

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 268

CR-753-2014

Date of decision : 23.07.2019

Karam Chand

..... Petitioner

VERSUS

Mohinder Singh (deceased)
through LRs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ashwani Kumar Chopra, Senior Advocate, with
 Mr. Eesha Khanna, Advocate, for the petitioner.

 Mr. Nakul Sharma, Advocate, for the respondents.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 10.10.2013, passed by the Civil Judge (Junior Division) Ferozepur (for short, the Executing Court), through which petitioner's execution application has been dismissed on the ground that the same was time barred.

After hearing learned counsel for the parties as also perusing the records of the case the admitted facts which have emerged are that on 20.01.1981 the petitioner filed a suit seeking therein possession of six marlas of land detailed and described in the head note of his plaint (for short, the suit property). Mandatory injunction to direct the respondents/defendants to vacate the suit property by removing of malba/debris was also sought.

On being put to notice, the respondents/defendants appeared before the Trial Court and filed their written statement contesting the petitioner's suit.

On the dispute between the parties the Trial Court framed the issues. However, on 20.07.1981, when the suit was listed before the Trial Court for leading of plaintiff's evidence, learned counsel for the respondents/defendants pleaded that he had no instructions to appear in the matter and on such statement

the respondents/defendants were ordered to be proceeded against *ex parte*. On the basis of *ex parte* evidence led by the petitioner, on 20.07.1981 itself, the Trial Court decreed the petitioner's suit.

Thereafter, an application was preferred on behalf of the respondents under Order 9 Rule 13 CPC seeking therein to set aside the aforesaid *ex parte* decree passed against them. Such application was dismissed by the Trial Court through its order dated 05.11.1981.

On the dismissal of the respondents' afore mentioned application the petitioner thought that now the decks were clear to seek execution of the decree passed in his favour and accordingly, on 10.11.1981, through a specific application filed by him in that regard, he knocked the doors of the Executing Court. However, in the meanwhile, the respondents had challenged the dismissal of their application filed by them under Order 9 Rule 13 CPC through an appeal filed by them before the District Judge, Ferozepur (for short, the Appellate Court). In such appeal, on 26.11.1981, the Appellate Court issued notice to the petitioner and in the meanwhile stayed the execution proceedings. The petitioner put in appearance before the Appellate Court and contested the respondents' appeal. His contest bore fruit as the respondents' appeal was dismissed by the Appellate Court on 10.02.1982.

The petitioner then went back to the Executing Court seeking execution of the decree dated 20.07.1981 in his favour. On 12.03.1982 the Executing Court issued warrants of possession. However, in the meanwhile, the respondents challenged the aforesaid order dated 10.02.1982 passed by the Appellate Court through a revision petition filed before this Court being CR-1024-1982 "*Darshan Singh and another vs. Karam Chand and another*". On 20.04.1982 this Court issued notice to the petitioner and in the meanwhile stayed the operation of *ex parte* decree dated 20.07.1981. In view of the stay

granted by this Court the petitioner withdrew his execution application. On 17.10.1983 subject to payment of ₹1,000/- as costs, this Court allowed the respondents' revision petition with a further direction to the parties to appear before the Trial Court on 15.11.1983 on which date neither did the respondents put in appearance before the Trial Court nor the awarded costs were paid by them leading to the reiteration by the Trial Court of its earlier order dated 05.11.1981 through which the respondents' application under Order 9 Rule 13 CPC had been dismissed.

On 14.12.1984 the respondents moved an application before the Trial Court for setting aside of its order dated 15.11.1983 which was dismissed on 12.05.1989. Against such order no further recourse was taken by the respondents and resultantly, the decree dated 20.07.1981 passed against them attained finality.

On 24.01.1995 the petitioner again filed an application before the Executing Court seeking execution of the decree in his favour. Such application was dismissed for non-prosecution and an application filed by the petitioner seeking restoration of the same was also dismissed. He then challenged such dismissal of his restoration application through a revision petition filed before this Court being CR-1066-2004 "*Karam Chand vs. Mohinder Singh*" which was allowed on 10.09.2012. This Court directed the parties to appear before the Executing Court on 09.11.2012 on which date though the petitioner appeared but the respondents did not.

