

**In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

R.V.W.O. No.48 of 2024

G.A. 1 of 2024

Arising out of

I.A/GA. No.3 of 2024

E.C. No.1016 of 2015

**Sujata Gupta Winfield and others
VS
CIC society**

For the
award debtors/petitioners : Mr. Chayan Gupta, Adv.,
Mr. Rajesh Upadhyay, Adv.,
Mr. Pourash Bandyopadhyay, Adv.,
Mrs. Sabita Biswas, Adv.,
Ms. Swarabita Biswas, Adv.

For the
awardholder/respondent : Mr. Sudip Deb, Sr. Adv.,
Mr. S. K. Poddar, Adv.,
Ms. Ipsita Ghosh, Adv.,
Mr. A.K. Gandhi, Adv.

Heard on : 03.01.2025, 10.01.2025,
31.01.2025, 07.02.2025,
21.02.2025

Judgment on : 28.02.2025

Sabyasachi Bhattacharyya, J:-

1. The present application seeks a review of the order dated November 8, 2024 whereby the legal heirs of one of the deceased award debtors, namely Late Aditya Vikram Gupta, were added as parties to the execution application and the plea of the award debtors/review applicants that the execution case was time-barred, either as against the heirs or Late Aditya Vikram or as a whole, was turned down.

2. There are four plinths of the arguments of the award debtors/review applicants:

- (i) That Section 21 of the Limitation Act, which was one of the bases of the order under review, is not applicable to execution applications but only to suits. Hence, the reliance of the court on the said provision was an error apparent on the face of the record. In the absence of such provision being applicable, the proviso thereto, which mitigates the belated filing of a suit in cases of good faith, is also not applicable to the execution case.
- (ii) Even if, for argument's sake, it is assumed that Section 21 of the Limitation Act is applicable to the execution case, the proviso to sub-section (1) thereof is not attracted, since there was lack of "good faith", which is an essential pre-requisite of the proviso, on the part of the award holder. There was absolute lack of due diligence on the part of the award holder in not impleading Aditya Vikram (since deceased), who was one of the award debtors, in the execution case and, as such, the attempt to implead his heirs after the expiry of the limitation period for filing the execution case was bad in law.
- (iii) Contrary to the observations in the order under review, the award was not severable and as such, the estate of the deceased award debtor was not represented by the other award debtors. Since the liabilities of each of the award debtors were separate and independent, the estate of the deceased award debtor could not be said to have been represented by the others.

Alternatively, in view of non-impleadment of the heirs of one of the award debtors during the limitation period for filing an execution case, even if the award was not severable, such non-impleadment vitiates the filing of the entire execution case, which should be deemed to be time-barred as a whole.

- (iv) The execution application was served on the award debtors only in the month of August 2024. On August 19, 2024, the award debtors intimated the date of death and the names of the heirs to the award holder. In view of non-service of prior notice in terms of Order XXI Rule 22 of the Code of Civil Procedure, there was no opportunity for the award debtors to furnish such details previously. As such, the award holder's argument as to the award debtors having shirked their liability under Order XXII Rule 10-A of the Code of Civil Procedure to intimate the death of the deceased award debtor did not arise previously and the award debtors could not be faulted on such count. Moreover, since the learned Advocates for the other award debtors did not represent the heirs of the deceased award debtor, no liability was cast on them to furnish any such information under Order XXII Rule 10-A of the Code.

3. Learned counsel for the review applicants cites *Manmotha Nath Mitter and others v. Rakhal Chandra Tewary and others*, reported at (1909-10) 14 CWN 752 and *Union of India v. Shambhaji Rao*, reported at 2014 SCC OnLine Del 3259, in support of the contention that Section

21 of the Limitation act is inapplicable in respect of execution proceedings.

