(1957) 11 MAD CK 0040

In the Madras High Court

Case No : Application No. 1598 of 1957 in Original Petition No. 192 of 1947

Hanuman Bank, Limited APPELLANT

Vs

P.T. Munia Servai RESPONDENT

Date of Decision : 26-11-1957

Acts Referred:

Banking Companies Act, 1949 — Section 45B, 45D(7)
Constitution of India, 1950 — Article 14, 182, 183, 226, 246

Citation : (1958) ILR (Mad) 502

Hon'ble Judges : Subrahmanyam, J

Bench : Single Bench

Advocate : S. Swaminathan, for the Appellant; N. Panchapakesa Ayyar, for the Respondent

Judgement

Subrahmanyam J.

1. Munia Servai was a debtor to the Hanuman Bank. The bank is now under liquidation. On 21st October 1953, this Court ascertained the amount payable by Munia Servai to the bank and passed a decree which said that upon failure of the said P.T. Munia Servai to discharge the liability within the time fixed in Clause 3 supra, all the said charged properties, including the Thenampadugai properties, shall be sold for the realization of the dues mentioned above. The liability has not been discharged.'' The liquidators request directions for the sale of the properties.

2. The properties are situate in the Tanjore district outside the limits of the ordinary original civil jurisdiction of this Court as defined in Clauses 11 and 12 of the Letters Patent. Learned Counsel for Munia Servai contends that this Court does not have jurisdiction to make an order for the sale of immovable properties situate in Tanjore. The short answer to that contention is that the Banking Companies Act fixes the territorial limits of the ordinary original civil jurisdiction of this Court so as to be co-extensive with the territorial limits of the State. The only question for decision on that point is whether Parliament was competent so to define the territorial limits of the ordinary original civil jurisdiction of this Court

in relation to matters covered by the Banking Companies Act. Item 43 in List 1 of the seventh schedule to the Constitution is :

Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

Item 95 in the list is :

Jurisdiction and power of all Courts, except the Supreme Court, with respect to any of the matters in this list; admiralty jurisdiction.

3. Under the Constitution, therefore, Parliament has plenary power to vest jurisdiction in this Court, territorial and otherwise, in relation to matters included in the expression incorporation, regulation and winding up of banking corporations. Learned Counsel for Munia Servai does not contend that Section 45-B is beyond the powers of Parliament under Article 246 of the Constitution, read with items 43 and 95 of List I of the seventh schedule. I find that, under the Banking Companies. Act ,the territorial limits of this Court''s jurisdiction in relation to matters dealt with in the Act, have validly been made co-extensive with the territorial limits of the State.

4. Learned Counsel contends next chat, although u/s 45-B of the Banking Companies Act, this Court may validly make an order for the sale of the properties in the Tanjore district, this Court cannot itself execute an order for sale and have a sale held. It is not possible to perceive any reason behind that distinction sought to be made by learned Counsel. Section 45-D(7) gives power to this Court to pass an order for the sale of any property given as security to the banking company. Under that section, an order for sale of immovable property in the Tanjore district may be made by this Court in the exercise of its jurisdiction under the Indian Banking Companies Act provided security of such property has been given for repayment of a debt due to the Banking Company. If a sale could be made u/s 45-D(7) in a case where there has been no specific decree or order directing sale, it is not easy to see how jurisdiction could be denied in a case where there is a specific order passed by this Court directing sale of such property. I find that this Court has jurisdiction 10 direct sale of the immovable property described in the schedule in the order passed on 21st October 1953, notwithstanding that such property is in the Tanjore district.