On 04.09.2013 the respondents filed an application for condoning the delay on their part for not appearing before the Executing Court. They also filed their objections to the execution application filed by the petitioner. On 10.10.2013 the Executing Court dismissed the petitioner's execution application on the ground that the same was beyond the prescribed period of limitation as

according to the Executing Court the petitioner had filed his execution application on 24.01.1995 seeking therein execution of *ex parte* decree dated 20.07.1981 which was well beyond the period of limitation of twelve years as prescribed under Article 136 of the Schedule attached to the Limitation Act, 1963 (for short, the Act). Such order is under challenge in the present proceedings.

Mr. Ashwani Kumar Chopra, learned Senior Counsel, appearing on behalf of the petitioner submitted that for execution of decree dated 20.07.1981 the petitioner had filed an application before the Executing Court on 10.11.1981 and only in view of the stay granted by this Court in the revision petition preferred by the respondents to challenge therein the dismissal of their appeal filed by them against the dismissal of their application under Order 9 Rule 13 CPC, the petitioner had withdrawn his execution application. According to him, the parties kept on litigating till 12.05.1989 and thereafter on 24.01.1995 the petitioner filed the execution application seeking therein the fruits of the decree in his favour. Mr. Chopra submitted that the petitioner never slept over his rights and therefore, the Executing Court had wrongly thrown the petitioner's application out on the ground of delay.

Irrespective of the above, Mr. Chopra contended that even if the petitioner's execution application was to be considered to have been filed by him in the first instance on 24.01.1995 seeking therein to execute decree dated 20.07.1981, the same was within the period of limitation of twelve years as prescribed under Article 136 to the Schedule attached to the Act. It was submitted that there was delay of 554 days beyond the period of twelve years in the filing of the execution application which was required to be condoned in view of the fact that in the integrum from 26.11.1981 to 10.02.1982 the operation of the decree which the petitioner sought execution of had been

stayed by the Appellate Court in the appeal preferred by the respondents against the dismissal of their application under Order 9 Rule 13 CPC and then from 20.04.1982 till 17.10.1983 this Court had stayed the execution proceedings in the revision petition preferred by the respondents against the dismissal of their appeal filed by them against the dismissal of their application under Order 9 Rule 13 CPC.

In support of his submissions Mr. Chopra relied on the following judgments: -

1. Bharat Nidhi vs. M/s Sehgal Bros. and others; 1979 PLR 317;
2. Diwan Singh vs. Om Parkash; 1998(2) PLR 694;
3. Prem Lata Agarwal vs. Lakshman Prasad Gupta and others; 1970(3) SCC 440;
4. Banda Chinna Subbarayudu & Ors. vs. Thailam Vishwanatha Rao & Anr.; (2010) 1 SCC 168; and
5. Deep Chand vs. Mohan Lal; 2000(6) SCC 259.

Mr. Nakul Sharma, Advocate, who appeared on behalf of the respondents countered the submissions made on behalf of the petitioner by submitting that the stay order granted in the proceedings initiated by the respondents for setting aside the *ex parte* decree 20.07.1981 were not by a Superior Court wherein challenge had been made to the decree, the execution of which is sought by the petitioner and therefore, the period of stay in such proceedings cannot be excluded from the prescribed period of limitation. In support of his arguments, reliance is placed by him upon a judgment of the Madhya Pradesh High Court in “*Bherulal vs Mohammad Jamil*” 2006(3) RCR (Civil) 396.

Through an application filed on 24.01.1995 the petitioner seeks to execute an *ex parte* decree passed in his favour on 20.07.1981. Since the aforesaid *ex parte* decree, under Article 136 of the Schedule attached to the Act, was executable within twelve years, there is a delay of 554 days in filing of the

execution application . However, between the date of the decree and the date of filing of the execution application, admittedly, for a period of 77 days i.e. from 26.11.1981 to 10.02.1982 the execution of the decree in question had been stayed by the Appellate Court in an appeal filed by the respondents against the dismissal of their application filed by them under Order 9 Rule 13 CPC seeking therein to set aside the afore referred *ex parte* decree.

It is further not disputed that on the dismissal of the aforesaid appeal, the respondents had filed a revision petition before this Court being CR-1024-1982 “*Darshan Singh and another vs. Karam Chand and another*” in which for 546 days this Court had stayed the execution of the impugned decree.

