

(1971) 06 MAD CK 0037

In the Madras High Court

Case No : Civil Revision Petition No. 1401 of 1969

A.B. Lobo

APPELLANT

Vs

Fateh Khan

RESPONDENT

Date of Decision : 17-06-1971

Acts Referred:

Foreign Exchange Regulation Act, 1947 — Section 5, 5(1)

Citation : AIR 1972 Mad 323

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

Kailasam, J.—In this civil revision petition against the order of execution directed against the defendant judgment-debtor, Miss O. K. Sridevi, learned counsel, Submits that no payment can be made to the decree-holder who is a foreigner. This point is well taken and has to be accepted.

2. In the counter-affidavit filed by the judgment-debtor, it is stated:

"I submit that the decree-holder Fateh Khan has left for Pakistan about three years back and that he has not obtained any permit from the Reserve Bank of India for realising the money due to him."

The decree-holder has not filed any affidavit to controvert this statement. It is also clear that the decree-holder is not now a resident and he is a Pathan--according to the defendant, a foreigner. If the contention of the decree-holder is that he is an Indian national, he ought to have filed an affidavit or let in evidence to that effect. In the record as it stands, the allegation by the judgment-debtor has not been controverted. The power of attorney agent generally denies the allegation and his statement is of no value. Section 5(1) , clauses (a) and (c) of the Foreign Exchange Regulation Act (VII of 1947) are clear that no payment shall be made to or for the credit of any person resident outside India or made to or for the credit of any person by order or on behalf of any person resident outside India, without the permission from the Reserve Bank of India. The

learned counsel for the respondent submitted that the Foreign Exchange Regulation Act is application only to payment of moneys outside India, and not for payment in India to a foreigner or a citizen. I am unable to accept the contention, for Section 5 does not permit such interpretation. The learned counsel also referred to the preamble of the Act, wherein it is provided that the aim of the Act is for providing for the regulation of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion. The first part of the preamble clearly shows that the object of the enactment was to regulate payments also. It cannot be said that Section 5 is beyond the scope of the preamble, I accept the objection raised by the judgment-debtor to the payment of the decree amount to the decree-holder or his power of attorney agent. I allow the petition with costs.

3. It is for the decree-holder to satisfy the several requirements of the Foreign Exchange Regulation Act before he seeks to execute the decree.