

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7752 OF 2014
(ARISING FROM SLP(C) NO.15940/2009)

Kuldip Singh ..Appellant

versus

Central Bank of India ..Respondent

O R D E R

Leave granted.

We have heard learned counsel for the rival parties.

During the course of hearing, our attention was invited to an order dated 14.10.2004 passed by the Additional Civil Judge,Senior Division, Jalandhar. Paragraph 11 of the said order reads as under:

"11. No doubt, the judgment and decree passed by the court of Shri R.G. Ahluwalia, PCS the then SJIC, Jalandhar, dated 22.11.93 Ex. PX & Ex. PY have merged in the judgment and decree of the court of Shri S.S.Arora the then Ld. Additional District Judge, Jalandhar, vide judgment and decree dated 24.5.95 a copy at Ex. PZ & Ex. PZ/1. The present application have been moved on 2.11.99 i.e. beyond the period of three years. As such, the application is barred u/s 136 of Limitation Act. It is settled law that in case of bar of limitation, the remedy is lost but right is not lost. For non filing of application for final decree within the stipulated period, the plaintiff/application has lost its right to proceed against the mortgaged property. However, the limitation for execution

of the decree is 12 years which have not

elapsed. As such, the decree passed by the trial court Ex. PX & PY merged into the judgment and decree of the court of Shri S.S.Arora, the then Learned Addl. District Judge, Jalandhar, dated 24.5.95 Ex. PZ and Ex. PZ/1 have become final

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Parveen Kumar Chawla

Date: 2014.08.19
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Reason:

and executable, but the applicant cannot proceed against the mortgaged property which was subject to passing of the final decree. However, the decree shall be executable as a simply money decree. With these observations, this issue is decided against the plaintiff/applicant and in favour of the defendant/respondent."

It is not a matter of dispute that order dated 14.10.2004 was not assailed at the hands of the appellant before this Court. The aforesaid order therefore attained finality against the appellant. Even though, the above order records a finding in favour of the appellant inasmuch as it denies the appellant to execute order dated 24.5.95, it denies him the right to do so only by way of foreclosure. It is, however, left open to the respondent to seek execution of the decretal amount by treating that the judgment dated 24.5.95 was a money decree, and that the same could be executed within a period of 12 years. The above part of the order having not been assailed by the appellant, it was certainly open to the respondent to initiate execution proceedings for recovery of the liability which the appellant owed the respondent, by treating the order dated 24.5.95 as a money decree.

For the reasons recorded hereinabove, we find no merit in this appeal, and the same is accordingly dismissed.

.....J.
[JAGDISH SINGH KHEHAR]

NEW DELHI;
AUGUST 14, 2014.

.....J.
[ARUN MISHRA]

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ITEM NO.201

COURT NO.7

SECTION IVB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 15940/2009

(Arising out of impugned final judgment and order dated 02/03/2009 in CR No. 1158/2008 passed by the High Court Of Punjab & Haryana At Chandigarh)

KULDIP SINGH

Petitioner(s)

VERSUS

CENTRAL BANK OF INDIA

Respondent(s)

(with appln. (s) for an application for discharge)

Date : 14/08/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE ARUN MISHRA

For Petitioner(s) Mr. Rajat Sharma, Adv.
Mr. Subhasish Bhowmick, AOR

For Respondent(s) Mrs Rachna Gupta ,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(Parveen Kr. Chawla)
Court Master

(Phoolan Wati Arora)
Assistant Registrar

[signed order is placed on the file]