Privy Council Appeal No. 23 of 1941

Govind Prasad and another – – – – – *Appellants*

v.

Pawankumar – – – – – – – – *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT NAGPUR

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 4TH MARCH, 1943

Present at the Hearing:

LORD ATKIN
LORD RUSSELL OF KILLOWEN
LORD PORTER
SIR GEORGE RANKIN
SIR MADHAVAN NAIR

[*Delivered by* SIR MADHAVAN NAIR]

This is an appeal from an order of the High Court of Judicature at Nagpur dated the 11th November, 1938, confirming an order of the Court of the Additional District Judge, Raipur, dated the 20th August, 1936.

The appeal arises out of an execution proceeding, and the question for determination is whether the application made by the decreeholder for the execution of a decree which he had obtained against the appellants before the Board—the judgment debtors—is barred by time. Both Courts in India have held that it is not barred.

The material facts are as follows:—One Madanlal Sao, the father of the respondent, obtained a decree against the appellants on the 1st February, 1932, in the Court of the Additional District Judge, Raipur, for Rs. 32,185.5.3 with interest and costs. Before judgment, he had the immoveable properties of the appellants attached under the Code of Civil Procedure. On the 27th June, 1932, which was within the period of three years prescribed by the Indian Limitation Act, Madanlal Sao applied for execution of his decree by the sale of the villages which had already been attached. On the 5th July the Court registered the application, making the following order:—

> " Application is corrected. It is reported to be correct. It be registered. In this case the judgment debtor's seven villages have been attached by the decreeholder before judgment, and he prays for the issue of ' C ' form to the collector. The decreeholder should file copies of mutation registers and decrees by the 13th August, 1932, and ' C ' form be prepared and put up on the 20th August, 1932."

The order to obtain copies of the mutation registers was apparently passed under Order 21, r. 14, Civil Procedure Code, which provides that,

> . . . " where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue or as liable to pay revenue for the land and the shares of the registered proprietors."

The time for filing these copies was extended from time to time till the 5th November, 1932, when the Court passed the following order:—

> " Decreeholder absent. Time 4.8 p.m. No copies filed as it is understood that the judgment debtor has been adjudged insolvent. Dismissed for default."

While the execution was pending, on the 5th July, 1932, the Additional Subordinate Judge, Raipur, adjudged the appellants insolvents: on the 19th August, 1932, Madanlal, the decreeholder, put in a claim in the Insolvency Court supported by an affidavit giving the particulars of his debt as required by section 49 of the Provincial Insolvency Act, which is as follows:—

Section 49 (1) A debt may be proved under the Act by delivering or sending by post in a registered letter to the Court an affidavit verifying the debt; (2) the affidavit shall contain or refer to a statement of account showing the particulars of debt and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers.

On the 20th August, a list of debts was prepared in which Madanlal's name was entered as a creditor.

On the 10th September, 1932, the Additional Subordinate Judge passed the following order:—

> " . . . No other debts have been proved. Hagi Walli Mohamad, Madan Lal Sao, Ambalal Ranchason and Kampta Prasad are suspended from the Schedule, since the receiver alleges that they are not fully binding on him; they must therefore prove on what grounds they got their decrees."

On the 28th February, 1934, the adjudication of the insolvents was set aside by the Appellate Court.

On the 23rd July, 1935, the decreeholder, who has since died and is now represented by his son the respondent, presented the 2nd application for the execution of his decree, which has given rise to this appeal.

Inasmuch as the above application was not filed within three years of the decree, as required by the Limitation Act, it was *prima facie* time-barred; but, the respondent claimed exemption from limitation on two grounds, either of which if accepted would suffice to secure him such exemption. These grounds, and the contentions of the appellants with reference to each, may be summarised as follows:—(1) That the previous application dated the 27th June, 1932, was a step in aid of execution " made in accordance with law " within the meaning of article 182 (5), col. 3, of the Limitation Act—Act IX of 1908, as amended by Act IX of 1927—and the period of three years began to run from the 5th November, the date of the " final order thereon.". Art. 182 (5) prescribes the time for the execution of a decree or order of any civil court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908—namely, three years (where the application next hereinafter has been made) from the date of the final order passed on an application made in accordance with law to the proper Court for execution or to take a step in aid of execution of the decree or order. To this, the appellants replied that since the decreeholder had failed to furnish copies of the mutation register of the attached villages as required by the Court under Order 21, rule 14 C.P.C., the application was not one " made in accordance with law," and it did not therefore give him a fresh starting point for the limitation period of three years. (2) That, inasmuch as the adjudication of the insolvents had been set aside on appeal, he was entitled under section 78 (2) of the Provincial Insolvency Act (Act V of 1920), in computing the period of limitation prescribed for his application for execution, to exclude the period from the date of the order of adjudication to the date when that order was set aside by the Appellate Court. Section 78 (2) of the Provincial Insolvency Act, so far as it is material, is in the following terms:—

> " Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any suit or application for the execution of a decree . . . which might have been brought

or made but for the making of an order of adjudication under this Act, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded."

