Sudeshwari Prasad NaraIn Singh Vs. Paljhan Dube

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Court : Allahabad

Decided On : Jan-07-1931

Reported in : AIR1931All722

Appellant : Sudeshwari Prasad NaraIn Singh

Respondent : Paljhan Dube

Judgement :

Boys, J.

1. This is an appeal against an order striking off an application for execution on the ground that it was time barred. At the time the application came up before me for determination as to whether it was a fit application to be admitted for hearing I expressed my grave doubts as to its fitness at the time. I however admitted the application for hearing because it seemed then, though not now, cognate to those cases in which the bona fides of an application for execution has been considered when determining whether a subsequent application was barred by limitation. My own view and that of Banerji, J., as to the propriety of considering the bona fides of a previous application when determining the question of limitation had been overruled by a Bench of three Judges. I was therefore loath to refuse admission to this appeal unless I was satisfied that such refusal would be in no way in conflict with that Full Bench decision.

2. There can in fact be no doubt but that in this case the previous application for execution was not made bona fide and was allowed to go by default. If that were the only point there can be no doubt that the case would be governed by the Full Bench decision to which I have referred, the bona fides or otherwise of the previous application being of necessity, in view of the Full Bench decision to be held immaterial. I therefore ignore that aspect of the previous application altogether.

3. The present appeal however must fail on a totally different ground, namely, that the previous application was not in accordance with law, and that cannot now be challenged.

4. The facts are simple. The decree-holder obtained a decree on 31st June-1920. When limitation was near expiry he filed an application for execution of that decree which he allowed to be dismissed for default. On 28th November 1922 the decree was affirmed by the High Court. On 26th November 1925 again practically on the last day of limitation an application for execution was filed. The office reported that the application was incorrect in its particulars in respect of the entries in Cols. 2, 6 and 8. The decree-holder was ordered to correct the mistakes. He was given-several opportunities to do so and eventually as he took no steps and ignored the Court's

order the Court was compelled to strike off his application without its even being registered. On 22nd November 1928 again, on what he believed to be almost the last day of limitation the decree-holder filed the present application. The trial Court has dismissed that application on two distinct grounds, firstly, that the application was not bona fide, and secondly, that there was never an application in accordance with law. This is clearly the meaning of its reference to the application not being registered, for the Court relies on Ram Bahadur v. Rahat Ali : AIR1926All376 , which was decided on the basis that the application for execution, which it was suggested saved limitation, was not one in accordance with law.

5. It has been suggested by counsel for the appellant here that there were in-fact no mistakes in the application. But that is a question which must be taken to have been finally concluded against him. The execution Court held that the application was not in accordance with law in view of the mistakes made in filling up the columns. It may be that it was wrong in the view that it took, but it gave the decree-holder repeated opportunities of either correcting the alleged mistakes or of pointing out to the Court that it was in error. The decree-holder admittedly ignored the order of the Court altogether. The discourtesy of his action is manifest, but he cannot be penalized for discourtesy of that description, but he can and should be held bound by the view of the Court intimated to him and which by his silence he must be taken to have accepted.

6. It is a very well known and sound principle that a superior Court will not listen to a contention of this sort by a litigant who had more than ample opportunity of raising the point to the Court primarily concerned and refused to take advantage of the opportunities given him. I proceed therefore as I must proceed, on the assumption that there were mistakes in the application for execution which rendered it an application which could not be proceeded with, or in other words, an application that did not comply with the requirements of Rule 11 A.I.R. 1921 Nag. 28 and not an application in conformity with law. It cannot therefore save limitation. For this proposition there is ample authority of this Court in Ram Bahadur v. Rahat Ali, of the Nagpur Court in Megh Raj v. Abdul Majid A.I.R. 1921 Nag. 28, and of the Calcutta Court in Joyanuddin v. Jamiruddin [1917] 37 I.C. 916.

7. On the other band for the applicant I have been only referred to two cases: Baghunandan Lal v. Badan Singh [1918] 40 All. 209 and Arjun v. Lakhan [1918] 47 I.C. 993, neither of which is in point. In both these cases the only question with 'which the Court had to deal was as to the effect of the failure of the applicant for execution to file a copy of the decree when ordered to do so by the Court. It is true that in the latter of the two cases Court referred to the question of whether there were any mistakes in filling up the form under Rule 11; but it is manifest that that reference was only due to some discussion in the High Court itself which found that as a matter of fact there were no mistakes in filling up the form. It is manifest from the rest of the report that there is no suggestion whatever that the trial Court rejected the application for execution for any other reason than that a copy of the decree was not filed; and the High Court had nothing to do but decide the question whether failure to file a copy of the decree rendered the application one not in conformity with the law, and it answered the question in the negative. Neither of those two cases is therefore relevant to the present point. Counsel for the appellant during the course of the delivery of the judgment asked to be allowed to put another point. I cannot however, hear him on that now as the point was not raised before the trial Court and has not been raised in the grounds of appeal to this Court.

8. The appeal is dismissed and the appellant will bear his own costs and the costs of the other side throughout.

9. Leave to appeal is asked for but refused.