
(1922) 11 MAD CK 0052
In the Madras High Court

Lagadapati Venkatarangabushanam

APPELLANT

Vs

Karella Ramaswamy

RESPONDENT

Date of Decision : 29-11-1922

Acts Referred:

Agency Rules, 1924 — Rule 24
Government of India Act, 1915 — Section 107

Citation : 73 Ind. Cas. 131 : (1923) 17 LW 375

Hon'ble Judges : Venkatasubba Rao, J; Spencer, J

Bench : Division Bench

Judgement

Spencer, J.—This is a petition u/s 107 of the Government of India Act requesting the High Court to interfere with an order passed in execution proceedings by the Assistant Agent, Badrachelam, directing a warrant to issue for the execution of a decree which the petitioner maintains to have been satisfied. The petitioner first applied to the Court of the Agency Commissioner, but his appeal was returned with the endorsement that no appeal lay from the Assistant Agent's order. Under Rule XXIV of the Agency Rules, the petitioner might have preferred a petition to Government against the Agency Commissioner's order, and if he had done so, and if the Government thought fit, they would have referred the petition to this Court. Instead of adopting that course, he has invoked the High Court's extraordinary power of superintendence.

2. In my opinion, this is not a fit; case for our exercise of those powers for the following reasons. Rule VIII provides an appeal to the Court of the Agency Commissioner against the decree of an Assistant Commissioner. The order of an Assistant Commissioner in execution proceedings is not a decree. *Sr Sri Sri Virkamadeo Maharajulam Garu v. Sri Neladevi Pattemadhadevi Garu* 26 M. 266 and *Lagadapati Venkatanagabushanam v. Ovilapati Mahalaxmi* 42 Ind. Cas. 535 : 34 M.L.J. 524 and there is no provision, in the Agency Rules for appeals against orders passed in execution or in miscellaneous proceedings, see the *Rani of Tuni v. Maharaja of Jeypore* 66 Ind. Cas. 115 : A.I.R(1922). (M). A remedy lies by way of potition under Rule XXIV against the order in execution of the Agency

Commissioner. See *Makaraja of Jeypors v. Sri Niladevi Pattmahadevi* 27 M. 109 : 13 M.L.J. 151. In that case there actually was an appeal from the Assistant Agent's order to the Agent; but the decision is not an authority for the proposition that such an appeal lies. It may be that, when these Rules were drawn up; the Government intentionally omitted to provide a light of appeal against orders of Assistant Commissioners in order to avoid encouraging litigation among the unsophisticated Agency peoples. If it was an unintentional oversight, it might be remedied by moving the Agency Commissioner under Rule XXV to make a reference to the Government as being a case not provided for by the Rules. In *Pedda Vikrama Deo Garu v. Maharaja of Jeypore* 36 Ind. Cas. 801 : 4 L.W. 499 : an opinion was expressed that the old Rule 31 (now Rule 24) was intended to provide for case for which no provision had been made, including orders against which no appeal was provided. It is unnecessary to say more, seeing that the petitioner before us has not adopted either of these courses. The Agency Commissioner was strictly correct in observing that no appeal lay to him, though it was unnecessary for him to return the appeal to the person presenting it.

3. Where the record of a case before the Court is so erroneous as to manifestly amount to an injustice, the Patna High Court in *Brindaban Ckander Choubey v. Gour Chandra Ray* 56 Ind. Cas. 155 : thought fit to exercise the powers of superintendence vested in them u/s 107 of the Government of India Act.

4. The present is not such an extreme case as to call for that unusual course. The Assistant Agent ordered the issue of a warrant, as the judgment-debtor's statement disclosed no valid reasons why it should not be issued. The judgment-debtor's statement contained an allegation that he had paid Rs. 4,052-2-0, which was all that was due under the decree in Original Suit No. 12 of 1914.

5. The statement was defective in that it did not give reasons to who why he was not liable for interest amounting to not liable for interest amounting to Rs. 1,399-14-9 claimed in the decree-holder's petition.