"Provided that nothing in this section shall apply to a suit or application in respect of a debt provable but not proved under this Act."

To this, the appellants replied that the annulment in this case was not made "under the Act" within the meaning of Section 78 (2), and, further, even if it was so made, the debt due to the decreeholder was not "proved" under the Act; and therefore section 78 (2) was inapplicable. Both Courts upheld the contentions of the respondent, and held that the execution application was not time-barred.

Their Lordships will now consider the various arguments in order:—

It is clear, both from the Code itself and from the provisions of the Limitation Act, that the legislature contemplated that there might be a succession of applications for execution. (See *Thakur Pershad* v. *Sheik Fakir Ullah* 22 I.A. 44). Under the Act, the first application for the execution of a decree must be made within three years from the date of the decree, and successive applications must be made within three years from the date of the final order passed on an application made in accordance with law, to the proper Court for execution or to take some step in aid of the execution of the decree or order (see Art. 182 (5)). It must be observed that, under the terms of the clause the previous application to be effective must be one "made in accordance with law"; otherwise, the date of the final order passed on it cannot constitute a fresh starting point of limitation. On the first contention, the question for determination is whether the previous application made on the 27th June, 1932, and dismissed on the 5th November, 1932, was one made "in accordance with law" within the meaning of Art. 182 (5) of the Limitation Act. It is well settled that the words "in accordance with law" mean in accordance with the law relating to the execution of the decrees. In support of their argument that the application is one not in accordance with law, reliance is placed by the appellants on order 21, rules 14 and 17 C.P.C. A few of the relevant provisions of order 21, relating to application for execution may be briefly noticed. Order 21, rule 11 (2) specifies the particulars which a written application for execution should contain. Rule 12 is inapplicable to the present case, as it deals with moveable property. Rule 13 declares that an application for attachment of immoveable property should contain a description of the property, sufficient to identify the same, boundaries, etc., and a specification of the judgment debtor's interest in such property. Rule 14, already quoted states that the Court "may require the applicant to produce certified extracts from the Collector's register in certain cases." Rule 17 as amended by the High Court of Nagpur, so far as it is material is as follows:

(1) "On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with, and if they have not been complied with, the Court may allow the defect to be remedied then and there, or may fix a time within which it should be remedied and in case the decreeholder fails to remedy the defect within such time the Court may reject the application."

It is common ground that in this case, there was an attachment before judgment and that there was no need for a further attachment of the property before sale; and all that the applicant was seeking for by his execution application was to get it sold through the Collector. The fact that the property had been attached before judgment was specifically mentioned in column 10 of the execution application headed "Mode in which the assistance of the Court is required." It was also mentioned therein that "the schedule of the property is filed in the suit." Further, after some corrections had been made the application was reported to be correct and was registered. The Court may well have abstained from requiring the applicant to produce the certified extracts and proceeded with the execution of the decree seeing that the property had been under attachment

and the necessary particulars about it were already known. However, though the application was correct in form and was admitted it thought that the certified extracts would be helpful, probably, for a further clarification of the details. It will be noticed that the provision in rule 14 is permissive unlike that in rule 13, which is mandatory. Under the old provision—see section 238 of the Code of 1882—it was necessary when an application was made for the attachment of land registered in the Collector's office that it should be accompanied by a certified extract from the register of such office, whereas, under the present rule the Court may at its discretion require the applicant to produce the required extract. The copies might have been filed had it not been for the insolvency of the appellants. In the circumstances, their Lordships are not prepared to hold that the order made by the Court dismissing the application would render it one not " made in accordance with law." It follows that the application, dated 23rd July, '35, which has given rise to this appeal being within three years from the 5th November, 1932, the date of the final order on the previous application, is not time-barred. This ground by itself is sufficient to dispose of this appeal.

