

(1996) 03 MAD CK 0065

In the Madras High Court

Case No : Civil Revision Petition No. 3243 of 1993

D.N. Elango

APPELLANT

Vs

Sudarsan Chits (India) Limited

RESPONDENT

Date of Decision : 19-03-1996

Acts Referred:

Companies Act, 1956 — Section 10, 634, 635

Citation : (1997) 88 CompCas 146 : (1996) 2 LW 333

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : P. Mani, for the Appellant;

Judgement

S.S. Subramani, J.—The second judgment debtor in C.C. No. 3849 of 1986 is the revision petitioner before this court.

2. The decree-holder is a company known as Sudarsan Chits (India) Limited, now under liquidation as per proceedings of the High Court of

Kerala, at Ernakulam.

3. When the execution petition was filed before the District Munsif's Court, Dharmapuri, the revision petitioner filed objections stating that the

court has no jurisdiction to entertain the execution petition. He also contended that the executing court also must be a company court and since the

Munsif's court is not a company court, the execution petition filed before it is not maintainable. He also said that there is no transfer of a decree for

being executed, and for that reason also, the execution petition cannot be sustained.

4. By the impugned order, the court below rejected all the objections and directed the execution to be proceeded with. It is against the said order,

the present revision is filed.

5. Learned counsel relied on a decision reported in Smt. Kalagara Rama Tulasamma v. Subhadaya Publications Ltd. (In Liquidation) [1969] 39

Comp Cas 993 (AP) to substantiate that the Munsif's court is not a company court. He also wanted this court to consider the provisions of section

10 of the Companies Act which deals with jurisdiction of courts. I do not think any of these provisions has any relevancy since the very decision

which learned counsel is relying on, is an answer to all his contentions. The case that is cited is one coming under the Indian Companies Act, 1913.

Section 3 of that Act corresponds to section 10 of the present Act. Section 200 corresponds to section 634 and section 201 corresponds to

section 635 of the present Act. Considering the relevant provisions, the Andhra Pradesh High Court held that if a certificate is issued by the

winding-up court, the certified copy itself is sufficient for executing the decree, and in view of sections 38 and 39 of the Code of Civil Procedure,

1908, the transferee court also gets jurisdiction to execute the decree. In view of the production of the certified copy of the certificate, no separate

order of transfer is required. It was also held in that decision that for the purpose of execution, the court need not be a company court. In the case

cited, a learned judge of the Andhra Pradesh High Court has held thus (page 997) :

What was, however, urged was that it is the company court which alone is competent to execute the order and, since the District Court is not a

company court, it cannot execute the order sent to it by this court. It is not possible to accept this contention. It is true that the District Court has

not been made a company court by any notification u/s 3. Section 164 is not quite relevant for this purpose. What section 164 concerns itself with

is the subsequent winding up proceedings and not enforcement of any order passed by a company court. The language of section 164 is plain

enough to indicate that the company court, which has passed orders of winding up, can direct any District Court to conduct the subsequent

proceedings. The order, which is under my consideration and which has come from the Madras High Court for enforcement, cannot be an order

which falls within the ambit of section 164. That section therefore is inapplicable to such a case. It is only u/s 200 that this court, which also is a

company court, gets jurisdiction to enforce the orders in cases where certified copies of such orders are produced before it u/s 201. While enforcing that order, section 199 expressly empowers this court to enforce that order in the same manner as if it was a decree in a civil suit passed by this court and it is under this provision that sections 38 and 39 of the Civil Procedure Code, 1908, get attracted under which this court would be competent to transfer the order for execution to a competent subordinate court. It will thus be plain that while initially the certified copy must be produced before a court within the meaning of section 3, i.e., to say a company court, when once the certified copy is received by the company court, the company court has jurisdiction to either directly execute it itself or send it for execution to a subordinate court in the same manner as it sends its decrees for execution passed in civil suits to the subordinate court. It is not, therefore, necessary that the transferee court also should be a company court. Any such contention would practically amount to flying in the face of section 199. It is difficult to accept the contention that the expression "in the same manner" relates only to the procedure and does not authorise the District Court to execute the order. Section 199 does not indicate any such distinction. It clearly states that it "may be enforced in the same manner" in which decrees of civil courts made in any suits pending therein may be enforced. The word "manner", in my opinion, is comprehensive enough to include a subordinate court which can execute the order if such an order is transferred for enforcement by this court in its jurisdiction as company court.

6. No other contention was raised. In view of my finding that the court below has got jurisdiction to proceed with the execution, the civil revision petition is dismissed. No costs.