

(1996) 07 KAR CK 0002

In the Karnataka High Court

Case No : C.R.P. No. 3961 and 3962 to 3965 of 1992

K.M. Puttaswamy

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 17-07-1996

Acts Referred:

Citation : (1997) 2 CivCC 639

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : G.V. Ramaiah, for the Appellant; H.C. Shivakumar, for the Respondent

Judgement

M.F. Saldanha, J.—Heard learned Counsel. The short point that arises for decision in this group of civil revision petitions centres around the question as to whether the ex parte decree passed against the deceased Petitioner is liable to be set aside or not. The Respondent 1-Bank filed suits against the principal debtors and the deceased Petitioner who was the surety was also cited as a party-Defendant. It was the case of the Bank that despite valid service, the suits were undefended and that therefore ex parte decrees came to be passed by the Court. The deceased Petitioner contends that these decrees were prior to the year 1986 when his property was sought to be attached in execution of those decrees that he came to know of the passing of the ex parte decrees. The Trial Court was therefore moved for setting aside the decrees on the ground that there was no valid service on the deceased Petitioner.

2. The proceeding was contested and it became necessary for the applicant before the Court to establish to the satisfaction of the Trial Court that there had been no valid and proper service and that therefore the ex parte decree should be set aside. The original Petitioner having died, his son was required to prosecute the proceeding and everything hinges around the aspect of the service. The original documents were taken out and the deceased Petitioner's son gave evidence and P.W. 1 was confronted with the postal acknowledgments

in respect of the alleged service. In the first of the suits, the son admitted that the signature was that of his father's. As far as the remaining suits were concerned the answer given by him was that the signature appeared to be that of his father. The Petitioner's learned Advocate had vehemently submitted that where there is a clear-cut admission by the son that the signature was that of the father in the first suit, that it was impossible for him to make any submissions but as far as the remaining four suits are concerned, that since the reply given was that the signature "appears" to be that of the father, that the onus of proving that there had been proper and valid service shifted to the Respondent-Bank. He submits that no such procedure was followed and that the Trial Court jumped to the conclusion that the service was valid in all the cases.

3. The learned Advocate submitted that there is a clear distinction in law between an unequivocal admission such as the one obtained in the first suit and an expression of doubt or a situation where a witness states on a visual comparison that the signature appears to be that of the person concerned. He submits that at the very highest, it would indicate the possibility of the signature being that of the deceased Petitioner but that it is only after this aspect is established with a degree of certainty that the Court would be justified in refusing to set aside the decree. As far as this submission goes, I am unable to accept it because one needs to take the totality of circumstances into account. Firstly, the suits were filed by a Nationalised Bank. Secondly by virtue of the admission in the first of the matters, it is very clear that the bank had taken out necessary summons on the deceased Petitioner who was one of the Defendants. There is a clear-cut admission that the notice was taken out on him and that he has signed for it. In one of the cases, there is an endorsement to the effect that the envelope has been refused. This is good service and it is impossible to accept the submission canvassed by the Petitioner's learned Advocate that merely because there is a postal endorsement of refusal, that further evidence was necessary to establish as to who refused the notice and that this ought to have come through an examination of the witness from the postal department. Where the Court notice has been despatched under registered acknowledgment due and the Postal Authorities in normal course endorsed that the addressee had refused the service, it is well-settled law that it is good service. That leaves us with the remaining three cases wherein the son has stated that the signature appears to be that of his father. Having regard to the fact that it is established that in the earlier two cases the notice was despatched to the Defendant concerned, it would be far-fetched to contend that no such notice was despatched. The notice having been despatched under registered acknowledgment due and an acknowledgment with a signature having come back, the presumption arises that it was served to the party to whom it was addressed. The mere fact that the son has given a evasive reply is not, to my mind, hundred percent conclusive to cast any doubt. I am conscious of the fact that the Petitioner's learned Advocate has vehemently submitted that there is a difference between a clear-cut admission and a situation where the witness states that the signature appears to be that of

his father. To my mind, when the witness has stated that the signature appears to be that of his father, a Court can safely rely on it because he has not disputed the signature and on a visual comparison of the signature where he states that it appears to be that of his father, the position that emerges is that the witness has virtually accepted the signature, as otherwise he would have denied it.

4. It is in this background, that the learned Trial Court has held that the decree is not liable to be set aside. No interference is called for as far as that order is concerned. The Petitioner's learned Advocate submitted that the Bank is disentitled from seeking to execute the decree against the surety without having exhausted all necessary efforts vis-a-vis the principal debtors from whom the loan was recoverable. The sequence in which the efforts for executing the decree are required to be undertaken is something within the jurisdiction of the executing Court and it is certainly open to the Petitioner to raise these points before that Court. That issue is not within the province of this Court and I do not propose to go into that aspect of the matter.

5. Having regard to the aforesaid position, these civil revision petitions fail and stand disposed of. Interim order, if any, to stand vacated.