FULL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice, Justice Sir Lal Gopal Mukerji and Mr. Justice King

MUHAMMAD HANIF AND OTHERS (JUDGMENT-DEBTORS) *v.* ALI RAZA (DECREE-HOLDER)* 1933 *July*, 20

Civil Procedure Code, sections 141, 151—*Decree transferred to another court for execution—Judgment-debtor's objection allowed* ex parte—*Executing court certifying full satisfaction to transferring court—Inherent jurisdiction of the executing court thereafter to set aside the* ex parte *order and restore the proceedings—Jurisdiction.*

A decree was transferred to another court for execution and in that court the judgment-debtor objected that the decree had been adjusted under a private arrangement. On the day of hearing the decree-holder was absent and the objection was allowed *ex parte* and the executing court certified to the court which had passed the decree that the decree had been fully satisfied and that the case was disposed of. An application for setting aside the *ex parte* order was subsequently made by the decree-holder to the executing court and was allowed, and the execution proceedings were restored.

Held, in revision, that the court to which the decree was sent for execution had inherent jurisdiction to entertain and allow an application for the setting aside of its previous order passed *ex parte*. Although the provisions of order IX of the Civil Procedure Code could not be made applicable to execution proceedings by calling in the aid of section 141 of the Code, yet an application to set aside its own previous *ex parte* order was entertainable by the court under the inherent jurisdiction which the court possessed and which was preserved by section 151.

Held, further, that this not being a case of a further execution of the decree, which could not be ordered after the certificate of satisfaction had been sent to the original court, but a question as to whether a previous proceeding of the executing court should or should not be re-opened, the executing court had not become *functus officio* but had jurisdiction to entertain such a question. Moreover, in the present case the

*Civil Revision No. 505 of 1932, from an order of Maheshwar Prasad, Subordinate Judge of Allahabad, dated the 18th of June, 1932.

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decree-holder applied invoking the inherent jurisdiction of the court to set aside an *ex parte* order, to meet the ends of justice; and the proper court to entertain such an application was obviously the very court which had passed the *ex parte* order.

Messrs. *Shiva Prasad Sinha, Hyder Mehdi* and *Zafar Mehdi,* for the applicants.

Mr. *Ladli Prasad Zutshi,* for the opposite party.

SULAIMAN, C.J., MUKERJI and KING, JJ. :—This case has been referred to a Full Bench because it raises a substantial question of law requiring an authoritative pronouncement.

In 1928 a decree for a fairly large sum of money was passed in favour of the respondent, Ali Raza, against Muhammad Hanif and others, judgment-debtors, by the Subordinate Judge of Cawnpore. This decree was later on transferred to the Allahabad court for execution. An application for execution was made at Allahabad in January, 1929, to which the judgment-debtors in September, 1929, objected, pleading that the decree had been adjusted out of court under a private arrangement. More than one date had to be fixed for the hearing of the application. On the last date, namely the 31st of May, 1930, the decree-holder was absent and his pleader made a statement that he had no instructions to go on with the case. The court heard the objection and allowed it *ex parte.* It appears that the execution case was then struck off and a certificate was sent to the Cawnpore court stating that the decree had been fully satisfied and that the case had been disposed of. This certificate was not received at Cawnpore till the 28th of June, 1930. On the 25th of June, 1930, the decree-holder made an application before the court of Allahabad for the setting aside of the *ex parte* order, on the ground that he had been prevented by sufficient cause from not appearing on the date of hearing. The application professed to have been made under section 141, section 151 and order XLVII, rule 1 of the Civil Procedure Code. After

issuing notice and hearing objections of the judgment-debtors the court entertained the application, and having come to the conclusion that sufficient cause had been shown, set aside the previous *ex parte* order allowing the objection and dismissing the execution application, and the case has, therefore, been re-opened and is still pending.

The judgment-debtors have come up in revision to this Court and contend that the Allahabad court after having sent the certificate of satisfaction to the Cawnpore court, had ceased to have any jurisdiction over the case, and therefore the order passed by it setting aside its previous *ex parte* order was *ultra vires*. It is further urged that the order setting aside the previous order was not a proper order on its merits.

We cannot go into the question of the propriety of the order in revision. The sole question which arises for consideration before us is whether the Allahabad court had jurisdiction to set aside its previous order.

No doubt order IX of the Civil Procedure Code would not in terms apply to an application for execution proceedings. In view of the pronouncement of their Lordships of the Privy Council in the case of *Thakur Prasad* v. *Fakir-Ullah* (1) section 141 of the Civil Procedure Code does not apply to execution proceedings, and therefore order IX cannot be applicable to such proceedings with the aid of section 141.

But there is no doubt that the Allahabad court had inherent jurisdiction to set aside its own previous *ex parte* order if it were satisfied that it was necessary in the ends of justice. This view has been expressed in a number of cases in this Court. We may refer to the case of *Ganesh Prasad* v. *Bhagelu Ram* (2) where it was pointed out that although the application for restoration of the previous application dismissed for default does not fall under order IX by virtue of the provisions of section 141, such an

(1) (1894) I.L.R., 17 All., 106. (2) (1925) I.L.R., 47 All., 878.

