

1933
TILLA SINGH
v.
TIRBHAWAN
SINGH

We are not, therefore, prepared to agree with the finding of the learned District Judge on the question of limitation. In our opinion the decree-holders' application is barred by time and was rightly and properly dismissed by the learned Subordinate Judge.

Hence we allow the appeal with costs and setting aside the order of the learned District Judge restore that of the learned Subordinate Judge.

Appeal allowed.

APPELLATE CIVIL

*Before Sir Syed Wazir Hasan, Knight, Chief Judge and
Mr. Justice J. J. W. Allsop*

1933
November, 8

OFFICIAL ASSIGNEE, BOMBAY, REPRESENTING DEBI SHANKAR JUDGMENT-DEBTOR (APPELLANT) *v.* DURGA PRASAD (DECREE-HOLDER) AND ANOTHER (RESPONDENTS)*

Presidency Towns Insolvency Act (III of 1909), section 53(1)—Execution of decree—Court issuing process under Order XXI, rule 46 instead of a precept or a garnishee order—Money received by court for benefit of decree-holder under the process, whether "assets realized in the course of the execution"—"Assets realized in the course of the execution" under section 53(1), meaning of.

Where money is received by a court in virtue of execution process, it is "assets realized in the course of the execution" within the meaning of section 53(1) of the Presidency Towns Insolvency Act. The requirements of section 53 are fully satisfied if the money is received by the Court for the benefit of the decree-holder in proceedings initiated according to law for the purpose of executing the decree. The fact that instead of issuing a precept under section 46 or a garnishee order under rule 104 of Order XXI of the Code of Civil Procedure, the court issued a process under rule 46 of the same order does not make the receipt of the money by the court otherwise than "in the course of the execution." *Mani Lal Umed Ram v. Nana Bhai Manek Lal* (1), *Vishwanath Maheshwar v. Virchand Pana Chand* (2), and *Arunachellam Chetti v. Ganapathi Ayyar* (3).

*Execution of Decree Appeal No. 8 of 1932, against the order of Baba Mahabir Prasad Varma, Subordinate Judge of Lucknow, dated the 16th of December, 1931.

(1) (1904) I.L.R., 28 Bom., 264. (2) (1882) I.L.R., 6 Bom., 16.
(3) (1905) I.L.R., 28 Mad., 279.

referred to and relied on. *Jitmand Ramanand v. Ramchand Nandram* (1), referred to.

Messrs. *Bishambhar Nath Sricustava* and *Harish Chandra*, for the appellant.

Messrs. *Hyder Husein, Ram Bharose Lal, Makund Behari Lal* and *Bishambhar Dayal*, for the respondents.

HASAN, C.J., and ALLSOP, J.:—This is an appeal from the order of the Subordinate Judge of Lucknow, dated the 16th of December, 1931.

Babu Durga Prasad Nigam, respondent No. 1, obtained a decree on the 30th of May, 1925, from the Court of the Subordinate Judge of Mohanlalganj against one Raghunandan Lal. This decree was put in execution by means of which a portion of the sum decreed was realised. Lastly on the 15th of November, 1930, Durga Prasad made an application for execution to realise the balance of Rs.5,386-8-4 in the Court of the Subordinate Judge of Lucknow. Raghunandan Lal the judgment-debtor had meanwhile died and the application was made against his son Pandit Debi Shankar. The application stated that the G. I. P. Railway at Bombay held a sum of about Rs.15,000 payable to Raghunandan Lal deceased under a certain contract and it was prayed that an injunction be issued to the General Traffic Superintendent and the Chief Auditor of Accounts, G. I. P. Railway, Bombay, to withhold the payment of the said sum of money to the extent of the decretal amount. This prayer was granted with the result that the Railway authorities at Bombay transmitted a cheque for the sum of Rs.5,386-8-4 to the Subordinate Judge of Lucknow in compliance with the Subordinate Judge's order of injunction. The cheque was issued in the name of the Subordinate Judge of Lucknow. The Subordinate Judge forwarded the cheque to the Imperial Bank of India, Lucknow, and the amount of the cheque was credited in the name of the court and it still lies there. Subsequently the judgment-debtor's heirs were adjudicated insolvent by the Presidency Small Cause Court

1933

OFFICIAL
ASSIGNEE,
BOMBAY
v.
DURGA
PRASAD

1933

OFFICIAL
ASSIGNEE,
BOMBAY
v.
DURGA
PRASAD

at Bombay. The appellant before us is the Official Assignee of Bombay. He raised certain objections to the execution proceedings taken by the decree-holder in the Court of the Subordinate Judge of Lucknow, who by his order under appeal has rejected those objections.

Hasan, C.J.
and Allsop,
J.

