(1957) 11 MAD CK 0006

In the Madras High Court

Case No : O.P. No. 192 of 1947 and Application No. 1598 of 1957

Hanuman Bank Ltd. APPELLANT

Vs

P.T. Munia Servai RESPONDENT

Date of Decision : 26-11-1957

Acts Referred:
Constitution of India, 1950 — Article 14, 226, 246

Citation : AIR 1958 Mad 279

Hon'ble Judges : Subramanyam, J

Bench : Single Bench

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

Judgement

Subramanyam, J.—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 realisation 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 I of the Seventh Schedule to the Constitution is

Incorporation, regulation and winding up of trading Corporations, including banking insurance and financial Corporations.

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.

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 S. 45-B is beyond the powers of Parliament under Art. 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.

3. Learned counsel contends next that, although under 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 under 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 to direct sale of the immovable property described in the schedule to the order passed on 21st October, 1953,

notwithstanding that such property is in the Tanjore district.

4. Learned counsel for Munia Servai places particular reliance on the decision in In re Dhakuria Banking Corporation Ltd., AIR 1955 (Cal) 4849

(A). Thai, 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 Cls. 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 Art. 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 matter 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.

5. The next question for decision relates to limitation. The article applicable is Art. 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 orders passed by this court in the exercise of its

ordinary original civil jurisdiction and Art. 183 applies.

6. It is next contended that Art. 183 of the I schedule of the Indian Limitation Act is void as contravening Art. 14 of the Constitution, because Art.

183 allows a longer period of limitation than Art. 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 12

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 Art. 14 of the Constitution cannot be invoked by a person J whose claim is not that his rights or liberties be

preserved from violation or abridgment, but that his obligations be curtailed by abridging another person''s rights.

7. 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, Art. 14 of the Constitution has no concern. A person resident in one part of the State may be liable to

be sued in a 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 Art. 14 of the Constitution which guarantees to all persons equality before the law and equal protection of the

laws. I find that Art. 183 of the First Schedule of the Indian Limitation Act is not void as contravening Art. 14 of the Constitution.

8. Messrs. Murray and Co., 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.

9. Munia Servai will pay the liquidator''s costs Rs. 100. Post after two months.

