

(1956) 08 MAD CK 0037

In the Madras High Court

Case No : Civil Revision Petition No. 1674 of 1954

Bank of Jaipur Ltd.

APPELLANT

Vs

P.G. Davey and Another

RESPONDENT

Date of Decision : 31-08-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46, Order 9 Rule 13, 8

Citation : AIR 1957 Mad 353 : (1957) 70 LW 212

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : R. Narasimhachari, for the Appellant; C.R. Rajagopalachari and P.T. Sampath, for the Respondent

Final Decision : Allowed

Judgement

Panchapakesa Ayyar, J.—This is a petition filed by the Bank of Jaipur Ltd., the garnishee second respondent in E. P. No. 3057 Of 1953 in

S. C. S. No. 686 of 1953 on the file of the Court of Small Causes, Madras, against an order of a Bench of the court of Small Causes setting aside

the order of the Registrar, Court of Small Causes, In M. p. No 1984 of 1953, dated 23-10-1953, and allowing a New Trial Application filed by

the decree-holder, P. O. Davey. The facts are briefly these:

2. The Bank of Jaipur was served with a garnishee notice by the decree-holder in E. P. No. 2293 of 1963 prohibiting them from paying to the

judgment-debtor, Annamalai Mudaliar, a sum of Rs. 1575-6-0 said to be due by the garnishee to the judgment-debtor. That notice was duly

served on the bank, but on that day the agent of the Bank was absent, and an accountant, who was in charge, received the notice but did not make

a note of the date of the hearing, with the consequence that the garnished failed

to appear in Court on the date fixed and make its representation.

The Bank urged that it really owed only Rs. 107-16-9 to the judgment-debtor and riot the amount of Rs. 1575-6-0 stated by the decree-holder to

be owing by it to the judgment-debtor. As the garnishee bank failed to appear in court in response to the garnishee notice, the garnishee order was

made absolute. Thereafter the decree-holder, Davey filed E. p. No. 3067 of 1953 and proceeded to execute the decree against the garnishee by

attaching its goods for recovering Rs. 1575-6-0. Then, naturally, the Bank woke up in trepidation and applied to have the ex parte garnishee order

set aside! and to be heard regarding its contention that only Rs. 107-15-0 were due by it to the judgment-debtor, and not Rs. 1575-6-0. It

deposited the entire amount of Rs. 1575-6-0, covered by the ex parte garnishee order, in order to avoid attachment and sale in execution. The

Registrar believed the bank's story regarding the ignorant accountant's receiving the garnishee notice and failing to note the date of hearing with the

consequence of the garnishee not appearing in court, and the garnishee order being made absolute. So he set aside the ex parte garnishee order

and posted the matter for enquiry. Against that order of his, the decree-holder filed the New trial Application with the result noted above.

3. I have perused the entire records, and heard the learned counsel on both sides. Mr. R. Narasimhachari, for the petitioner bank, urged that the

Bench of the Court of Small Causes went wrong in ignoring the specific ruling of the Full Bench of the Small Cause Court in N. T. A. Nos. 334

and 335 of 1933 to the effect that there was power in the court to set aside an ex parte order passed against a garnishee on sufficient grounds

being shown for the garnishee's absence, despite the fact that that ruling was confirmed by Beasley C. J. by dismissing C. R. P. No. 778 of 1935

(Mad) (A), filed against it. Mr. B. T. Sampath, for the respondent-decree-holder contended that the records in the new trial application of the Full

Bench had been destroyed, and the order of Beasley C. J., in the civil revision petition did not say under what provision of law an ex parte

garnishee order could be set aside, whether under Order IX, Rule 13, C. P. C .. or under any other provision of law, and that it was clear that till

1933 no such power to set aside an ex parte garnishee order on sufficient reason being shown was recognised as existing in a Small Cause Court

in execution proceedings. I am afraid I cannot agree with him. First of all, a decision of a court does not depend for its validity on the number of

years it has been in force, and the number of decisions in favour of the particular point.

As an ancient sage has remarked, a room kept dark for a hundred years does not require another hundred years for light to be let in. The moment

light is let in, the darkness automatically disappears. So too the moment a valid and (binding decision of a High Court is given as in C. R P. No.