The next question is whether in computing the period of limitation the respondent is entitled to exclude the period between the adjudication of the appellants as insolvents and the setting aside of that adjudication by the appellate Court. It is conceded that if section 78 (2) is applicable then the respondent's application would be in time. But, the learned Counsel for the appellants, stressing the words " under the Act " which follow the word " annulled " in the section seeks to draw a distinction between annulment under the express provisions of the Act and the annulment resulting from the setting aside of the adjudication by the appellate Court. The latter class of annulments, according to him will not fall within the meaning of the words " annulled under this Act " used in section 78 (2). No authority was cited in support of this contention, but the learned Counsel drew their Lordships' attention to section 35 of the Act which follows the sub-title " annulment of adjudication." Their Lordships are unable to see any force in the argument. The opening words of the section " where in the opinion of the Court a debtor ought not to have been adjudged insolvent " are wide enough to include an annulment resulting from the setting aside of adjudication by the Appellate Court. In their Lordships' view, the words " annulled under this Act " in section 78 (2) would include an annulment resulting from the setting aside of the adjudication by the Appellate Court, as in the present case.

The next branch of the argument has reference to the proviso to section 78 (2) which declares that the privilege of exemption from limitation conferred by the section will not apply " in respect of a debt provable but not proved." To avoid the operation of the proviso, two conditions have to be satisfied, viz., (1) There must be a debt " provable " and (2) that debt must have been " proved under this Act." That the debt in the present case is " provable " is not disputed. How is the debt to be " proved " under the Act is the question? The learned Counsel answers that the debt can be said to be " proved " only if the proof has been accepted by the Court. He goes further, and says that in this case the proof has been definitely rejected by the Court. In support of the latter statement attention was drawn to the order of the Court dated 10th September, 1932, wherein it was stated that Madan Lal is " suspended " from the schedule along with two others, since the receiver alleges that the debts are not fully binding on him and they must therefore prove how they got their decrees. It is clear to their Lordships that this order does not mean that Madan Lal's claims were either finally rejected or that he was finally excluded from the schedule in the insolvency proceedings. It is also clear that the order is not one which can be taken in appeal. The word " suspended " used in the order can have no special significance, and it is not used in the Act anywhere in connection with this stage of the proceedings in insolvency. It imports that no decision to accept or reject the proof has been come to—in other words, that the Court has not yet discharged its duty to frame the schedule referred to in section 33 of the

Act. The question remains, has the debt been " proved." Section 49 provides the mode of proof under the Act. It is not denied that the requirements of that section have been complied with by the respondent. Their Lordships have been shown no authority in support of the proposition that a debt can be said to be proved under the Act only if it is accepted or admitted by the Court. " Provable " and " proof " are words of technical import in the language of the law of insolvency. A creditor proves his debt when he lodges a proof in the mode prescribed by the Statute, i.e. by fulfilling the requirements laid down in section 49 of the Act; and when he has done that, he has proved his debt within the meaning of the proviso to section 78 (2). Under section 33 of the Act, the proof so tendered may be accepted or rejected by the Court or it may require further evidence—as under the rules of the English bankruptcy law. If the effect of an adjudication is to prevent the creditors from taking proceedings in the ordinary Courts of Law for the realisation of their debts, it is only just, to exclude from the period of limitation the space of time that elapses between adjudication and its annulment. This is the just privilege accorded to the creditors under section 78 (2) of the Act. If the meaning sought to be put upon the word " proved " by the learned Counsel is accepted, it is easy to see that the principle underlying the exemption thus granted may often be frustrated. Thus, as pointed out by the learned Chief Justice, in a case where there has been an adjudication which would prevent a creditor from following his remedy in a Court to realise his debt, he lodges proof of his claim as required by the statute, proof which may be assumed will be accepted by the Court, if the adjudication is annulled before such acceptance, as may well happen, the creditor would lose his debt altogether. Their Lordships cannot accept an interpretation of the word " proved " in the proviso which will lead to such a result. They hold agreeing with the High Court that the respondent has " proved " his debt and that his application for execution is not time-barred under Section 78 (2) of the Provisional Insolvency Act also. In this connection, reference may be made to the decision in *Lakshmi Bai* v. *Rukmaji Rao*, I.L.R. 57, Madras 767, where it was held that " a debt ' proved ' under the Provincial Insolvency Act in the proviso to section 78 (2) means a debt in respect of which a proof has been lodged and all the requirements of section 49 of the Act fulfilled "; and " that it is not also necessary that the debt must have been admitted by the Official Receiver under the provisions of the Act ". In their Lordships' opinion, the conclusion arrived at by the learned Judges is right.

In the result, their Lordships will humbly advise His Majesty that this appeal fails and should be dismissed with costs incurred by the respondent here and before the High Court.

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In the Privy Council

GOVIND PRASAD AND ANOTHER

v.

PAWANKUMAR

DELIVERED BY

SIR MADHAVAN NAIR

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