

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 15.3.2012

**+CM(M) No.296/2012 & CM No.4452-53/2012 & CAVEAT
No.251/2012**

PRADEEP KUMAR GUPTA Petitioner
Through: Mr.V.B.Andelay, Sr. Adv. with
Mr.Priyank Sharma, Adv.

versus

HARI RAM GUPTA DECD THRU LRS. Respondent
Through: Mr.S.N.Kumar , Adv.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

INDERMEET KAUR, J. (Oral)

1. Petitioner is aggrieved by the order dated 05.11.2011 which had endorsed the finding of the trial judge dated 20.8.2011; the objections filed by the objector Pradeep Kumar (hereinafter referred to as the JD No.4) had been dismissed.

2. Record shows that the a suit for recovery of Rs.16,255/- had been filed by the plaintiff against Hari Ram Gupta and his son Rishi Ram; this was decreed in favour of the plaintiff. Execution was filed by the decree holder; insolvency proceedings were also initiated against Hari Ram which was in Insolvency Petition No.44/1972; the proceedings in the execution were stayed; Hari Ram had in fact been adjudged an insolvent. This Insolvency Petition was dismissed on 24.5.1982. JD No.4 was not a party in those suit proceedings; he was born on 01.11.1965 and attained majority on 01.11.1983. On 09.12.1987 objections were filed by him against the decree dated 02.11.1970; his contention in the objections was that the sale which has been ordered is not as per the procedure; publication has not been effected properly; the property is not liable to be attached because of these irregularities; there is a collusion between the decree holder, JD and the auction purchasers; the objector (JD No.4) is not bound by this sale; the property is a joint hindu family and after its division between the two brothers (Shyam Lal and Lala Hari Ram) this property has fallen to the share of Lala Hari Ram who is grandfather of JD No.4 which is an ancestral and a co-parcenery property.

3. Relevant would be to state that at no point of time any objection was ever raised by JD No.4 that the proceedings had been adjourned sine die and as such the objections could not have been preferred by him before the aforementioned dated i.e.09.12.1987. This becomes relevant in view the fact that both the two courts below had dismissed the objections of the petitioner primarily on the ground of limitation.

4. Record, as note supra, shows that the petitioner had attained majority on 01.11.1983. Objections had been filed by him 09.12.1987. Both the courts below had rightly noted that Article 127 of the Limitation Act is relevant for disposal of these objections and period of limitation in terms thereof has to be computed from the date of the sale which is 60 days; the vehement contention of the petitioner before this Court is that Article 137 which is the residuary Article is applicable and not Article 127. This submission of the learned counsel for the petitioner has no force. The Supreme Court in Mohan Lal Vs. Hari Prasad Yadav reported in 501 CCC VII 1994(2) while dealing with an application seeking setting aside of a sale in the execution of a decree had noted that limitation is governed under Article 127 of the Limitation Act and an application filed before the executing court beyond the

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limitation of 60 days cannot be entertained as even Section 5 of the Limitation Act is not applicable to such proceedings. Article 127 of the Limitation Act reads as follows:

Article	Description of suit	Period of Limitation	The time from which period begins to run
127	To set aside a sale in execution of a decree including any such application by a judgment-debtor	Sixty days	The date of the sale

It is thus clear that an application to set aside a sale under Order 21 Rule 89 of the Code is governed by Article 127 of the Limitation Act and the present objections seeking setting aside of the sale by JD No.4 in terms of his objections filed on 09.12.1987 were clearly beyond the prescribed period of limitation.

5. Admittedly, the JD No.4 was a minor on the date when the sale had occurred; giving him the benefit of his minority he having attained the age of majority on 01.11.1983 the inordinate delay in preferring the objections which were filed only on 09.12.1987 remained unexplained and unanswered and both the courts below had thus rightly noted that

the objections filed by JD No.4 suffer from laches and are liable to be dismissed on this count alone.

6. The contention of the learned counsel for the petitioner is that the execution proceedings remained stayed right up to 1997 when the appeal filed by the Official Receiver against the order dated 24.5.1982 (of the Insolvency Court) was disposed by the first appellate court; contention being that since the proceedings in the execution had been stayed the question of his filing objections in this intervening period did not arise.

7. This submission of the petitioner is not borne out from the record. Nowhere in his objections has it been averred or whispered that there is stay of proceedings by any court. Record, in fact show that in the aforementioned insolvency proceedings the execution proceedings had been stayed between 1972 to 24.5.1982 when the insolvency petition was finally disposed of. Thereafter there has been no stay of the proceedings. Neither has this been averred and neither any order of stay from any court has been brought before any court; not even before this Court. This submission is wholly false. Attention has been drawn by learned counsel for the petitioner to the objections filed by him wherein in the marginal notes Ahlmad/some staff member has noted that the

previous execution had been stayed on 26.4.1974 in an insolvency petition and has been adjourned sine die; this note has been relied upon vehemently by the petitioner today before this Court to substantiate the aforementioned averment that the eviction petition had in fact been adjourned sine die. Attention has also been drawn to the definition of “adjourned sine die”; submission being to the effect that in such proceedings no date is mentioned; the JD No.4 could not in these circumstances have filed his objections.

