which the decree is transmitted and that Court would take no steps to execute the decree so long as it is not moved in that behalf by the decree holder. Order 21, Rule 10, lays down to which court an application for execution can be made and so far we can see *prima facie*, without finally committing ourselves to that view, it does not say that if the property, against which the decree-holder wants to proceed, is situated within the jurisdiction of another Court, a fresh application has to be made to that court even if an application for execution has been made to the Court which passed the decree in which the properties against which the decree-holder wants to proceed have been included. In case, however, a proper application for execution had been made to the Court which passed the decree along with a prayer for transmission of the decree to another Court or along with a separate application under Section 39 and that Court had sent the application for execution to the Bahraich Court, it might have been necessary for us to consider whether an application for execution made to the Court to which the decree had been transferred in accordance with the provisions of Rule 181 of the Oudh Civil Rule was a fresh application or was a mere continuance of the previous application. It is not necessary so express any Opinion on this point as in our view the application filed on 30.8.1947, must in the circumstances of the case be deemed to be a fresh application.

(6) We have already said that the manner in which the decree was to be executed was not given in the application of 10.8.1945, nor did that application furnish any list of properties which were to be sold in execution of the decree. Order 21, Rule 11, (2) sets out what an application for execution should contain and it provides that the application should mention the mode in which the assistance of the Court is required. It requires *inter alia* that the decree-holder should mention what properties are to be attached and sold or sold without attachment for the realization of the decretal amount. No such details, as we have already said, were furnished in the application. It cannot be said, therefore, that the application of 30.8.1947, was unnecessary and it was merely to revive or to continue the previous application of 10.8.1945. In the application of 30.8.1947 a long list of properties was mentioned by the sale of which the decretal amount was to be realized.

3. The argument of the counsel for the petitioner appears to be correct that when a decree is transferred to another court for execution a fresh application should be given in accordance with Rule 11 Order 21 C.P.C. However, Rule 11 (1) C.P.C. relates to execution of decree for payment of money and the execution can proceed on oral application. The present suit was also a money suit and admittedly the request made by the decree holder was an oral prayer and the court proceeded on the basis of the request made orally. There is no illegality in the procedure and the judgments relied upon are not applicable to the facts of the present case. On perusal of the record it is evident that the petitioner had approached this Court previously against an order of attachment dated 2.5.2001 in the execution proceedings by filing Civil Revision 356 of 2001, which was dismissed on 29.9.2003. The order passed by this Court was that the execution is of money decree and the court below rejected the application for staying the writ of attachment. No good ground for interference in the order has been made out and the revision was dismissed. This order was never challenged.

4. This writ petition is filed against an order in revision by the District Judge Jhansi, the objections came up before learned Civil Judge and he rejected the same vide order dated 35.8.2004. It was stated in the order that petitioner was arrested in pursuance to the warrant of arrest during

execution proceedings and he had deposited an amount of Rs. 32,655/- he was released on an assurance that remaining amount will be deposited in monthly installments. The judgment debtor has once again violated the order dated 20.7.2004 and as a result movable property was directed to be attached. The revision against the order was tiled which was also dismissed on 50.9.2004, which is impugned in the present writ petition., while rejecting the revision, revisional court has observed, since the question of attachment was challenged in the High Court and it was dismissed. The order stands continued and it cannot be reagitated in this revision and passed the impugned order

5. After hearing the counsel at length and going through the record, it is evident; that the writ petition has been filed for seeking the same relief against the issuance of writ of attachment, which was earlier dismissed by this Court in Civil Revision No: 356 of 2001 Besides, there is no illegality if the court proceeded on and oral request during execution proceeding since it was a money suit. In the circumstances, the writ petition lacks merit and it. does not call for any interference

6. Accordingly the writ petition is dismissed.