
(1945) 08 MAD CK 0002
In the Madras High Court

Gudemetla China Appalaraju

APPELLANT

Vs

Kota Venkata Subba Rao

RESPONDENT

Date of Decision : 24-08-1945

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 18

Citation : AIR 1946 Mad 296 : (1946) 59 LW 60

Hon'ble Judges : Sahabuddin, J

Bench : Division Bench

Judgement

Sahabuddin, J.—The petitioner was the defendant in O.S. No. 146 of 1942 filed by the respondent in the Court of the District Munsif of

Coconada. The case of the respondent was that the petitioner who is his brother-in-law, agreed to lend him Bs. 525 on security of his lands in

Yanam which is in French Territory. Under the French law, the immovable properties in French territory can be made liable only under a decree

obtained in French Courts. The petitioner and respondent, therefore, proceeded to Yanam and obtained a consent decree from the Sub-Court of

Yanam to the effect that the respondent owed the petitioner a sum of RS. 525 and agreed to pay the same with interest at 8 per cent, per annum

within a period of two years. But, as a matter of fact, the petitioner had by that time paid the respondent only Bs. 100 and though he promised to

pay the entire balance in Coconada, he paid him only Rs. 25. The respondent, therefore, claimed the balance with interest mainly as damages for

breach of contract and alternatively on the basis of specific performance of a contract to lend. The petitioner contested this claim. His case was

that he had lent the respondent BS. 500 on a promissory note and that when he pressed for the repayment of this amount, the respondent agreed

to Buffer a decree in the French Court in Yanam and on their going to that Court a decree in the petitioner's favour was passed. It was contended

that in view of that decree, the claim of the respondent was barred u/s 18, Civil P.C. Other contentions also were raised and although evidence

had been adduced on all the issues, the learned District Munsif without going into the merits dismissed the suit on a preliminary point regarding the

effect of the decree of Yanam Court. He held that the decree was conclusive in the matter relying on the decision in Muhammad Moideen v.

Chintamani Chettiar AIR 1929 Mad. 503. On appeal the learned Subordinate Judge differed from the District Munsif and considered that the

above decision did not apply to the facts of the present case. He, therefore, remanded the suit for disposal on merits. It is against this order that

this revision petition has been filed. The only point for determination in this petition is whether the decree passed by the Yanam Court can be

regarded as a decision given on merits within the meaning of Section 13 which is in these terms:

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under

whom they or any of them claim litigating under the same title

2. One of the exceptions to this rule is Clause (b) "except where it has not been given on the merits of the case." In Muhammad Moideen v.

Chintamani Chettiar AIR 1929 Mad. 503 the decree of the foreign Court was based on a joint representation by the plaintiff and defendant that if

they did not settle their dispute by a certain date the suit shall be decreed as prayed for. It is argued that the present case is a similar one and as the

respondent consented to the decree in question being passed, that decree should be considered as having been given on the merits of the case. It

is, therefore, contended that Clause (b) of Section 13 does not apply. On behalf of the respondent, it is argued that for the application of Section

18 it is necessary that there should be a controversy. Reference in this connection is made to the decision of the Privy Council in Keymer v.

Viswamatha Reddi AIR 1916 P.C. 121. The decision in Muhammad Moideen v. Chintamani Chettiar AIR 1929 Mad. 503 is distinguished on the

ground that in that case there was a controversy unlike the present case. I have been through these decisions and, in my opinion, the contention of

the respondent has to prevail and this petition must be dismissed. In *Keymer v. Viswamatha Reddi* AIR 1916 P.C. 121 the decree of the English

Court had been passed ex parte on the defence having been struck off because the defendant did not answer the interrogatories. It was held that to

that decree Section 13(b) applied. In that connection, their Lordships observed that that provision

refers to those cases where for one reason or another the controversy raised in the action has not, in fact, been the subject of direct adjudication

by the Court.

3. From this observation and the language of Section 13 it would appear that for a decree of a foreign Court to be conclusive there should be a

controversy and an adjudication thereon. In *Muhammad Moideen v. Chintamani Chettiar* AIR 1929 Mad. 503 the defendants had appeared and

filed a written statement and an issue had been raised with regard to the plea taken by him. But when the case came on for trial, the defendants and

plaintiffs filed a joint petition to the effect that the case be postponed for three months with a view to settlement and that if it was not settled,

judgment be entered for plaintiffs as prayed for with costs. After the period of three months expired the suit was called. The defendants were

absent and the foreign Court ordered that the suit be decreed in terms of the order passed on the joint petition already referred to. It was held that

Section 13(b) did not apply. There is nothing in this decision to indicate that for the application of Section 18 controversy is not necessary. On the

other hand, the above mentioned decision of the Privy Council as well as other decisions holding that decrees of the foreign Court passed ex parte

were not conclusive were distinguished by the learned Judges on the ground that in the case before them, there was a controversy. But in the

present case there was no controversy. What happened in this case was that both the petitioner and the respondent went to the Yanam Court with

a drafted compromise and the decree in question was passed on the strength of that compromise. Therefore, when they went to that Court, they

had no dispute and there was nothing for the Court to decide. The decree appears to have been given mechanically in accordance with a

prescribed rule. It was in effect a mere recognition by a Court of an arrangement already arrived at between the parties In these circumstances it

"cannot be said that the decree of the Yanam Court was a decision on the merits. The petition is, therefore, dismissed with costs.