4. Learned counsel for the review applicants further relies on *Serish Maji v. Nishit Kumar Dolui*, reported at (1999) 1 CHN 365, and *Akshat Commercial Pvt. Ltd. and another v. Kalpana Chakraborty and others*, reported at (2010) 3 CHN 95, for the proposition that execution proceedings cannot be equated with a suit and Section 2(l) of the Limitation Act clearly mentions that a suit does not include an appeal or an application.
5. Learned counsel for the review applicants, in support of the contention that the award holder did not act in “good faith”, cites Section 2(h) of the Limitation Act which defines “good faith” to mean that nothing shall be deemed to be done in good faith which is not done with due care and attention. In such context, learned counsel cites:
 - (a) *Delhi Transport Corporation v. Lillu Ram*, reported at (2017) 11 SCC 407;
 - (b) *Munshi Ram v. Narsi Ram and another*, reported at (1983) 2 SCC 8; and
 - (c) *Balwant Singh (dead) v. Jagdish Singh and others*, reported at (2010) 8 SCC 685.
6. It is argued that due care must be pleaded and proved, which is absent in the present case. In the absence of good faith, no discretionary benefit of the proviso to Section 21(1) of the Limitation Act was applicable to the award holder. Learned counsel cites, in

support of such contention, *Archit Banijya & Biniyog Pvt. Ltd. and others v. Asha Lata Ghosh and others*, reported at (2000) 2 CHN 640.

7. Learned counsel next cites *Presidency Industrial Bank Ltd. v. Hindustan Leather Industries Ltd.*, reported at AIR 1969 Bom 84, to argue that once Section 21 of the Limitation Act is inapplicable, the legal heirs of a deceased award debtor who was not made a party cannot be impleaded for the first time after expiry of limitation, which also warrants the entire execution application to be dismissed. On the question of segregability of the award, learned counsel cites *Moreshar Yadaorao Mahajan v. Vyankatesh Sitaram Bhedi (D) thr. LRs. and others*, reported at 2022 SCC OnLine SC 1307 in support of the contention that when the award is in respect of an undivided portion, the award cannot be segregated and enforced against only a few award debtors. Thus, it is argued that the entire execution case ought to have dismissed as time-barred.
8. Non-impleadment of the legal heirs of the deceased award debtor vitiates the entire execution proceeding for non-joinder of necessary party, which is not curable after the period of limitation to institute an action against them. In support of such proposition, learned counsel cites *Prabodhlal Mukherji v. Neelratan Adhikari*, reported at ILR Vol. LXII Cal. Page 324, and *Sri Raja Sobhanadri Appa Rao Bahadur v. Sri Raja Parthasarathi Appa Rao Savai Aswa Rao Bahadur and others*, reported at AIR 1932 Mad 583.

9. The above judgments were distinguished in the order under review on the basis of Section 21 of the Limitation Act, which is not applicable to the execution case, it is reiterated.
10. On the scope of review, learned counsel for the review applicants cites *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*, reported at (1980) 2 SCC 167, where it was held that the scope of review is wide enough to include matters where a provision of a Section has not been considered and where there is a grave error or patent mistake. Review would also lie for substantial justice, it is submitted.
11. Learned counsel cites *Board of Control for Cricket in India and another v. Netaji Cricket Club and others*, reported at (2005) 4 SCC 741, for the proposition that the scope of Order XLVII of the Code of Civil Procedure is wide enough to include misconception of law or fact by the court or even an advocate.
12. In reply, learned counsel for the award holder submits that a review petition has a very limited scope and cannot be allowed to be “an appeal in disguise”. An erroneous order cannot be corrected in the guise of review. Mere discovery of a new or important matter or evidence is not sufficient ground for review but the party seeking review also has to show that such matter or evidence was not within his knowledge even after the exercise of due diligence. A judgment can only be reviewed if there is a mistake or an error which is apparent on the face of the record. For such contention, learned counsel cites *Shri Ram Sahu (Dead) through Legal Representatives and Others v. Vinod Kumar Rawat and others*, reported at (2021) 13 SCC

land *S. Madhusudhan Reddy v. V. Narayana Reddy and others*, reported at (2022) 17 SCC 255.

