
(1923) 02 MAD CK 0043
In the Madras High Court

Hari Krishna Pillai

APPELLANT

Vs

Arur Pandithar

RESPONDENT

Date of Decision : 21-02-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 3, 152

Citation : AIR 1923 Mad 663 : 72 Ind. Cas. 688 : (1923) 18 LW 105

Hon'ble Judges : Oldfield, J

Bench : Single Bench

Judgement

Oldfield, J.—The facts of this case are exceptional and fortunately so; and it is fortunate, further, that there is no dispute about the good faith of the District Munsif concerned, whatever opinion may be formed of the propriety of his conduct.

2. The facts are that, on the 29th September 1921, the District Munsif gave a judgment on the present petitioner's claim to draw certain money, the subject of attachment, which was alleged to be due to the judgment-debtor from the Trichinopoly District Board. The District Munsif delivered that judgment orally, dictating it to a shorthand-writer; and there is no dispute that, in substance, whatever the exact words he used may have been, he allowed the petitioner to draw the money in case he got Probate or Succession Certificate or got his rights determined in a separate suit or gave security on unencumbered Immovable property for the amount. This order may be difficult to understand, because it is not of the nature contemplated by Order XXI, Rule 60, being based on assumptions in the alternative that the judgment-debtor or the claimant was entitled, to the property. With the merits of that order, however, we are, not, at pve-S2nt, concerned. What we are concerned With is that, when the shorthand transcript reached the District Munsif for correction, he entirely changed the effect of what he, had said in open Court, by leaving out the reference to the withdrawal of the money by the petitioner in case he gave security. There is no dispute that this change Was made. In fact the District Munsif, when the

petitioner's Vakil remonstrated with him on 8th October, 1921, dealt with the matter in a lengthy order, in which he Sustained the judgment as corrected and declined to make any alteration in it, saying that it and not the judgment as pronounced, expressed his real decision. The order contains a good deal regarding the circumstances, in which the District Munsif found it necessary to make this material correction in his judgment and those in which the petitioner's Vakil discovered, owing to his clerk's consulting the Court diary that a change had been made. It is not necessary to pursue those matters. I turn to the arguments to be dealt with, first, whether the District Munsif acted with material irregularity in the exercise of his jurisdiction and, secondly, whether I should interfere in revision, when it is said that the petitioner has another remedy open to him by a suit under Order XXI, Rule 63.

3. On the question of material irregularity and the right of the District Munsif to correct his judgment as he did, in fact, by substituting a refusal of relief for grant of it, reference has been made to the rule substituted by this Court for Order XX, Rule 3. That rule deals with the case of a Judge, who has been empowered to pronounce his judgment by dictation to a shorthand-writer in open Court and says that the transcript of the judgment so pronounced shall, "after such revision ^as may be deemed necessary," be signed by the Judge; and it is urged that this authorises the Judge to revise the transcript and to substitute fresh words for the words which fell from his mouth to any extent he may deem necessary. Such a case as this is not likely to have any precedent and, accordingly, no authority on the interpretation of the rule has been brought to my notice. It seems to me, on reference to Section 152 and the rule issued by this Court and of torn obvious considerations of principle, that the revision contemplated cannot be of the effective part of the judgment and must be of the nature referred to in Section 152, one relating to "clerical or arithmetical mistakes arising from any accidental slip or omission." It is in fact impossible to see how there can be any purpose in the provision in Order XX, Rule 1 that the parties and Pleaders shall be present or have notice of the pronouncement of judgment in open Court, if the decision which is to bind them ultimately is to be contradictory of what was then said. Certain judgments dictated must inevitably contain verbal or arithmetical mistakes, in respect of which revision will be advisable or even necessary. But that is not to say that by revision the Court can substitute a wholly new decision for the one which was originally pronounced. Taking this view, I hold that what purports to be the District Munsif's judgment in its ultimate form is not really the judgment. It is clear that the terms of his judgment, as originally formulated and as it must be taken for the present purpose to have been given, were to an entirely different effect; although it must be held that it is not possible to reconstruct them exactly from the materials available.

4. I turn to the second question whether the District Munsif having been guilty of a material irregularity to the prejudice of the petitioner, the fact that the petitioner can bring a suit under Order XXI, Rule 63, will disable me from proceeding in revision. It is, no doubt, the practice of this Court not to interfere

in revision when another remedy is available. The present case, however, is exceptional and it is not clear that there is in fact another remedy. True, the petitioner, may sue in manner contemplated by Order XXI, Rule 63 to set aside the order as ultimately promulgated by the District Munsif. But that is no reason why he should be called on to forego the advantage he obtained in the order as pronounced, which I feel bound to regard as the real order in the case. There is, moreover, the consideration that the procedure under Order XXI, Rule 63 is for the establishing of the right of the party who has failed in the claim proceedings. If the petitioner were to sue for the purpose it would be difficult to see how he could be allowed to put forward what would certainly be a material part of his case, that he did not really fail in the proceedings, but was virtually successful. In any case, it seems to me that it will be a fair exercise of my discretion to use the power of revision to clear up the position of the parties, and to enable them to obtain an order which cannot be open to the very grave objections applicable to the one before me and on which they can take further action.

5. Taking this view, I hold that a material irregularity has been committed and that it is a proper exercise of this Court's power in revision to interfere to set it right. The only difficulty is, as I already indicated, that it is impossible to reconstruct exactly the District Munsif's original order and, therefore, impossible to restore it. There is the further consideration that, if it is restored the respondent here, owing to a misapprehension for which he is not responsible, will be prejudiced in respect of the period available to him for suing, if he has to do so, under Order XXI, Rule 63. The course I take is, therefore, to set aside the whole proceedings in the lower Court on the petition and to direct the present District Munsif to hear it and deal with it according to law. Costs in this Court and up to date in the lower Court will be costs in the claim petition and will be provided for in the order thereon.