



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1248/2021

The Akola Janata Comm. Co-Op. Bank Akola .Vs. Ku. Jyoti Pandurang
Patwardhan and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. O. A. Ghare, Advocate for petitioner.
Mr. P. Sagdeo, Advocate for respondent No.1.

CORAM : **ANIL L. PANSARE, J.**
DATE : **13.08.2024**

Heard.

2. The petitioner is decree holder of money decree for an amount of Rs.10 Lakhs approximately. He filed proceedings for execution against respondent – judgment debtor, who expired on 16.06.2009. The legal representatives were not brought on record for years together. The petitioner, in the month of September, 2017, filed application to bring on record legal representatives of respondent No.1. The Executing Court rejected the application on the ground that it is time barred and that there is no explanation for the delay of about 7 ½ years.

3. The petitioner then filed application seeking review on the ground that the issue involved is covered by the judgment of the Apex Court in the case of **V. Uthirapathi .Vs. Ashrab Ali and Ors.; (1998) 3 SCC 148.** The Executing Court has referred to the judgment but has not considered its effect. The Executing Court proceeds to observe that the application under question has been decided on merit and was not dismissed on the count of limitation alone. The Court further held that the application seeking review was not filed within

three days and further that the decree holder failed to show that there is any error apparent on the face of record.

4. To my mind, the Executing Court failed to consider the law laid down by the Hon'ble Supreme Court. The relevant paragraphs read thus:

11. Order 22 Rule 12 of the Code of Civil Procedure reads as follows:

"Order 22 Rule 12: Application of order to execution proceedings: Nothing in proceedings in execution of a decree or order."

12. In other words the normal principle arising in a suit - before the decree is passed - that the legal representatives are to be brought on record within a particular period and if not, the suit could abate, - is not applicable to cases of death of the decree holder or the judgment debtor in execution proceedings.

13. In Venkatachalam Chetti V. Ramaswami Servai, a Full Bench of the Madras High Court has held that this rule enacts that the penalty of abatement shall not attach to execution proceedings. Mulla's Commentary on CPC (Vol.3) p. 2085 (15th Edn., 1997) refers to a large number of judgments of the High Court and says:

"Rule 12 engrafts an exemption which provides that where a party to an execution proceedings dies during its pendency, provisions as to abatement do not apply. The rule is, therefore, for the benefit of the decree-holder, for his heirs need not take steps for substitution under Rule 2 but may apply immediately or at any time while the proceeding is pending, to carry on the proceeding or they may file a fresh execution application." (emphasis supplied)

14. In our opinion, the above statement of law in Mulla's Commentary on [CPC](#), correctly represents the legal position relating to the procedure to be adopted by the parties in execution proceedings and as to the powers of the Civil Court.

15. It is clear, therefore, that if after the filing of an execution petition in time, the decree holder dies and

his legal representatives do not come on record - or the judgment debtor dies and his legal representatives are not brought on record, then there is no abatement of the execution petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of the execution Court. If it remains pending and if no time limit is prescribed to bring the legal representatives on record in execution proceedings, it is open in case of death of the decree holder, for his legal representative to come on record at any time. The execution application cannot even be dismissed for default behind the back of the decree holder's legal representatives. In case of death of the judgment-debtor, the decree holder could file an application to bring the legal representatives of he judgment debtor on record, at any time. Of course, in case of death of judgment-debtor, the Court can fix a reasonable time for the said purpose and if the decree holder does not file an application for the aforesaid purpose, the Court can dismiss the execution petition for default. But in any event the execution petition cannot be dismissed as abated. Alternatively, it is also open to the decree holder's legal representatives, to file a fresh execution petition in case of death of the decree holder; or, in case of death of the judgment debtor, the decree holder can file a fresh execution petition impleading the legal representatives of the judgment debtor; such a fresh execution petition, if filed, is, in law, only a continuation of the pending execution petition - the one which was filed in time by the decree holder initially. This is the position under the Code or Civil Procedure.”

5. As could be seen, Order XXII Rule 12 of the Civil Procedure Code, 1908 provides that the Rules 3, 4 and 8 shall not apply to the proceedings in execution of decree. The Supreme Court has, in categorical term, held that normal principal in a suit, that legal representatives should be brought on record within a particular period and if not, the suit could abate, is not applicable to the case of death of the decree holder or judgment debtor in execution proceedings. The Supreme

Court further held that in such an eventuality, if the decree holder dies or the judgment debtor dies and his legal representatives are not brought on record then there is no abatement of execution petition and if there is no abatement, execution petition remains pending on the file of Execution Court. The Court further held that if it remains pending and if no time limit is prescribed to bring legal representatives to come on record at any time, an execution application cannot be dismissed in default. The Court then held that in case of death of judgment debtor, the decree holder can file an application to bring legal representatives of judgment debtor on record at any time. The Court then clarified that in case of death of judgment debtor, the Court can fix the reasonable time for the said purpose. If the decree holder does not file application in the aforesaid period, the Execution Court can dismiss the execution proceedings for default but then the execution petition cannot be dismissed as abated. The Supreme Court then went on to further clarify that it is also open to the legal representatives to file a fresh execution petition in case of death of the decree holder. In case of death of judgment debtor, the decree-holder can file a fresh execution petition impleading the legal representatives of judgment

6. In the present case, the original judgment debtor expired. It is nobody's case that the Execution Court has fixed a time to bring on record legal representatives of judgment debtor. If that be so, one cannot find fault in decree holder approaching the Executing Court after 7 ½ years (when they got knowledge of death of the judgment debtor), in filing application to bring on record his legal representatives. The Trial Court was apprised of the law in this regard but ignored

the same for no valid reason. The order impugned appears to be contrary to the law laid down by the Supreme Court in the aforesaid case.

7. As such, the counsel for the respondent made an attempt to support the impugned order. However, he could not point out any judgment of the Apex Court that renders a different view or that judgment in V. Uthirapathi case is overruled.

8. In that view of the matter, the petitioner has made out a case. Impugned order dated 18.09.2019 passed below application Exh.-12 seeking to bring on record legal representatives of judgment debtor No.1 and order dated 06.02.2020 passed below application Exh.-16 seeking review of order passed below Exh.-12, in Arbitration R. D. No. 777/2010, passed by 4th Jt. Civil Judge Senior Division, Akola, are quashed and set aside. Application Exh.-12, filed by petitioner – decree holder to bring on record the legal representatives of the original judgment debtor No.1, who is respondent No.1 herein, is allowed. Necessary amendment be carried out on or before 31.08.2024, which is the scheduled date before the Executing Court.

9. The petition is disposed of in the above terms. No order as to costs.

(Anil L. Pansare, J.)