
(1993) 08 MAD CK 0065
In the Madras High Court
Case No : O.S.A. No. 85 of 1989

M. Balamam and another

APPELLANT

Vs

Bharat Overseas Bank

RESPONDENT

Date of Decision : 18-08-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 6, 151

Citation : (1993) 08 MAD CK 0065

Hon'ble Judges : S.M. Ali Mohamed, J;Mishra, J

Bench : Division Bench

Advocate : Y.K. Rajagopal, for the Appellant; M. Chidambaram, for the Respondent

Final Decision : Allowed

Judgement

Mishra, J.—This appeal is directed against an order passed in an interlocutory application, which has the effect of granting to the plaintiff a decree. The plaintiff/respondent has filed a money suit based on security of documents, (1) a promissory note for Rs. 50,000/- and (2) a letter of continuity in respect of the said promissory note. Soon after the presentation of the plaint, the plaintiff filed an application seeking appointment of a Receiver to take charge of certain hypothecated machineries and paper, the machineries being a printing press. The defendants/appellants responded to the said application by denying the allegation and disputing the claim of the plaintiff. Later, they also filed their written statement and stated that the plaint averments were not correct and that the suit claim was not true.

2. The trial court, however, had disposed of the application for the appointment of Receiver by an order stating the it is not proper to appoint a Receiver.

However, the Bank cannot wait for the realization of the amount indefinitely when there is no clear dispute about the amount due to the Bank. Consequently, the defendants are directed to deposit a sum of Rs. 5000/- every month with the

plaintiff-Bank commencing from March 1989. The first of such deposit shall be made on or before 10.3.1989 and every succeeding deposit should be made on or before 10.3.1989 of every succeeding month.

3. There can hardly be any objection to a plaintiff in a suit, even in a money suit applying for security and in default, of security, for attachment before judgment, for injunction or a direction to maintain a status quo with respect to the subject matter of the dispute or to ensure that the defendants by some acts pendent elite do not defeat the suit claim or asking for a Receiver to take a charge of the subject matter of the dispute in a suit. It is open to a Court to make one or the other order depending upon the facts of the case and the re quarrymen's of the case. It has, however never been in doubt that the Court should not make any order pendent elite, which has the effect of granting to the plaintiff the relief prayed for in the suit.

4. In a case in which a learned single Judge of this Court directed the sale of charged properties before framing of the issues and trial of the suit and appropriation of the sale price by the plaintiff Ranjani v. The Indian Bank, R. A. Puram Branch (O.S. Appeal No. 64 of 1993), (reported in 1993-2-L.W. 491) we have delivered a judgment on 5.8.1993 and said as follows:

It is indeed necessary to bear in mind that a plaint by which a suit is instituted is not a proof of the claim in itself. A plaintiff is required to annex a list of the documents, if any, or produce the same if not annexed to the plaint within such time as fixed by the Court or extended by it from time to time. A plaint can be rejected before summons are issued calling upon the defendant to file his written statement where it does not disclose a cause of action or there are certain other types of infirmity and if it is not rejected, then only summons notices are issued upon the defendants and they are called upon to present a written statement of their defence.

When, however, the written statement is filed by the defendant, the Court, at the first hearing of the suit, is required to ascertain from each party or his pleader whether he admits or denies such allegation of facts as are made in the plaint or in the written statement, if any, of the opposite party and as are not expressly or by necessary implication admitted or denied by the party against whom they are made and to record such admissions and denials. There can be a decree in favour of either party on such admission and if there is no such decree, the suit has to proceed in accordance with law first by framing of issues and thereafter providing opportunity to the parties to lead evidence. If, however, at the first hearing of a suit it is found that the parties are not at issue on any question of law or of fact the court may at once pronounce judgment. If otherwise the court will try to settle all issues of fact and law and pronounce the judgment accordingly on all issues except when the Court is of opinion that the case or any part thereof maybe disposed of on an issue of law only it may try that issue first, if that issue relates to,

(a) the jurisdiction of the Court; or

(b) a bar to the suit created by any law for the time being in force and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined and may deal with the suit in accordance with the decision on that issue-All assurance created by specific and clear provisions of law to safeguard the interests of all parties to a suit and to ensure that no party is subjected to any arbitrary, harsh or unfair order, however, is ignored when what has been a claim in the plaint is allowed to be achieved by way of an interlocutory application and by a summary order without any adjudication of the issues of fact and law. The judgments of this Court affricated have recognized the legally permissible extent of sale of any movable or immovable property which is the subject matter of the suit and also held what is intended to be a provision recognizing the inherent power of the Court to do certain things ex denote justice is controlled by such express and implied restrictions on its exercise which shall reaffirm the assurance aforementioned and not impinge. We reiterate, what has been said in the earlier Bench decision of this Court in the case of PL.C.T.S. Subramania Chettiar (1992-I-L.W.423) supra that Order 21, Rules 83 to 96 of the CPC are alone applicable for sale of immovable properties in execution of decrees except the provision as in Order 39, R. 6 C.P.C., and S. 151 of the Code does not confer a new power in the Court, but makes a statutory recognition of the inherent power of the Court to do certain things ex debit Justinian. Such a power is not to be exercised casually and if at all exercised with circumspection and not to violate any rule of law or equity. There can be no justification in, applying the powers of the inherent jurisdiction to introduce a new form of procedure, for which no provision is made by law

5. The above principle, in our opinion, is applicable on all fours to the facts of the instant case in which the trial Court has ordered for the payment each month of Rs. 5,000/- towards the claim of the plaintiff Bank thus granting to the plaintiff the relief in the suit.

6. The trial court shall be perfectly justified in passing an interim decree if any part of the case of the plaintiff has been accepted by the defendants, but an order directing payment by instalment in an interlocutory application for appointment of a Receiver to satisfy the plaintiffs claim on a finding that there is no dispute as to the certain sum payable to the plaintiff Bank is not justifiable. For the said reason, the impugned order is not sustainable in law.

7. We have, however, taken notice of the nature of the controversy between the parties to find that it will be appropriate to call upon the defendants to furnish security for the suit claim and in case such security is not furnished, to order for attachment of the properties hypothecated. It shall be open on the facts of this case to the plaintiff to matter appropriate application for security and attachment accordingly. In the result, the appeal is allowed. The judgment is set aside. In view of the facts and circumstances of this case, there shall be no order as to

costs.