
(1924) 07 MAD CK 0025
In the Madras High Court

A.L.A.R. Arunachalam Chettiar, through his Authorised Agent,
Pichappa Chettiar

APPELLANT

Vs

Latchumanan Chettiar and Others

RESPONDENT

Date of Decision : 24-07-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 37

Citation : (1924) 20 LW 713 : (1924) 47 MLJ 537

Judgement

1. The short question for decision in all but two (C.R. P. Nos. 117 and 156 of 1921) of these Civil Revision Petitions is whether the payment of

process fees for issue of a warrant of arrest in execution of a decree is a step-in-aid of execution so as to save limitation.

2. The execution petitions under consideration were presented on 12th February, 1920, and the previous execution petitions were presented on

9th January, 1917, more than three years before. In the course of the latter petitions batta memos. for warrant of arrest were put in on 21st

February, 1917 and 23rd March, 1917. The question is whether the filing of these batta memos. is a step-in-aid of execution. The District Munsif

held that it was not. The decree-holders have put in these Civil Revision Petitions. The respondents, the judgment-debtors, do not appear.

3. A step-in-aid of execution has been defined in Kuppaswami Chettiar v. Rajagopala Aiyar (1921) 42 MLJ 303 as an application which is not an

initial application for execution, but an application to take some step to advance an execution petition already pending. Whether a formal

application is in all cases necessary is a matter of some doubt. There is no direct authority whether a mere payment of process fees for an arrest

warrant without a formal application for the issue of warrant is a step-in-aid; but

there are cases analogous to this in which different High Courts take different views. This High Court in *Vijiaraghavalu Naidu v. Srinivasalu Naidu* ILR (1905) M. 399 has held that a batta memo which applies for the issue of a sale proclamation and on which a sale proclamation is issued is a step-in-aid. From the report in that case it appears that the batta memo itself asked that process may issue and the learned Judges in that case in consequence distinguish it from the Full Bench case in *Malukchand v. Bechar Natha* ILR (1901) B 639 in which there was nothing more than the payment of batta, there being no application either written or oral.

Vijiaraghavalu Naidu v. Srinivasalu Naidu ILR (1905) M. 399 followed the case in *Ambica Pershad Singh v. Surdhari Lal* ILR (1884) C 851 in which also there was an application for the issue of a sale proclamation. The previous case in Madras, *Bellayya v. Jaganatha* ILR (1883) M 307 is inconclusive, but seems to have held that the payment of stamps for the transmission of records for the purposes of execution to another Court would not amount to a step-in-aid unless there was an application. Two Calcutta cases seem to adopt rather a different view. In *Radha Prosad Singh v. Suridar Lal* ILR (1883) C 644 it was held that the deposit of costs for bringing property to sale is a step-in-aid without a formal application, and in *Narendra Nath Padhari v. Bhupendra Narain Roy* ILR (1895) C.374 it was held that the deposit of process fees for service of a sale proclamation is in itself a step-in-aid. Another Calcutta case reported in *Bhupendra Narayan Dutt v. Rajendra Nath Dutt* 18 IndCas 455 follows these two rulings and holds that a payment of process fees paid at the instance of the Court after a notice had been served and a sale proclamation issued, imported a request to the Court to proceed with the execution and therefore was a step-in-aid. It is a little curious that the *Radha Prosad Singh v. Sundar Lal* ILR (1883) C644 and *Narendra Nath Padhari v. Bhupendna Narain Roy* ILR (1895) C 374 cases were not cited before the Full Bench in *Malukchand v. Bechar Natha* ILR (1901) B 639 when other cases from the seven volumes were cited. In *Sheo Prasad v. Indar Bahadur Singh* ILR (1908) A 179 it was held that the payment of process fees for attachment without an application is not a step-in-aid. I think the case in *Vijiaraghavalu Naidu v. Srinivasalu Naidu* ILR (1905) M399 indicates the then view of this Court that a mere payment of

batta for process, where the batta memo, itself does not apply for the issue of process, will not be a step-in-aid, and I think that it is more essential

in such matters that there should be uniformity of practice in each Presidency than that there should be unanimity in the views of different High

Courts.

4. In the present memo. I find no prayer for the issue of process. I am asked to infer that there must have been one because the Court has under

Order 21, Rule 37, Civil Procedure Code, discretion not to issue a warrant at once. But there is nothing to show that if it did after deliberation or

on application order the issue of a warrant, that application was within three years of the Execution Petition of 1920. I am therefore not prepared

to interfere in these cases and dismiss the petition.

5. In two cases which I excepted at the beginning--C.R. Ps. 117 and 156 of 1921--the case for the petitioner is much weaker. The process

memos there were merely for the issue of a notice to the 2nd plaintiff and not to the judgment-debtors at all. Clearly this was not a step-in-aid of

execution and these petitions are also dismissed.