

(1949) 01 MAD CK 0019
In the Madras High Court

A. Rangaswamy Iyer

APPELLANT

Vs

Thd Madura Urban Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 26-01-1949

Acts Referred:

Citation : (1949) 1 MLJ 384

Hon'ble Judges : Mack, J

Bench : Division Bench

Judgement

Mack, J.—The petitioner is Sri A. Rangaswami Iyer, said to be a leading pleader of the Madura Bar. He finds himself in the strange position

of being a judgment-debtor in execution proceedings for the attachment of his law books and moveables on two decrees passed against him for

costs in two unsuccessful suits he filed as trustee of two funds. The learned Subordinate Judge found that he was personally liable on these decrees

and directed execution to proceed.

2. The short facts as admitted before me are these: The petitioner got himself appointed as trustee by Court in O.P. No. 57 of 1936 of two old

funds, one the Madura Provincial Conference Fund and the other the Governor's Reception Committee Fund, which had deposited their moneys

in the Madura Urban Co-operative Bank, Ltd. Some years after his appointment he sued for recovery of the deposits of these two funds in O.S.

No. 27 of 1941 for about Rs. 3,000 and in S.G. No. 41 of 1942, both on the file of the Subordinate Judge, Madura, as trustee. The bank put up

a successful plea of limitation and both the suits were dismissed. An appeal to the District Judge in the original suit and also a revision petition to the

High Court were dismissed. The result is that there are two decrees for costs,

one amounting to about Rs. 350 in connection with the original suit and the other for Rs. 56, odd, arising out of the small cause suit. The learned Subordinate judge in simultaneous execution proceedings by the bank passed a common order overruling the objections of the judgment-debtor and directed execution to proceed. It is said that an appeal has been filed in the District Court so far as the decree on the original suit is concerned. The petitioner has come up in revision here in connection with the execution of the small cause decree for costs.

3. The actual decrees under execution in the small cause suit and in the civil revision petition in the High Court merely direct the plaintiff to pay the costs of the defendant-bank. The objection of the petitioner is that he is not personally liable under these decrees which imposed an obligation only

on him as trustee of these funds. The learned Subordinate Judge followed the decisions in *Panchakshari v. Venkalarathnam* (1934) 67 M.L.J. 209

: ILR 58 Mad 160 and *Munuswami Mudaliar v. Kandaswami Pillai* (1934) 67 M.L.J. 787 which are clear authority for the position that trustees

are liable personally if such decrees do not specify that the costs should be paid out of the estate or institution. It is regrettable that in these cases

where a trustee sues or is sued, there should be any ambiguity in the decree which should make it perfectly clear whether the trustee is liable

personally or whether the costs should be paid out of the estate. It is, however, settled law as the learned Subordinate Judge has found that where

the decree does not say on the face of it that the costs should be paid out of the estate or institution the trustee is personally liable. I am unable to

accept the contention on behalf of the petitioner that the direction to the plaintiff to pay the costs means the plaintiff qua trustee of the fund and not

the plaintiff individually and that the costs are only payable out of the fund's assets. On the admitted facts also all the fund's assets were in the bank

and it is prima facie very unlikely that the Court should have contemplated costs being paid by the plaintiff out of no fund's assets in his possession

at all.

4. It is competent for a Court to direct costs being paid out of the institution even in the event of an unsuccessful litigation by a trustee. In

Westminster Corporation v. St. George, Hanover Square (Rector and Church Wardens) (1909) 1 Ch. D. 592 the decision referred to by

Curgenven, J., in Panchakshari v. Venkatarathnam (1934) 67 M.L.J. 209 : ILR 58 Mad.160 the trustees were given their costs out of the trust

estate in very special circumstances although their appeal tailed. It was made perfectly clear in that decision that the ordinary practice which was

deviated from in that case was that the trustee who appeals does so at his own risk as to costs and should normally be content with the decision of

the Court of first instance; so, in this case, we have this petitioner, a lawyer, himself appealing against two considered decisions by Courts of first

instance and increasing costs, it is urged that he was permitted to file these suits in forma pauperis and also that Government have thought fit to

waive the collection of court-fee from him. These are really matters extraneous to the simple decree which I am called upon to interpret. The

learned Subordinate Judge has, in my opinion, correctly interpreted it in the light of settled case-law and held that the decree as it stands-makes the

petitioner personally liable for these costs.

5. The revision petition is dismissed but on it, in the circumstances, I make no order as to costs.