Thus, from the date of the decree till the filing of the execution application by the petitioner there was stay on its execution for a total number of 623 days. For these number of days the petitioner was precluded from executing the decree passed in his favour for which obviously no fault can be attributed to him. Thus, such period is required to be excluded while calculating the period of limitation. That being so, since there was delay of 554 days in filing of the petitioner's execution application and in the integrum the execution of the decree had been stayed by the Appellate Court as also this Court for 623 days, his execution application would be deemed to be within the prescribed period of limitation.

The above view of mine finds support from the following observations made by the Hon'ble Supreme Court in “*Prem Lata Agarwal's* case (supra) wherein in paragraph 14 of the judgment it has been held as under:-

“.....It is, therefore, manifest that the execution proceedings before the Civil Judge at Allahabad were stayed and the decree holder was rightly found by the Madras High Court entitled to the benefit of exclusion of time during which the execution was stayed.”

Paragraph 20 of the same judgment reads as under: -

“The Madras High Court upheld the order of the learned Single Judge entitling the decree-holder to the exclusion of the period spent in prosecuting prior infructuous execution proceedings before the Civil Judge at Allahabad. The decree-holder was allowed to proceed with the execution proceedings and the Madras High Court remitted the matter to the Master to consider the questions indicated in the judgment and the judgment-debtors were allowed to raise objections to the executability of the decree apart from those of limitation as indicated in the judgment of the learned Single Judge. We are of opinion that the Madras High Court is right in holding that the decree-holder is entitled to the benefit of exclusion of time during which the executing proceedings were stayed by the order of the Allahabad High Court and the decree-holder proceeded with the said execution proceedings in good faith and with the diligence.”

(emphasis supplied)

Similarly, in “*Banda Chinna Subbarayudu's* case (supra), the

Hon'ble Apex Court has held as under: -

“10. In our view, since the appellants were prevented by the stay order from taking any further steps in the execution proceedings, they would be entitled to the benefit of the said period and the same has to be excluded while considering the question of limitation as prescribed under Article 127 of the Limitation Act.”

(emphasis supplied)

This Court has also considered a similar question and returned findings in line with what has been held as above.

In *Bharat Nidhi's* case (supra) this Court held as under: -

“7.... I am, however, unable to agree with this contention of the learned counsel. The limitation, as already observed, starts running from the date when the decree or order becomes enforceable which obviously implies that during the period in which the decree is declared by the order of the Court to be unenforceable has to be deducted while counting the period of twelve years and the contention of the learned counsel for the respondents that the period could be deducted for filing of the application immediately after the decree was restored or held unenforceable cannot be accepted. I am, therefore, of the considered opinion that by virtue of the provisions of Article 136, the decree-holder is entitled to deduct the period during which the decree was declared unexecutable while counting the period of 12 years irrespective of the fact whether the execution application is the one filed immediately after the decree was declared executable or any subsequent application.”

“8. As already observed above, if the period during which the decree was declared unenforceable and the period during which its execution remained stayed under orders of the Letters Patent Bench is deducted from the period of 12 years, the present execution application filed on March 26, 1969 would be deemed to be within limitation.”

In “*Diwan Singh's* case (supra), this Court has held as under: -

“4..... As already observed, the period of limitation for executing a decree is 12 years and this period gets enlarged only to the extent during which the execution of the decree is stayed by the Court in the first appeal or the second appeal. Mere filing of appeal against the judgment and decree in the absence of any stay granted by the appellate Court cannot enlarge the period of limitation for execution of the decree. The two judgments relied upon by Mr. Hooda, learned counsel for the petitioner have no application whatsoever to the facts of the present case. In the above two matters dispute before the Supreme Court related to a claim in a pre-emption suit and the apex Court was considering the effect of the amendment made in the provisions of Section 15 of the Pre-emption Act by Haryana Act No. 10 of 1995. It was in that situation held that in a pending appeal against the decree, the whole matter became *sub judice* and the right of pre-emption should be available to the pre-emptor at all stages including the final stage.”
(emphasis supplied)

The judgment cited by learned counsel for the respondents in *Bherulal's* case (supra) would have no application in the facts of the present case as in that case no stay had been granted by any Court with regard to the execution of the decree in question.

Since, as above, Mr. Chopra's second contention has been accepted, no opinion is being expressed on the other submissions raised by him. The same are left open.

In view of the above, the present petition is allowed and the impugned order is set aside.

The Trial Court is directed to take a final decision on the petitioner's execution application within one month from the date of receipt of a certified copy of this order.

23.07.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No