13. Learned counsel for the award holder also relies on *Harinagar Sugar Mills Ltd. and another v. State of Bihar and others*, reported at (2006) 1 SCC 509 for the argument that a person cannot be permitted to re-argue the points in a review application, which had been rejected earlier.
14. Learned counsel next argues that Order XXII Rule 10-A of the Code of Civil Procedure casts a duty on the pleader to inform the court about the death of a party. The Supreme Court, in *Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) through Legal Representatives and Others*, reported at (2008) 8 SCC 321, had categorically observed that it is the duty of the pleader to inform the death to the court and if the same is not done his adversary cannot be made to suffer.
15. Learned counsel for the award holder further argues that a person is not permitted to approbate and reprobate at the same time. In the present case, a single award was passed jointly against all the award debtors without mentioning the specific liabilities and obligations of any particular award debtor, who are all co-owners/joint-owners of their demarcated portions of the property which is the subject-matter of the execution case. Such award is severable and all the award debtors are independently and severally liable to fulfil their obligations under the award.

16. The interest of the award debtor, whose name was omitted due to *bona fide* error, was properly represented by the other co-owners/joint award debtors. The deceased award debtor also enjoyed the benefit of the award in terms of the order passed in the execution case along with the other co-owners and no prejudice was caused to the deceased award debtor who had otherwise been represented in the execution case and also before the learned Special Officer appointed by the court through the rest of the award debtors.
17. The review applicants participated in the execution case and have enjoyed the monetary benefit pursuant to orders passed in the execution application jointly on behalf of the deceased award debtor as well, and are now estopped from arguing to the contrary.
18. The point that the execution application is bad for misjoinder and non-joinder of necessary party cannot be taken at a subsequent stage. In support of such contention, learned counsel relies on *R.N. Gosain v. Yashpal Dhir*, reported at (1992) 4 SCC 683.
19. Order I Rule 9 of the Code of Civil Procedure categorically provides that no suit shall be defeated by reason of misjoinder and non-joinder of parties. Order I Rule 9 stipulates that the court may at any stage of the proceeding add a party.
20. It is argued by the award holder that in the instant case the money component of the award has been satisfied and the execution is primarily to implement the injunction component, for which the cause of action is continuing. It is argued that Article 136 does not envisage applicability of limitation to an injunction decree/award. Learned

counsel cites *Rango Laxman Pingle deceased, by his heir Govind Rango v. Kumudini Chandrakant Pethkar and others*, reported at AIR 1981 Bom 220, for the proposition that execution is a continuation of the suit and as such, Order I Rule 10 applies to execution cases as well. Thus, it is argued that the review application ought to be dismissed, not coming within the purview of Order XLVII of the Code of Civil Procedure.

- 21.** Upon hearing learned counsel for the parties, the court comes to the following conclusions:

Applicability of Order I Rule 10(5) of the Code of Civil Procedure and/or Section 21 of the Limitation Act

- 22.** There are two possible scenarios in the present case.
- 23.** The first possible proposition is that the bar of limitation applies by virtue of Order I Rule 10(5) of the Code of Civil Procedure, and the second, that the bar arises independently under Section 21 of the Limitation Act.
- 24.** Order I Rule 10(5) of the Code stipulates that the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons. It is evident from the rest of Rule 10 of Order I that the same applies only to suits and not to applications or other proceedings. Sub-rule (5) of Rule 10 cannot be read in isolation from the rest of the provision, which speaks about 'plaintiffs', 'defendants', 'plaint', 'summons' and 'suit' and as such do not *per se* apply to execution proceedings, which are not independent

proceedings (even as per the award holder) but a continuation of the suit.

- 25.** Hence, the bar, if at all, could have arisen independently under Section 21 of the Limitation Act, which is the law governing limitation for instituting proceedings.
- 26.** However, as per the arguments of the review applicants themselves, Section 21 does not apply to execution cases, which is also apparent from the language of Section 21, which also speaks about ‘suit’, ‘plaintiff’ and ‘defendant’.
- 27.** The argument of the award holder that the expression “proceedings” used in sub-rule (5) of Rule 10 of Order I takes within its fold other proceedings than suits is not tenable in the eye of law, in view of the language of the said provision as a whole. The said sub-rule specifically operates in the context of sub-rule (4), which speaks about addition of ‘defendants’, upon which the ‘plaint’ is to be amended, and provides that the proceedings as against any person added as ‘defendant’ shall be deemed to have begun only on the service of the summons. The use of the word “summons” and the context of the said sub-rule, which is embedded among other provisions of Rule 10, all of which deal with suits exclusively, is a clear indicator that the expression “proceedings” in sub-Rule (5) refers not to independent proceedings but proceedings in the suit itself, where a person is added as a defendant.
- 28.** If the bar contemplated here is construed to be under Order I Rule 10(5) of the Code, however, the applicability of Section 21 of the

Limitation Act, 1963 [which is the current version of Section 22 of the Indian Limitation Act, 1877 referred to therein] cannot be avoided, since sub-rule (5) itself has been subjected by its very language to Section 21 of the Limitation Act, 1963.