778 of 1935 (Mad) (A), the days of non-decision disappear automatically, and this decision takes its place till it is displaced or overruled which is

not the case here.

That the non-essential records in the new trial application of the Small Cause Court have been destroyed under the rules Is neither here nor there,

because the decision of the Full Bench in the N. T. A. Nos. 334 and 335 of 1933 (Mad) (B) is before me, as it was before the lower court, and

the learned Judges have specifically held in it as follows:

In garnishee proceedings when such an ex parte order is made it is open to the garnishes subsequently to satisfy the court - concerned that there

was valid excuse for his absence on the date on which the matter was disposed of by the court, and when the court is so satisfied it is open to the

court to set aside that order and give an opportunity to the garnishee to put forth his contentions. We have also taken this view in respect of

garnishee applications, following the view taken in the Madras High Court in O. S. A. No. 32 of 1934 (C).

4. C. R. P. No. 778 of 1935. (Mad) (A), Was filed in this Court challenging that order of the Full Bench of the Small Cause. Court, and it was

dismissed by Beasley. C. J., after hearing the learned counsel on both sides. The Bench of the Small Cause Court, whose order is challenged

before me, seems to have taken the order in the civil revision petition erroneously, as having been a summary order of dismissal passed by the

admission court.

Even if a civil revision petition is dismissed by the admission court, I cannot see how the value of the decision is lessened. Indeed, it may be argued

that when a civil revision petition is considered so worthless as not even fit to be admitted, by a Judge of this court, the dismissal may be more

eloquent about the amenability of the attack on the new trial order than a judgment of 20 or 30 pages delivered after full contest and discussing the points on either side and ultimately concluding that the decision of the new trial is correct.

There is no need to discuss this point further as the dismissal of the civil revision petition was after hearing the learned counsel on both sides.

5. Nor do I agree with the argument of the-learned counsel for the decree-holder that when a court holds that an ex parte order passed against a garnishee can be set aside, on sufficient ground being shown, the decision is not valid unless it quotes chapter and verse, and the specific provision of law under which the ex parte order can be set aside.

There may be obvious things which do not require citation of specific provisions. Whatever it be, no decision can lose its binding force simply

because it does not dismiss whether power to set aside the ex parte order against a garnishee is one given under Order IX, Rule 13, C. P. C ., or

under any other provision. Suffice it to say that I fully agree, with respect, with the Full Bench decision of the Small Cause Court in N. T. A. Nos.

334 and 335 of 1933 and with the decision of Beasley C. J. confirming it.

Why should a garnishee be In a worse position than a party to a suit? In modern times, when all courts are courts of Justice, equity and good

conscience, it will be very strange indeed if, after a court's holding that there is sufficient reason for a garnishee's absence on the day indicated in

the garnishee order it refuses to set aside the ex parte order and hear him, especially when the court holds, as here, that there is no doubt that the

garnishee owed the judgment-debtor only Rs. 107-15-9. and not Rs. -1575-6-0, and even the decree-holder did not challenge the correctness of

that assertion.

Of course, the decree-holder might not have challenged the garnishee's assertion at that stage as he relied upon what he considered to be a fool-

proof technical objection to the setting aside of the ex parte garnishee order. But it is obvious that a man who owes only Rs. 107-15-9 should not

be made by a court, in modern times, to pay up Rs. 1575-6-0, when he had no real opportunity of representing his case to the court, and when

there is no adjudication of his liability, even ex parte, on any sufficient evidence, as in a third party application decided ex parte.

6. I, therefore, set aside the order of the Bench of the Court of Small Causes in N. T. A. No. 279 of 1953, and restore the order of the Registrar

setting aside the ex parte garnishee order, and give the garnishee a fresh opportunity to file his objections to the garnishee order. Of course, both

sides will be free to, let in evidence as to what exact amount the garnishee owed the judgment-debtor, "and the court will pass suitable orders after

hearing all sides.

In the circumstances, I direct all the parties to this civil revision petition to bear their own costs in the new trial application and this civil revision

petition.