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application is entainable under the inherent jurisdiction which the court possesses and which is preserved by section 151 of the Civil Procedure Code. Similarly, in *Ram Chander* v. *Tej Singh* (1) it was held that where an application to set aside an *ex parte* decree is dismissed for default, an application for the restoration of such application can be made, and although order IX does not apply to such an application for restoration, the case falls under the inherent jurisdiction of the court. In *Yudhishtir Lal* v. *Fateh Singh* (2) although it was not considered necessary to decide whether section 141 of the Civil Procedure Code applied to an application for restoration of the previous application, it was clearly held that section 151 could be safely applied and that the court had jurisdiction to entertain such an application.

The learned advocate for the applicant contends that as soon as the executing court has reported to the court which passed the decree that the decree has been satisfied, it becomes *functus officio* and ceases to have any jurisdiction whatsoever to entertain any application in connection with the previous proceeding. He has relied on a number of cases which broadly lay down that the jurisdiction of the court to execute the decree ceases on the decree being satisfied and such satisfaction being reported to the court which passed the decree. These decisions adopt the language used by a Bench of this Court in *Abda Begam* v. *Muzaffar Husen Khan* (3) which was to the following effect: "In our opinion the court to which a decree is sent for execution retains its jurisdiction to execute the decree until the execution has been withdrawn from it, or until it has fully executed the decree and has certified that fact to the court which sent the decree, or has executed it so far as that court has been able to execute it within its jurisdiction and has certified that fact to the court which sent the decree, or until it has failed to execute the decree and has certified that fact to the court

(1) A.I.R., 1929 All., 906. (2) (1929) I.L.R., 51 All., 901.
(3) (1897) I.L.R, 20 All., 129.

which sent the decree." It will, however, be noted that the rule laid down in that case related to the question of the jurisdiction of the execution court to execute the decree further and not to any question of jurisdiction to entertain an application for review of judgment or for rectification of any mistake that may have been inadvertently committed. Indeed, in that case although an application for execution had been struck off by the executing court on the ground that it did not comply with the requirements of the law, not having supplied all the necessary particulars, and although a certificate had been sent to the court which had sent the decree for execution that the case had been struck off the file, it was held by the learned Judges that the executing court could entertain a fresh application for execution which was in proper form and which fulfilled the requirements of the law. The learned Judges relied on the Calcutta Full Bench case of *Bagram* v. *Wise* (1) as showing "that the court to which a decree is sent has, even after striking off an application for execution, as here, still jurisdiction in the matter of the execution." A Division Bench of the Calcutta High Court in *Manorath Das* v. *Ambika Kant Bose* (2) has naturally followed its own Full Bench ruling as well as the ruling of the Allahabad High Court in *Abda Begam's* case.

The case decided by a Division Bench of the Oudh Chief Court in *Musammat Jilai* v. *Abdul Rahman* (3) is somewhat similar to the case before us. There, there were several judgment-debtors whose properties were attached and sold by the execution court to which the decree had been transferred. After the case had been struck off on full satisfaction, some of the judgment-debtors discovered that although the claim had been dismissed against them, their property had been put up for sale. Instead of applying to the court under section 47 they filed regular suits for declaration of their title. The

(1) (1868) 1 Beng. L.R., (F.B.), 91. (2) (1909) 13 C.W.N., 533.
(3) A.I.R., 1929 Oudh, 76.

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Oudh Chief Court came to the conclusion that their proper remedy was to apply under section 47 of the Civil Procedure Code and that it was the execution court to which the decree had been transferred for execution which was a proper court for entertaining such an application. The learned Judges accordingly sent the case to that court with direction to treat the plaint as if it were an application under section 47 of the Civil Procedure Code. Agreeing with the decision of a single Judge of this Court in *Shiam Lal* v. *Koerpal* (1), they distinguished it on the ground that although the execution court may have ceased to have jurisdiction for the purpose of issuing a fresh process for execution, it has not ceased to have jurisdiction to decide an objection lodged before it in respect of anything done in the course of the execution proceedings taken by it.

It seems to us that the case before us stands on a stronger footing. The decree-holder applied invoking inherent jurisdiction of the court to set aside an *ex parte* order to meet the ends of justice. The proper court to entertain such an application was obviously the very court which had passed the order which was sought to be set aside. The inherent jurisdiction vested in that court and not in the Cawnpore court which could not properly consider the propriety of the previous order. If a question arose for a review of judgment or for setting aside an *ex parte* order, that jurisdiction could be properly exercised by the court which passed the previous order. This is not a case of a further execution of the decree, which cannot be ordered after the satisfaction had been recorded and certificate sent to the original court, but a question as to whether a previous proceeding should or should not be re-opened. We think that there can be no doubt that the Allahabad court had not ceased to have jurisdiction to entertain an application for the setting aside of its previous order, in the exercise of its inherent jurisdiction.

The revision is accordingly dismissed with costs.

(1) A.I.R., 1925 All., 179.