- 29.** Hence, the argument of the review applicants that although the bar under Order 1 Rule 10(5) applies, Section 21 is not applicable, is unacceptable, as Rule 10(5) itself operates subject to Section 21 of the Limitation Act. Hence, if the bar under sub-rule (5) is to be applied, the same has to be inextricably linked with Section 21 of the Limitation Act and as such, if Section 21(1) is applicable, the proviso thereto cannot be read in isolation or be segregated from such applicability.
- 30.** However, upon a conjoint perusal of Order I Rule 10(5) and Section 21 of the Limitation Act, 1963, it is evident that a reciprocal ecosystem is contemplated in the said two provisions and the said two provisions operate from mirror image perspectives. Sub-rule (5) of Rule 10 looks at things from the viewpoint of the defendant and provides that the proceedings of the suit commences as against an added defendant only on the service of summons. Thus, the perspective is entirely from the focal point of the defendant and has connotations on the liabilities of a defendant, such as the timeline for filing of written statement, etc., all of which liabilities of the defendant commence only from the date of service of summons in case of an added defendant.
- 31.** On the other hand, Section 21(1) looks at things from the viewpoint of the plaintiff, since it uses the expression “*suit shall, as regards him be*

deemed to have been instituted when he was so made a party” as opposed to “the proceedings *as against any person added as defendant* shall be deemed to have begun only on the service of the summons”. Thus, whereas Order I Rule 10(5) of the Code speaks about the commencement of proceedings in the suit as against the added defendant, Section 21(1) of the Limitation Act speaks about the effect of such addition of a defendant from the viewpoint of the plaintiff, since it speaks about institution of the suit and not commencement as against the defendant.

- 32.** Thus, as opposed to Order I Rule 10(5), which commences the liabilities of an added defendant, Section 21(1), for all practical purposes, focuses on the liabilities on a plaintiff by fixing the date of institution of the suit as against an added defendant from the date when such defendant is impleaded.
- 33.** Thus, Order I Rule 10(5) does not have any applicability in the present case, since it operates only as against the added defendant (to be read as award debtor) whereas Section 21(1) is the provision which could be applicable, if at all, since it speaks about the commencement/institution of the suit by the “plaintiff” (to be read as “award holder” in the present case) as against the added defendant (award debtors). Thus, the bar to filing of the suit/execution case, if at all, does not stem from Order I Rule 10(5) of the Code but from Section 21(1) of the Limitation Act insofar as the plaintiff/award holder is concerned.

- 34.** Unfortunately for the review applicants, it is their case that Section 21 is not applicable at all to an execution case. If such contention is accepted by placing reliance on the judgment of *Manmotha Nath Mitter (supra)*, *Shambhaji Rao (supra)*, *Serish Maji (supra)* and *Akshat Commercial Pvt. Ltd. (supra)*, then the baby would be thrown out with the bathwater, since not only would the mitigating proviso to sub-section (1) of Section 21 be inapplicable, the bar emanating from Section 21(1) itself would also not be attracted at all. Thus, if Section 21 is not applicable, there would be no other provision under which we could deem the execution case to have been instituted on the date when an omitted award debtor is impleaded in the execution proceeding, and not on its actual date of filing.
- 35.** Thus, the argument of non-applicability of Section 21 advanced by the award debtors is self-defeating, to say the least.
- 36.** On the other hand, the award debtors have themselves argued that an execution proceeding is not a suit and as such, the provisions relating to a suit are not applicable, thereby taking the current execution case outside the purview of Order I Rule 10 as a whole, since the said provision applies to suits and not to execution proceedings.
- 37.** Hence, even if the award debtors' arguments were to be accepted, neither Order I Rule 10 (5) of the Code of Civil Procedure nor Section 21 of the Limitation Act would be applicable to the present execution case and, as such, the addition of the heirs of the deceased award debtor Aditya Vikram has to relate back to the date of filing of the execution case. In such event, it should be deemed that the execution

case was presented in respect of the surviving award debtors as well as the heirs of the deceased award debtor in the year 2015, that is, within the limitation period.