8. This argument is also wholly without any merit; even as per the case of JD No.4 the stay order continued till 1997 and as such objections could not have been filed by him in this intervening period. There is, however, no explanation as to why he chose to file the objection in this intervening period on 09.12.1987; to this specific query there is no answer. Attention has also been drawn to an averments made in the application filed by the grandfather of the petitioner (page 90 of the paper book); this was an application under Section 37 of the Provincial Insolvency Act wherein an averment had been made that the order dated 24.5.1982 had been suspended; contention being that the stay which was granted in the insolvency petition continued even before the appellate

court. This submission is again bereft of merit. Admittedly the Insolvency Petition had been disposed of on 24.5.1982; if there was a stay of the said order, it should have been brought to the notice of the court; in the entire hearing of the proceedings no such order has been brought on record and even before this court no such order has been placed on record. It also does not find mention in any proceedings before the court below.

9. There is no dispute to the proposition that under Section 15 of the Limitation Act there is an exclusion of certain time periods which includes the period when the execution proceedings have been stayed. However, in the instant case the record shows that the execution proceedings had been stayed only for period 1972 up to 24.5.1982 by the Insolvency Court and for no period beyond thereafter. In AIR 1964 SC 227 A.S.K. Krishnappa Chettiar & Ors. Vs. S.V.V.Somiah & Ors. the Apex Court had noted as follows:

“The Limitation Act is a consolidating and amending statute relating to the limitation suits, appeals and certain types of application to courts and must, therefore, be regarded as an exhaustive Code. It is piece of adjective or procedural law and not of substantive law. Rules of procedure, whatever they may be, are to be applied only to matter to which they are made applicable by the legislature expressly or by necessary implication. They cannot be extended by analogy or

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reference to proceedings to which they do not expressly apply or could be said to apply by necessary implication. It would, therefore, not be correct to apply any of the provisions of the Limitation Act to matters which do not strictly fall within the purview of those provisions. Thus for instance, period of limitation for various kinds of suits, appeals and applications are prescribed in the First Schedule. A proceeding which does not fall under any of the articles in that schedule could not be said to be barred by time on the analogy of a matter which is governed by a particular article. For the same reasons the provisions of Sections 3 to 25 of the Limitation Act cannot be applied to situations which fall outside their purview.

These provisions do not adumbrate any general principles of substantive rights on litigants and therefore, cannot be permitted to have greater application than what is explicit or implicit in them. Suspension of limitation in circumstances of the kind obtaining in these appeals is neither explicit nor implicit in S.15 upon which reliance placed on behalf of the appellants. We, therefore, unable to accept the first argument of Mr. Sastri.”

10. In AIR 1959 SC 198 Siraj-ul- Haq Khan Vs. The Sunni Central Board of Waqf the court in the context of Section 15 of Limitation Act had interalia noted as follows:

“... It is plain that, for excluding the institution of the suit in question had been stayed by an injunction or order; in other words, the section requires an order or an injunction which stays the institution of the suit. And so in cases falling under S.15, the party instituting the suit would by such institution be in contempt of court. If an express order or injunction is produced by a party that clearly meets the requirements of S.15.”

11. In the instant case there is admittedly no stay which has been brought to the notice of the court. The judgments relied upon by learned

counsel for the appellant reported as AIR 1955 Madras 547 Kannappa Chettiar Vs. Kandaswami Pillai; AIR 1963 Punjab & Haryana 174 Baghicha Singh Vs. Suba Singh; AIR 1984 SC 1383 Anandilal Vs. Ram Narain; AIR 1992 SC 1975 Poolpandi etc. Vs. Superintendent, Central Excise and Ors.; AIR 1995 SC 1971 Nani Gopal Paul Vs. T. Prasad Singh are thus wholly inapplicable. There is no dispute that during the period when the executing proceedings are stayed the said period has to be excluded while computing period of limitation but at the cost of repetition it is noted the only period for which the stay was in operation was from 1972 to 24.5.1982 and for no period beyond thereto.

12. It is also relevant to note that the objections filed by JD No.4 (grandson of Hari Ram) were the same objections which were those of his grandfather and which were dismissed on 23.2.1973.

13. Both the courts below have dealt with these arguments which have now been advanced before this Court today. This court is sitting in its power of superintendence and unless and until there is a patent illegality or a grave injustice which has accrued to one party qua the other interference by High Court in its power of superintendence is not called for. This is not one such case.

14. Impugned order suffers from no infirmity. Dismissed.

INDERMEET KAUR, J

MARCH 15, 2012

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