

SANTI RANJAN DASS GUPTA

v.

M/S DASURAM MIRZAMAL

March 11, 1976

[A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

Indian Limitation Act, 1908, s. 15, whether attachment of decree amounts to 'stay' within the meaning of—Execution application struck off—Another application on decree becoming executable, if continuation of the previous one.

The respondent obtained a money-decree against the appellant, from the Subordinate judge, Gauhati, and applied for its execution. The appellant applied for an adjustment of the decree, and the respondent's application for execution was dismissed. The appellant then obtained a decree from the Subordinate Judge, Nowgong, against the respondent, and in its execution, got his Gauhati decree attached. The appellant then withdrew his adjustment-application.

The High Court allowed the respondent's appeal for execution of the Gauhati decree. The Subordinate Judge, Gauhati, struck off his original execution-application from the file. Thereafter, the attachment order ceased to be operative on account of the High Court's allowance of the respondent's appeal in the Nowgong matter, and the respondent again applied for execution of the Gauhati decree, but the Subordinate Judge, Gauhati, dismissed the application as time-barred. The High Court allowed his appeal and directed the execution to proceed. The appellant contended before this Court that attachment of the respondent's decree did not amount to a 'stay' within the meaning of S. 15 of the Indian Limitation Act, and therefore, his second application for execution was barred by limitation, not having been filed within three years of the first one being struck off by the Subordinate Judge, Gauhati.

Dismissing the appeal, the Court

HELD: (1) The order obtained by the appellant attaching the decree of the respondent precluded the respondent from executing the decree during the time the attachment was in force. There was no question of limitation because the application was filed within three years from 28 April, 1964, when the bar against execution was raised and the attachment order ceased to be operative. [627B—C]

(2) The order striking off the execution application was mere consigning it to the record-room for statistical purposes. The application for execution on 27th July, 1965, is a continuation of the old application. [627D—E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 858 of 1968.

From the Judgment and Decree dated 7-7-67 of the Assam and Nagaland High Court at Gauhati in Misc. Appeal Nos. 36 and 37 of 1966.

Sarjoo Prasad and *A. K. Nag* for the appellant.

B. P. Maheshwari for the respondent.

The Judgment of the Court was delivered by

RAY, C.J. This appeal by certificate is from the order dated 26 July, 1967 of the High Court of Assam.

The only question in this appeal is whether the respondent's application filed on 27 July, 1965 for execution of the decree obtained by him is barred by limitation.

A The respondent on 7 January, 1952 obtained a decree against the appellant for the sum of Rs. 71,980 in a money suit filed in the Court of Subordinate Judge, Gauhati. On 8 December, 1956 the respondent decree-holder filed an application No. 89/56 for executing the said decree. On 15 July, 1957 the appellant, the judgment debtor, filed an application pleading adjustment of the decree. On 15 April, 1958 the judgment debtor withdrew the said application. On 18 December, 1957 the Subordinate Judge Gauhati dismissed the decree-holder's application No. 89/56. The decree-holder preferred an appeal. The High Court at Gauhati on 1 July, 1959 set aside the order of the Subordinate Judge and allowed the appeal for execution of the decree.

B Meanwhile on 18 January, 1958 the appellant judgment debtor in the Gauhati suit obtained a decree against the respondent for the sum of Rs. 1,22,000 in the Court of the Subordinate Judge at Nowgong. In execution of the decree in the Nowgong suit the appellant on or about 29 January, 1958 obtained an attachment of the respondent's decree passed in the Gauhati suit.

C On 13 August, 1959 the Subordinate Judge, Gauhati struck off the execution application No. 89/56 from the file.

D The respondent filed an appeal against the decree obtained by the appellant in the Nowgong suit. The High Court on 28 April 1964 accepted the appeal filed by the respondent and dismissed the Nowgong suit filed by the appellant.

E On 27 July, 1965 the respondent filed an application for execution in the Court of the Subordinate Judge, Gauhati. The appellant preferred an objection contending that the application is barred by limitation. On 4 March, 1966 the Subordinate Judge dismissed the execution application as barred by time.

F On 26 July, 1967 the High Court accepted the appeal filed by the respondent and directed the execution to proceed.

G The contention of the appellant is that the order obtained by the appellant attaching the respondent's decree did not amount to a stay within the meaning of section 15 of the Indian Limitation Act, 1908, and therefore, the respondent's application for execution which was filed on 27 July, 1965 was barred by limitation. The appellant contended that when the Subordinate Judge, Gauhati on 13 August, 1959 struck off the execution application of the respondent the respondent should have filed an application for execution within three years from that date.

H The High Court referred to the order dated 29 January, 1958 passed by the Nowgong Court attaching the decree obtained by the respondent. The High Court relied on the provisions contained in Order 21 Rule 53 (1)(b) of the Code of Civil Procedure and held that the attachment continued restraining the respondent from executing the decree until the notice issued by the Court attaching the decree was recalled. The Nowgong court did not pass any order recalling the

order. On 1 March, 1958 the Nowgong court passed an order which was as follows : A

“Notice served. No objection filed by J. D. (meaning thereby judgment debtor). Heard both parties. Execution case is struck off for the present. Attachment to continue until further orders.”

In the context of this order of attachment passed by the Nowgong court the attachment continued until the Nowgong suit was dismissed by the High Court on 28 April, 1964. The High Court rightly held that there was no question of limitation because the application was filed within three years from 28 April, 1964 when the bar against execution was raised and the order restraining the respondent decree holder from executing the decree in the Gauhati suit ceased to be operative. B
C

Another contention which had been raised by the appellant and repeated here is that when the Gauhati court on 13 August, 1959 struck off the execution case No. 89/56 the execution application filed on 27 July, 1965 was barred by time. The High Court held that the Gauhati Court on 13 August, 1959 merely struck off the execution application, and, therefore, the subsequent application which was made was a continuation of the execution proceedings. The High Court held that striking off the application did not amount to any order deciding the merits of the application. D

The order obtained by the appellant attaching the decree of the respondent in the Gauhati suit has been rightly held by the High Court to have precluded the respondent from executing the decree during the time the attachment was in force. The other conclusion of the High Court that the execution application dated 27 July, 1965 was a continuation of the earlier application is also correct. The order striking off the execution application has been rightly construed by the High Court as merely consigning the application to the Record Room for statistical purposes. The application dated 27 July, 1965 indicates in column 2 as the respondent rightly stated that the previous application for execution was struck off on 13 August, 1959 because of the order of attachment passed by the Nowgong court. The attachment order was nullified only when the appellant's suit was dismissed by the High Court on 28 April, 1964. The respondent's decree became executable at that time. The inescapable conclusion is that the application for execution on 27 July, 1965 is a continuation of the old application. E
F

For these reasons, the judgment of the High Court is affirmed. The appeal is dismissed with costs. G

M.R.

Appeal dismissed.