38. The review applicants have argued that at least Aditya Vikram, who was known to the award holder to be one of the award debtors, ought to have been impleaded as an award debtor in the case, which argument, however, is defeated by the fact that a deceased award debtor (since Aditya Vikram had already died on the date of presentation of the execution case) could not have been impleaded as a party to the execution case, which impleadment would, in any event, be *non est* in the eye of law.
39. Thus, it cannot be said that the execution case was barred as against the already-deceased award debtor.

Whether, if Section 21, Limitation Act is applicable, the award holder acted in “good faith”

40. If the bar under Section 21(1) of the Limitation Act is at all to be applicable to an execution case, it necessarily comes hand-in-hand with its proviso, since the proviso is an integral part of the sub-section and cannot be segregated from the main provision.
41. Seen from such perspective, it is only to be seen whether the mistake of omission was made in good faith.
42. Here, the award debtors have extensively argued to absolve themselves of any liability under Order XXII Rule 10-A of the Code of Civil Procedure to inform about the death of the deceased award

debtor Aditya Vikram. However, such contention cannot be accepted since admittedly, as long back as in the year 2020, the award debtors appeared in the execution case and were fully aware of the subsistence of the execution case but never pointed out the date of death or particular of heirs of Late Aditya Vikram prior to the e-mail dated September 9, 2024. Although it was recorded in an order of 2020 that the award debtors had claimed that they had informed of such death, not a single document is on record to indicate that the date of such death or the particulars of the heirs of the deceased award debtor Aditya Vikram were intimated to the award holder before the e-mail dated September 9, 2024. Even if we gloss over the error of date of death in the said e-mail, which was mentioned as October 24, 2024 instead of October 24, 2014, it cannot be denied that the award holder only learnt of the date of death and the particulars of the heirs of the deceased award debtor only by dint of the e-mail dated September 9, 2024, which is the only document on record to show disclosure of such information to the award holder. The award holder filed the application bearing GA No.3 of 2024 for impleadment of the heirs of the deceased award debtor on September 23, 2024 itself. Thus, the *bona fides* of the award holders in that regard cannot be doubted. In the present context, the germane test is not the fault or otherwise on the part of the award holders in not pointing out the particulars of the death earlier, but the bone of contention is whether the award holder acted in good faith.

- 43.** As per the above discussion, the award holder was not even aware of the date of death or the particulars of the heirs of the deceased award debtor before September 9, 2024 and, as such, could not have impleaded the heirs of the deceased award debtor earlier.
- 44.** Again, it has to be noted that the award-in-question was passed on February 19, 2009. Aditya Vikram, the “omitted” award debtor, met his demise on October 24, 2024, whereas the execution case bearing EC No.1016 of 2015 was filed after such death in the year 2015. Hence, as on the date of filing of the execution case, which was otherwise within the limitation period of twelve years from the date of the award, Aditya Vikram was no longer alive and, as such, could not have been impleaded, since the impleadment of a dead person would not have been valid in the eye of law. Thus, even on the date of presentation of the execution case, it was the heirs of Late Aditya Vikram who were omitted to be impleaded and not the deceased award debtor himself. Since the knowledge of the particulars of the heirs was derived by the award holder only on September 9, 2024, there was no scope or occasion for the award holder to implead the said heirs of Late Aditya Vikram from the juncture when the execution case was presented till September 9, 2024.
- 45.** In any event, as already discussed above, since the award holder learnt about the date of death of the deceased award debtor and the particulars of his heirs only by the e-mail dated September 9, 2024 and filed the application for impleadment of the heirs of the said deceased soon thereafter on September 23, 2024, no fault can be

attributed to the award holder. Thus, it acted in good faith within the contemplation of the proviso to Section 21 of the Limitation Act, which is one of the premises of the order under review.

