
(1963) 03 MAD CK 0020
In the Madras High Court
Case No : A.A.O. No. 249 of 1960

C.T.A. CT. Nachiappa Chettiar

APPELLANT

Vs

M.G. Ramaswami Pillai

RESPONDENT

Date of Decision : 25-03-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : AIR 1964 Mad 236 : (1963) 76 LW 685

Hon'ble Judges : Ramamurti, J;Anantanarayanan, J

Bench : Division Bench

Advocate : K. Parasaran, for the Appellant; A. Srirangachari and P.S. Sarangapani Aiyangar, for the Respondent

Final Decision : Allowed

Judgement

Anantanarayanan, J.—The appeal is upon a very short point. The executing decree-holder in O.S. No. 53 of 1947 is the appellant and he

filed E. A. No. 194 of 1960 in a pending execution petition, for the relief of attaching certain money due from a debtor of the judgment debtor, on

the averment that the existence of this claim came to the knowledge of the executing decree-holder only recently. The learned subordinate Judge

dismissed the execution application, both on the ground that it was presented a little beyond the time prescribed by return, which is admittedly

technical, and on the ground that the relief sought for was virtually an introduction of a fresh execution petition, which could not be permitted. The

second ground alone concerns us now, since the first ground is purely formal and technical in nature.

2. With regard to the second ground, learned counsel for respondent (judgment debtor) relies upon a judgment of a Bench of this Court in Sri Raja

D.K. Venkata Lingama Nayanim Bahadur Varu (since deceased) and Another Vs. Rajah Inuganti Rajagopala Venkata Narasimha Rayanim

Bahadur Varu and Others, . But that is clearly distinguishable upon the facts, for it was held in that case, that, though the former execution

proceeding had not been formally terminated, every thing had been done in that proceeding to grant relief, so that the further petition was, really art

unjustified enlargement of a closed proceeding, in order to levy execution against new properties. In the present case, the pending execution

petition is for arrest and attachment of moveables, and it is admitted that" sums are still not realised under the decree. Both in L.J. Leach and

Company Ltd. Vs. Jardine Skinner and Co., and in Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, , their Lordships of the

Supreme Court have laid down the liberal criteria that should guide the Court in permitting such amendments, whether of pleading in a suit or of

pending execution proceedings in the interests of justice.

If there is no injustice to the other side, and the amendment of pleadings or enlargement of reliefs of execution is necessary for the purpose of

determining the real question in controversy between the parties, the amendments should be permitted and not refused. In the present case, learned

counsel for the appellant concedes that the prayer for execution by way of arrest, which is the remedy which really concerns the judgment debtor

and the grant of which might work hardship to him, will not be pressed; we record that undertaking. Since execution is limited to the relief of

attempted attachment of sums due to the judgment debtor from a third party, as urged, there is no injustice whatever to the judgment debtor.

Further, this is the essential matter in controversy, since the decree holder states only recently came to his notice, and he could not move for

garnishee proceedings earlier. Consequently we allow the appeal and the execution application but recording the undertaking relinquishing arrest as

a relief in the execution. Further execution will proceed in accordance with law. The parties will bear their own costs.