
(1997) 01 MAD CK 0101
In the Madras High Court
Case No : C.R.P. No. 178 of 1992

Bank of Madurai Ltd.

APPELLANT

Vs

M. Sundara Mahalingam

RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1997) 1 CTC 326 : (1997) 1 LW 353

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : P.L. Narayana, for the Appellant;

Final Decision : Allowed

Judgement

T.N. Vallinayagam, J.—The plaintiff/decreed holder is the Revision Petitioner, who failed to convince the lower court and get his application for the delay in representation condoned.

2. The suit was for recovery of the money by the bank and the same was decreed on 12.7.1976. E.P.No. 238 of 1978 was filed and was dismissed on 23.8.1978 for non-payment of batta. Again E.P. No. 480 of 1978 was filed and the same was dismissed on 18.8.80 again for non-prosecution and exactly on the last day of the expiry of twelve years, the present E.P. was filed on 12.7.1988. It appears, the E.P. was returned for rectification of some defects and the same was not properly complied with. According to the learned District Munsif, the defects remained unrectified and when finally the E.P. was represented, there was a delay of 57 days in representation at various stages and the only return appears to be that the decree copy was not enclosed, and therefore, the E.P. was dismissed. I am really shocked at the attitude of the learned Munsif. Knowing fully well that this is the last E.P. and the only chance for recovering the money, if at all, possible by the plaintiff. Learned District Munsif ought to have been more careful in dealing with such execution petitions.

3. It is always said that obtaining a decree by the plaintiff is easy, but getting the decree executed is difficult. A man comes to court for getting a relief. Fighting several odds on his way, he is ultimately able to get a decree. Unfortunately his agony is not ended by getting the decree alone. He has travelled only half way and before he could travel the remaining half way. so many obstacles, obstructions and resistance are placed in his path in the realisation of the decree. If ultimately the Court, which is bound to honour its own decree and whose primary duty is to see that the fruits of the decree reaches the person who got the decree, failed to exercise its discretion in the way of such realisation, the confidence, people have on courts will dwindle, deteriorate and ultimately be demolished. Everybody who approaches the court wants relief only when he is entitled to such a relief in law and on the facts with which he came to the court, the Courts grant such a relief. If the relief is not turned out into actual realisation of the fruits of the decree, then, no useful purpose would be served and the entire exercise and the long journey undertaken by the plaintiff will come to a very sad end.

4. The court must always take into consideration that the force or effect of the decree must not be whittled down by pure technicalities. A positive approach, to make the plaintiff realise the fruits of the decree must be made by every executing court. Any discretion if available, with the court should be rendered in favour of the plaintiff and towards realisation of the satisfaction of the decree and the plaintiff eating the fruits of the decree. In my opinion, if such course is not adopted by every executing Court, which executes a decree, there will be no meaning for the existence of such Courts in the country. Therefore, in my considered view, learned District Munsif is thoroughly wrong in not exercising his discretion to come to the aid of the plaintiff in realising the fruits of the decree.

5. Therefore, the application for condonation of delay in representation of the E.P. is hereby condoned. Learned District Munsif, Madurai Town is directed to number the E.P. keep it on file till the plaintiff is able to realise the decree and till the plaintiff exhausts all remedies in execution towards the realisation of the decree. Learned Munsif is further directed to give top priority to the hearing of the above E.P. and dispose of the same without indulging in long adjournments if asked for by the Judgment Debtor.

6. The Civil Revision Petition is allowed. No costs.