Severability of the award

46. Both parties have alternatively argued that the award was severable and, in the same breath, non-severable, to suit their respective purposes. Whereas the award debtors contend that the award was non-severable and as such the execution is time-barred as a whole, they themselves argue that the award casts distinct liabilities allocated to each of the award debtors, in order to show that the estate of the deceased award debtors was not represented by the other award debtors.
47. On the other hand, the award holder argues that the award was not severable and as such, the estate of the deceased award debtor was represented by the other award debtors, while in the same breath, the award holder contends that the award was severable for the purpose of combating the argument that the entire execution case ought to be held as time-barred.
48. The court is required to be neutral by extricating itself from such confusion of ideas on the part of both the parties.
49. In the present case, a perusal of the award would indicate that it was not segregated into compartments, fixing separate liabilities on separate award debtors individually. The money component of the award as well as the injunction component of the award

were both passed jointly and severally against the award debtors and as such, on the face of the award, it is evident that the award was a non-severable one.

- 50.** Going by such approach, it cannot but be said that the estate of the deceased award debtor was sufficiently represented by the other award debtors, which is strengthened by the fact that the money component of the award was accepted on behalf of all the award debtors without any rider that the deceased award debtor was left out in that regard. Hence, the approach in the order under review to the effect that the award was non-severable and the estate of the deceased was represented by the other award debtors, cannot be faulted, at least on the face of the award. We cannot also lose sight of the fact that the award debtors jointly contested the arbitral proceeding and their interests were, thus, jointly represented all throughout the proceedings.

Scope of review

- 51.** The proposition laid down in *Shri Ram Sahu (supra)*, *S. Madhusudhan Reddy (supra)* and *Harinagar Sugar Mills Ltd. (supra)*, if crystallized in a nutshell, lays down that any and every mistake or error does not come within the purview of review. For a review petition to be maintainable on the principle of Order XLVII Rule 1 of the Code of Civil Procedure, the error has to be palpable, apparent on the face of the order. The review court cannot sit in an appeal in the disguise of a review petition over its own order. Even errors of law, let alone of

fact, are amenable to appellate jurisdiction and do not ordinarily come within the ambit of the review jurisdiction.

52. In a review application, a person cannot be permitted to re-argue the points which were dealt with *in extensor* by the original court.
53. Learned counsel for the review applicants cites *Northern India Caterers (India) Ltd. (supra)*, for the proposition that where there is a grave error or patent mistake, review would lie for substantial justice.
54. However, in view of above discussions, I am unable to find any error, grave or otherwise, or patent mistake apparent on the face of the order under review which would require a review of the order for the ends of substantial justice.
55. Learned counsel for the review applicants have also cited *Board of Control for Cricket in India (supra)* for the proposition that the scope of Order XLVII is wide enough to include misconception of law or fact by the court or even an advocate.
56. Apart from no misconception, either of law or fact, being apparent on the face of the order, which is evident from the extensive arguments required in connection with the review application, which tantamounts to a re-argument of the entire case on merits, it is to be kept in mind that a review would only be maintainable if the purported error apparent on the face of the order would alter the outcome of the original order.
57. In view of the above discussions, even if the arguments now made by the review applicants were advanced at the time of passing of the original order, the outcome of the same could not have been different.

- 58.** That apart, the elaborate arguments advanced by the parties in connection with the review application are beyond the scope of a review application, where the error must be palpable and apparent on the face of the order, which ingredient is absent in the present case. Even if there was any error of law otherwise, an appeal would lie and not a review application.
- 59.** Thus, no case for review within the contemplation of Order XLVII of the Code of Civil Procedure or otherwise has been made out by the review applicants in the present case.
- 60.** Accordingly, R.V.W.O. No.48 of 2024 along with G.A. 1 of 2024 is dismissed on contest, thereby sustaining the order dated November 8, 2024 passed in connection with GA No.3 of 2024, arising out of E.C. No.1016 of 2015. The execution case be accordingly placed before the appropriate Bench having determination currently for passing further orders.
- 61.** There will be no order as to costs.
- 62.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)