

(119) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CR No.4177 of 2018 (O&M)

Date of decision: 11.09.2018

Gurnam Singh and another ... Petitioners

Versus

Union of India and others ... Respondents

2. CR No.4255 of 2018 (O&M)

Jagtar Singh son of Kishan Singh through his LRs
and others ... Petitioners

Versus

Union of India and others ... Respondents

3. CR No.4273 of 2018 (O&M)

Jagtar Singh son of Kishan Singh through his LRs
and others ... Petitioners

Versus

Union of India and others ... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Kanwar Pahul Singh, Advocate for the petitioners.
Mr. Shivoy Dhir, Standing Counsel for UOI.

B.S. Walia, J. (Oral)

[1] This order shall dispose of CR Nos.4177, 4255 and 4273 of
2018 as identical question is involved in all three cases.

[2] Short point in issue is that execution application filed by the petitioners was dismissed on the ground that the same was barred by limitation as execution application had been filed after more than 12 years from the date of order dated 15.04.2003 execution of which was sought by way of the execution application.

[3] The petitioners have challenged the impugned order on the ground that the same does not take into account the fact that order dated 15.04.2003 was challenged by the petitioners by filing Regular First Appeal (i.e. RFA No.2249 of 2004 in CR No.4177 of 2018, RFA No. 2244 of 2004 in CR No.4255 of 2018 and RFA No.2246 of 2004 in CR No.4273 of 2018) and the same came to be decided on 13.01.2016 and that in the circumstances, limitation for counting period of 12 years would begin from the date of order passed in the aforementioned RFAs (i.e. 13.01.2016) and not date of award (i.e. 15.04.2003).

[4] Learned counsel appearing on behalf of the respondents has not controverted the factual or legal position.

[5] It is settled law that whenever a decree of trial Court is challenged by a competent appeal, the appeal is considered as a continuation of the suit and when the appellate decree affirms, modifies or reverses the decree on merits, the trial Court decree is said in law, to merge in the appellate decree, and it is the appellate decree which rules.

[6] The decision passed by the First Appellate Court on 13.01.2016 in the appeals referred to above is on merits and not otherwise. Accordingly, the doctrine of merger will apply and the trial Court decree having merged in the appellate decree, the period of limitation would begin to run from the date of the appellate decree.

Relevant extract of the order dated 08.03.2006 passed by this Court in CR No.1872 of 2002 titled as Sita Ram v. Smt. Mahadi and others, is reproduced as under:-

“13. Identical controversy, as involved in the present revision petition, was involved in the case of **Chhota Ram and others v. Naginder Singh and others, Civil Revision No.1496 of 1998, decided on May 28, 1998 : 2000 (1) PLR 720 : 2000 (2) LJR 785**, by a Single Bench of this Court. The learned Single Judge in the aforesaid case had duly noticed the law laid down in Diwan Singh’s case (supra) which had followed Bharat Nidhi Ltd.’s case (supra) and after noticing the pronouncements by different High Courts and also noticing the law laid down in **Laxmi Narayan Guin and others v. Niranjana Modak, 1985 (1) RCR (Rent) 27 : AIR 1985 Supreme Court 111**, has held that whenever a decree of trial Court is challenged by a competent appeal, the appeal is considered as a continuation of the suit and when the appellate decree affirms, modifies or reverses the decree on the merits, the trial Court decree is said in law, to merge in the appellate decree, and it is the appellate decree which rules. On the basis of the aforesaid law, the following observations made in Chhota Ram’s case, may be noticed:-

“After pondering thus for some of the precedents, it is clear that period of limitation would be reckoned from the date, the appeal was dismissed. Even if there was no stay granted during the course of the appeal, the decree would be enforceable for purpose of limitation as passed by the Appellate Court. The doctrine of merger permits us to say so. The moment Appellate Court decree comes into being, the original judgment and decree loses its independent entity. Consequently, the learned trial Court, therefore,

rightly held that it was within time. There is no ground to interfere in the order of the trial Court.”

14. In a recent judgment, an identical controversy was also raised before the Hon’ble Supreme Court in India in the case of **Chandi Prasad and others v. Jagdish Prasad and others, 2005 (2) RCR (Civil) 737 : 2004 (8) SCC 724**. The Hon’ble Supreme Court noticed the law laid down in Rattan Singh’s case (supra) and it was explained that in Rattan Singh’s case the execution petition had been filed beyond the period of limitation, even after the Appellate Court judgment. Rattan Singh’s case was explained by holding that the second appeal against the judgment of the first Appellate Court had been filed in that case after the period of limitation and the second appeal was dismissed as barred by limitation. Execution petition had been filed by the decree-holder much after the period of limitation from the date of appellate Court decree. Consequently, it was held that Rattan Singh’s case had no application to the proposition of law to the effect that the limitation would commence from the date of the original decree and not from the appellate decree or revisional order.”

[7] In the circumstances, the impugned order dismissing the execution petition is set aside. Parties are directed to put in appearance before the Executing Court on 01.10.2018 which shall proceed in accordance with law.

[8] Accordingly, Revision Petition is disposed of in the light of the observations as noted above.

(B.S. Walia)
Judge

11.09.2018
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No