In the arguments before us two points were taken in support of the appeal:

(1) That the attachment effected by the learned Subordinate Judge of Lucknow of the money in the hands of the G. I. P. Railway at Bombay was *ultra vires* as the place where it was attached was outside the territorial jurisdiction of the Lucknow Court; and

(2) That the learned Subordinate Judge has misinterpreted the provisions of section 53(1) of the Presidency Towns Insolvency Act, 1909.

We agree with the learned Subordinate Judge on the second point and thus it is not necessary to decide the first. Section 53(1) of the Presidency Towns Insolvency Act is as follows:

“53(1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee except in respect of assets realised in the course of the execution by sale or otherwise before the date of the order of adjudication and before he had notice of the presentation of any insolvency petition by or against the debtor.”

The argument is that in the circumstances of this case it should be held that the sum of Rs.5,386-8-4 which the learned Subordinate Judge received by means of a cheque from the G. I. P. Railway authorities was not “assets realised in the course of the execution.” It is urged that as the execution was invalid the receipt of money by the Subordinate Judge was not “in the course of the execution,” and it was further urged that it cannot be treated as assets realised” until the Subordinate

Judge has at least passed an order for payment of the same to the decree-holder. As regards the first contention we have little doubt in our mind that the money received by the Subordinate Judge must be treated as having been received by him "in the course of the execution." Whatever steps he took for the purpose of obtaining this sum of money into his own possession he took under a perfectly legal application for execution which the decree-holder was in law entitled to make. The fact that instead of issuing a precept under section 46 or a garnishee order under rule 104 of Order XXI of the Code of Civil Procedure, the court issued a process under rule 46 of the same order does not in our opinion make the receipt of this money by the learned Subordinate Judge otherwise than "in the course of the execution."

As regards the second point also we are of opinion that this money must be treated as "assets realised." In the first place the Code makes no provision for making an order of payment in favour of the decree-holder except in a case where the property attached is current coin or currency notes (rule 56, Order XXI). In the second place it may frequently happen that the court may never pass an order of payment in cases of this nature. Nor does section 53 of the Presidency Towns Insolvency Act say that the assets must be realised by the decree-holder. We think that the money received in the form of a cheque by the Subordinate Judge of Lucknow must be treated as "assets realised." The interpretation finds supports from the decisions of the Bombay High Court in the cases of *Mani Lal Umed Ram and others v. Nana Bhai Manek Lal* (1) and *Vishwanath Maheshwar v. Virchand Pana Chand* (2). It may be that money voluntarily paid by a judgment-debtor into court for the satisfaction of a decree against him is not "assets realised in execution," as it was held in *Arunachellam Ghatti v. Ganapathi Ayyar* (3), for the

1933

OFFICIAL
ASSIGNEE,
BOMBAY
v.
BURGA
PRASAD

Hasan, C.J.,
and Allsop,
J.

(1) (1904) I.L.R., 28 Bom., 264. (2) (1882) I.L.R., 6 Bom., 16.
(3) (1905) I.L.R., 28 Mad., 379.

1933

OFFICIAL
ASSIGNEE,
BOMBAY
v.
DURGA
PRASAD

Hasan, C.J.
and Allsop,
J.

purposes of rateable distribution, but where money is received by a court in virtue of execution process it must be held that it is "assets realised in the course of the execution." It will be observed that the provisions of section 53 are not the same as the English Law in this behalf. Under the English law a creditor is entitled to the benefits of execution as against the trustee in bankruptcy only if there has been a completed execution by the creditor before the date of the receiving order and before notice of a bankruptcy petition or of an available act of bankruptcy. Under the English law an execution by attachment of debt due to the insolvent is not complete until the debt is actually received by the creditor—see *Jitmand Ramanand v. Ramchand Nandram* (1). The requirements of section 53 are in our opinion fully satisfied if the money is received by the court for the benefit of the decree-holder in proceedings initiated according to law for the purpose of executing the decree.

For these reasons we dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

1933
November, 15

MAHABIR (DEFENDANT-APPELLANT) v. JAGANNATH
BAKSH SINGH, RAJA (PLAINTIFF-RESPONDENT)*

Oudh Rent Act (XXII of 1886), section 127—Death of occupancy tenant—Landlord receiving rent from the son and heir—Landlord, whether debarred from proceeding under section 127—Section 36, Oudh Rent Act (XXII of 1886)—“Admitted to occupation of the holding,” whether implies voluntary act of landlord—Landlord allowing deceased’s heir to take possession under impression that he was

*Second Rent Appeal No. 21 of 1932, against the order of Pandit Raghubar Dayal Shukla, District Judge of Rae Bareilly, dated the 7th of April, 1932, upholding the decree of S. Masudul Hasan, Assistant Collector, Rae Bareilly, dated the 8th of August, 1931.

(1) (1905) I.L.R., 29 Bom., 405.