
(1988) 07 MAD CK 0034
In the Madras High Court
Case No : C.R.P. No. 198 of 1988

K.R. Shankar Raj

APPELLANT

Vs

State Bank of India, Vellore Branch

RESPONDENT

Date of Decision : 20-07-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 1(2), Order 21 Rule 2(2), 47

Citation : AIR 1989 Mad 255 : (1988) 2 LW 441

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : K. Ramu, for the Appellant; R. Sreekrishnan, for the Respondent

Final Decision : Allowed

Judgement

Srinivasan, J.—The petitioner who was the defendant in O.S. 130 of 1984 filed an application out of which this revision arises, under Order XXI, Rule 2(2), CP.C. for recording full satisfaction of the decree made in the suit.

2. In the affidavit filed in support of the application, the petitioner has stated that he had paid a sum of Rs. 8,000 after decree in LA. 364 of 1987 and that was recorded on 27-4-1987, and again he had filed LA. 432 of 1987, and paid a sum of Rs. 1,500 towards the decree and that was recorded on 25-6-1987. Thereafter the petitioner deposited a sum of Rs. 33,916.38 in Court after giving notice to the plaintiffs advocate, which amount represented the entire balance due under the decree as on that date.

3. To this application for recording full satisfaction a counter was filed by the plaintiff in which it was stated that the plaintiff had filed an appeal against the decree of the trial Court, and therefore the trial Court could only record part satisfaction of the decree. The plaintiff also reserved its right to sue for the balance as soon as the appeal in the High Court is disposed of on merits.

4. The executing Court passed the following order-

"Heard. The decree-holder has taken the matter on appeal and the appeal is pending. The petitioner has not denied this fact. Pending judgment, in the appeal, full satisfaction for the decree cannot be done, since there is possibility of the decree being varied. Petition is dismissed".

The order passed by the Additional Subordinate Judge Vellore, to say the least, is wholly untenable and erroneous on the face of it. Just because an appeal against the decree is pending, at the instance of the plaintiff, it does not mean that the decree passed by the trial Court could not be satisfied by the defendant by payment or adjustment otherwise. It is not in dispute before me that the entire amount due under the decree passed by the trial Court had been discharged by payment and deposit, and therefore, there is no further amount due to the plaintiff under the decree passed by the trial Court. The plaintiff may be entitled to further amounts in the event of its success in the appeal filed by it against the decree. But that will not prevent the executing Court from recording the payments made by the defendant towards the decree passed by the trial Court. In fact an unconditional deposit of the amount decreed in Court will operate as a discharge of the decree.

5. Learned counsel for the respondents contends that the application for recording full satisfaction has been filed under Order XXI, Rule 2(2), CP.C. and that the said rule would not apply to the present case as this is not a case of payment outside Court or adjustment of the decree otherwise. No doubt the language of Rule 2(2) of Order XXI, CP.C. is to the effect that the judgment-debtor may inform the Court that money payable under the decree is paid out of Court or that the decree is otherwise adjusted. But Rule 2-A of Order XXI of the Code makes the position clear. Under Rule 2-A no payment or adjustment shall be recorded at the instance of the judgment-debtor unless the payment is made in the manner provided in Rule 1; or the payment or adjustment is proved by documentary evidence; or the payment or adjustment is admitted by or on behalf of, the decree-holder in his reply to the notice given under Sub-rule (2) of Rule 1, or before the Court. Rule 1 of Order XXI of the Code provides that all money payable under a decree shall be paid by deposit into Court, whose duty it is to execute the decree or by payment out of Court to the decree-holder, or otherwise as the Court which made the decree directs. Hence, the deposit of money into Court, pursuant to the decree, is one of the modes of payment recognised by Order XXI, Rule 1, C.P.C. If money is paid under the decree in accordance with Rule 1 of Order XXI of the Code by deposit into Court, that shall be recognised by the Court under Rule 2-A of Order XXI, CP.C. In this case, admittedly the entire balance due under the decree after the two payments made in the applications I. A. 341 of 1987 and 432 of 1987 had been deposited into Court by the defendant after giving notice to the plaintiffs advocate. Consequently, the Court was bound to record the payment under Rule 2-A of Order XXI, C.P.C. The Court below was wrong in dismissing the application taking the view that because an appeal was pending at the instance of the plaintiff, payments should not be recorded.

6. In the result the Civil Revision Petition is allowed. The order of the Court below is set aside and the learned Additional Subordinate Judge, Vellore, is directed to record the payments made by the petitioner herein towards the decree as the entire amount due under the decree passed by the trial Court has been paid. However, this will not in any way prejudice the claims made by the plaintiff in the appeal filed against the decree in O.S. 150 of 1984. In the circumstances, there will be no order as to costs.