5. Learned Counsel for Munia Servai places particular reliance on the decision in In re. Dhakuria Banking Corporation, Limited and Ors. A I.R. 1955 Notes of Unreported Cases 4849. That case is distinguishable on the facts, because that was a case of a decree simpliciter for payment of money, whereas we have here a decree for sale of immovable property. Even otherwise, in so far as that decision requires the Court to fit its jurisdiction under the Banking Companies Act within the framework furnished by Clauses 11 and 12 of the Letters Patent, I am, with great respect, unable to agree. I am of the opinion that, in interpreting its authority and duty under the Indian Banking Companies Act, the Court should

have regard only to the terms of the Act which is a source of power and obligation (that is, jurisdiction) altogether independent of Clauses 11 and 12 of the Letters Patent. Nobody would contend that the jurisdiction conferred on this Court by Article 226 of the Constitution should be construed as limited, in relation to execution, by the terms of Clauses 11 and 12 of the Letters Patent. I am unable to see any justification for the contention that the jurisdiction conferred on this Court by Parliament in exercise of its powers with reference to a. particular subject should be construed as limited in relation to execution, by the terms of Clauses 11 and 12 of the Letters Patent. I hold that this Court has jurisdiction to order sale of the immovable property situate in the Tanjore district in execution of the order passed on 21st October 1953.

6. The next question for decision relates to limitation. The article applicable is Article 183 of the Indian Limitation Act. The applicability of that article is not excluded by the circumstance that the decree was passed by this Court in the exercise of its jurisdiction under the Banking Companies Act. All that the Banking Companies Act does, on the question now under reference, is to enlarge the territorial limits of this Court''s jurisdiction so as to be co-extensive with the territorial limits of the State. The order under execution is, therefore, an order passed by this Court in the exercise of its ordinary original civil jurisdiction and Article 183 applies.

7. It is next contended that Article 183 of the first schedule of the Indian Limitation Act is void as contravening Article 14 of the Constitution, because Article 183 allows a longer period of limitation than Article 182 does. A rule of limitation is not a measure of protection for the judgment-debtor, but a method of curtailment of the rights of the decree-holder. No judgment-debtor has a right to say that he should be protected, after a specified period, from obeying the order of Court embodied in the decree. A decree-holder who has obtained a decree in the City Civil Court may, with some degree of propriety, contend that, in being allowed only three years for his first execution petition, he is denied protection equal to that afforded to the decree-holder who has obtained a decree on the Original Side of the High Court, who is allowed twelve years for such petition. I am unable to hold that a judgment-debtor under a decree on the Original Side of the High Court could reasonably contend that he is denied equal protection of the laws because the decree against him is kept alive for twelve years without intervening execution petitions or steps-in-aid of execution, whereas a decree passed by the City Civil Court could not be kept alive for that period in like circumstances. The word protection used in Article 14 of the Constitution cannot be invoked by a person whose claim is not that his rights or liberties be preserved from violation or abridgement, but that his obligations be curtailed by abridging another person''s rights

8. Article 14 of the Constitution has, in my opinion, no relevance to rules of procedure or limitation or to rights of appeal except where it is alleged that the differences in the rules that are prescribed or the rights that are granted

constitute either discrimination on grounds of race, religion, caste, sex, or place of birth or discrimination directed against a particular category of persons due to impatience, on the part of the Legislature or the State, with the normal processes of law which form an essential safeguard of freedom. With the normal rules which prescribe different rules of procedure or limitation for different Courts, Article 14 of the Constitution has no concern. A person resident in one part of the State may be liable to be sued in Small Cause Court for recovery of a sum of Rs. 900, while a person, resident in another part of the State, may be sued only in a Court of original civil jurisdiction for recovery of the same sum of money. In the former case, the procedure is different and there is no right of appeal. In the latter case, evidence may have to be recorded in full and there may be a right of appeal and of second appeal. These are matters of legislative policy which are not hit by Article 14 of the Constitution which guarantees to all persons equality before the law and equal protection of the laws. I find that Article 183 of the first schedule of the Indian Limitation Act is not void as contravening Article 14 of the Constitution.

9. Messrs. Murray and Company will sell as auctioneers the properties other than the properties in Thenampadugai. In regard to Thenampadugai village, the liquidators will divide the village into convenient parcels having regard to portions in the occupation of separate tenants and apply to this Court for directions regarding sale of such parcels. Munia Servai will pay the liquidator''s costs.