6. It now appears that after the money was paid into Court, it was prevented from being paid out through an injunction obtained in another suit (Original Suit No. 23, of 1918). The Assistant Commissioner did not appreciate the fact that payment into Court was a good legal discharge of the decree, if he "thought that the judgment-debtor was responsible for the decree-holder failing to realise the fruits of his decree and to get interest on the money paid into Court, his proceedings in allowing the decree-holder to claim interest for the period when the money lay in Court, may have been in accordance with the equities of the case. In any case, the decree-holder was entitled to recover the costs of the previous execution petition and the costs incurred in the High Court in the Civil Miscellaneous Petition on the decree of the Agent's Court.

7. The Assistant Agent's order should have dealt with the claims of the parties in the execution petition and should have adjusted the equities. It did not do so,

but I am unable to treat it as manifestly erroneous or unjust. We must, therefore, decline to interfere and dismiss this petition with costs.

Venkatasubba Rao, J.

8. The Assistant Agent of Bhadrachalam made an order allowing execution at the instance of the plaintiff. The defendant filed an appeal from this order to the Agency Commissioner, and the latter returned the appeal memorandum stating that no appeal lay to his Court from orders made by his subordinates in execution. The Agency Commissioner was right in the view that no appeal lay; to his Court. There is no provision in the Agency Rules for appeals against orders in execution. *Rani of Tuni v. Makaraja of Jeypore* 66 Ind. Cas. 115 : 16 L.W. 8 :

9. Rules 8, 9, 13 and 14 refer to decrees and not to orders, passed in execution or other orders of a miscellaneous character.

10. The Agency Commissioner having acted properly in returning the appeal memorandum, the defendant could not, preset, valid petition against the proceedings" of that officer under Rule 24. But under Rule 25 the petitioner should have requested the Agency Commissioner to make a reference to the Government as, in my opinion, the words "in all cases not provided for by the rules" are enough to cover a case of this kind. If the order in execution is one made by the Agency Commissioner himself under Rule 24, the aggrieved party may submit a petition to the Government who may refer it to the High Court. It, therefore, follows that orders in execution or other orders of a miscellaneous character, if passed by an Agency Commissioner, are not absolutely final, but they are liable to be revised by the High Court under Rule 24. Can it be said that orders of his subordinates of a similar character are entirely immune from interference by a higher authority? In my opinion, Rule 25 provides the remedy, and the defendant was entitled to ask the Agency Commissioner to make a reference to the Government under Rule 25.

11. Assuming, but not deciding, that the High Court can exercise its powers of superintendence to revise an order so erroneous ,as manifestly to amount to an injustice as held in *Brindaban Chander Choubey v. Gour Chandra Ray* 56 Ind. Cas 155. , I do not think that a case has been made out for our interference under that section.

12. On the 7th August 1918 the defendant filed a suit against the plaintiff and made an application for the issue of a temporary injunction to restrain the plaintiff from executing the decree in question, and on the 19th August the Assistant Agent passed an order in the following terms: "The injunction sought for will be issued if defendant: pays money into Court. Fifteen days time for payment." Having obtained this order, the defendant paid into Court the full amount of the decree on the 24th August 1918. On the 3rd September 19.18 he applied that the plaintiff should be restrained from receiving the amount that had been paid into Court and on the same date a temporary injunction was accordingly issued pending the disposal of the suit instituted by the defendant.

The temporary injunction was dissolved in 1920 when the suit filed by the defendant was finally dismissed. The defendant's present contention is that he is not liable to pay interest on the decree amount from the date he paid it into Court. The plaintiff's contention, on the other hand, is that the defendant made the payment after having first obtained the order-dated 19th August which practically operated to prevent the plaintiff from withdrawing the amount, from Court and that a payment made in such circumstances is not a valid payment. It must be observed that the defendant did not put forward his case properly before the Assistant Agent, who was not in a position in consequence to direct his mind to the appropriate issue which these rival contentions would raise. The summary disposal of the Assistant Agent may be accounted for by this fact. But, apart from the manner in which it has been disposed of, I am not prepared to say that the order manifestly unjust. The amount throughout lay in Court and carried no interest. The defendant's suit having been immediately dismissed it must be assumed that he was accountable for damages to the plaintiff in respect of the temporary injunction obtained by the defendant restraining the plaintiff from withdrawing the amount. In a proceeding properly instituted, the plaintiff would probably be entitled to damages and the measure of damages would be the interest which he lost and in this view the order of the Assistant Agent is equitable. I, therefore, agree that this petition should be dismissed with costs.