

(1978) 10 MAD CK 0025

In the Madras High Court

Case No : Civil Revision Petition No. 1688 of 1977

M. Saraswathi Achi

APPELLANT

Vs

Chitralaya Pictures Pvt. Ltd.

RESPONDENT

Date of Decision : 23-10-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46, Order 21 Rule 46A, Order 21 Rule 46C, Order 4 Rule 1

Citation : (1979) ILR (Mad) 77

Hon'ble Judges : T. Ramaprasada Rao, C.J

Bench : Single Bench

Advocate : K. Shanmugam, P. Murugaiyan, A.S.A. Tajudeen and R.S. Ramalingam, for the Appellant; N.S. Varadachari, T.V. Ramanujam and C.P. Pattabiraman, for the Respondent

Final Decision : Allowed

Judgement

T. Ramaprasada Rao, C.J.—This is yet another instance to show how a Judge in the City Civil Court, Madras acts and how he understands the provisions of the Code of Civil Procedure. Elementary principles as to what is an issue and what has to be done when the Legislature mandates a Court to determine an issue have not been borne in mind by this Judge. A petition for attachment of certain moneys in the hands of the Respondent as garnishee was taken in the year 1972. That was in Execution Petition No. 365 of 1972. Then the garnishee Respondent did not file any counter-affidavit denying that it had no amount belonging to the judgment-debtor in its hands. Thereafter the order was made absolute on 15th March, 1972. In spite of the fact that such an order, which was an order which could be passed by a competent Court, was passed and remained unchallenged for nearly a year thereafter, the garnishee did not take any step to comply with the order passed against it. This, therefore necessitated the decree-holder to file the present petition, Execution Petition No. 2012 of 1972 on the file of the City Civil Court Madras, for a direction to the garnishee to bring the amount, already attached in Execution Petition No. 365 of 1972 and said to be

with it, but belonging to the judgment-debtors to Court, It is necessary at this stage to state that there was a direction by this Court on an earlier occasion in the very same proceedings wherein it was made clear that, if the garnishee disputes the liability, an enquiry as contemplated under Order XXI, Rule 46-C CPC has to be held by the executing Court. When a petition, as already stated, to bring the amount to Court after the order for attachment of the moneys in the hands of the garnishee had become final, was filed, the garnishee filed, exhibits R-1 and R-2 and did not plead otherwise excepting through affidavits filed by it. Exhibit R-1 is an agreement between the garnishee and the judgment-debtor. Exhibit R-2 is a self-serving statement of account prepared by the garnishee to show that on the date when it was called upon to bring the amount as required in the present petition, Execution Petition No. 2012 of 1972, it had no moneys with it. Exhibit R-2, gained acceptance with the Court below, who characterized the said document as clinching in establishing that no amount was available with the garnishee as if belonging to the judgment-debtor. On that basis, the lower Court thought that no question of sending for any amount as, if due by the garnishee to the judgment-debtor would arise and it dismissed the present Execution Petition also. It is against that the present civil revision petition has been filed.

2. Mr. Shanmugham, the learned Counsel for the Petitioner After inviting my attention to the scope and content of Order XXI, Rule 46-C CPC says that there was no adjudication on the issue whether any amount was due by the garnishee to the judgment-debtor and that issue which is a relevant issue, which has to be enquired into under the prescribed norms as set out in Order XXI Rule 46-C CPC has not been attempted by the Court below.

3. He, therefore, complains that the order suffers from a material irregularity. Mr. Varadachari, on the other hand appearing for the Respondent would still rely upon exhibit R-2. According to him, account books in support of exhibit R-2 were available on the date when the matter was enquired into by the Court below. What prevented the garnishee to speak about the correctness of the self-serving statement exhibit R-2 is not clear. The question is whether the Court has discharged its legal duty as contemplated under Order XXI Rule 46-C Code of Civil Procedure.

4. It is only by an Amendment by amending Act CIV of 1976, Sub-rules 46-A to 46-1 were introduced and made part of the Code of Civil Procedure. Rule 46 of Order XXI in the main runs as follows:

Trial of disputed questions:--Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit and upon the determination of such issue shall make such order or orders as it deems fit:

Provided that, if the debt in respect of which the application under Rule 46-A is made in respect of a sum of money beyond the pecuniary jurisdiction of the

Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge, shall deal with it in the same manner as if the case had been originally instituted in that Court.

No doubt, the Madras Amendment is to the following effect:

If the garnishee disputes his liability or its extent, the Court may decide the dispute and, thereafter direct the garnishee within such time as it may allow to pay into Court such sum as it has found to be due from him or so much thereof as may be sufficient to satisfy the decree and the costs of the execution proceedings:

Provided that where the garnishee admits his liability but disputes its extent and the decree-holder does not seek to recover from the garnishee any sum in excess of what he admits is due from him, the Court shall not be bound to decide the dispute and may direct the garnishee to pay such sum or so much thereof as is sufficient to satisfy the decree and the costs of the execution proceedings.

5. There is no guide-line prescribed in the rules framed in our Court as to the manner in which a dispute as between a garnishee and a decree-holder, in case the garnishee disputes his liability, has to be decided excepting for a broad statement and a direction under Madras Rule 46-C which says that:

If the garnishee disputes his liability or its extent the court may decide the dispute and, thereafter, direct, the garnishee within such time as it may allow to pay into Court such sum as it has found to be due from him....

6. The question is whether by our Court adopting the language as it stands which does not quite fit in with the language deployed by the Parliament when it introduced Order XXI Rule 46-C, the procedure which is contemplated or intended under Order XXI, Rule 46-C in the main Code can be given the go-by by a bare enquiry on affidavits or a decision rendered on evidence which is not acceptable. The Madras Amendment contemplates that the Court should decide the dispute, if the garnishee disputes his liability or its extent. The Parliament prescribes that where the garnishee disputes a liability, the Court may order that any issue or question necessary for the determination of the liability shall be, tried as if it were an issue in a suit and upon the determination of such issue shall make such order or orders as it deems fit. The compendious manner in which our Court has amended Order XXI, Rule 46-C CPC cannot be misunderstood as if this Court wanted to depart from the real intention, purpose and meaning of Order XXI, Rule 46-C. Presumably, the amendment in our Court was made on the foot that making a decision in a dispute would obviously enfold with in its compass a decision on the issue between the parties, Issue as defined in Order, IV, Rule 1 CPC arises when a material proposition of fact is affirmed by the one party and denied by the other. Even so, a decision on a disputed liability would arise under similar circumstances. In my view, therefore, the non-adoption

of the language into to by our Court while amending Order XXI Rule 46-C does not mean that an issue need not be framed in such circumstances when the garnishee disputes his liability or its extent and that the Court is enabled automatically to decide without evidence the alleged dispute and more so be satisfied with self-serving evidence. If at least acceptable materials, may be in the shape of affidavits, have gone into the records, then that might form the foundation for a decision in certain circumstances. But in the instant case what prompted the court below to accept the garnishee's story was a self-serving statement exhibit R-2 filed by the garnishee to prove that it was not liable to pay any amount to the judgment-debtor. We have already referred to the fact that the final order was made compelling the garnishee to respect an order of Court even as early as 15th March, 1972. The garnishee was, therefore, under a legal obligation to comply with such an order of a competent Court. We have already seen that the garnishee did not even file a counter affidavit questioning the request of the decree-holder who sought for an attachment of certain moneys in its hands as if such moneys belonged to the judgment-debtor. It was only at the time when the garnishee was asked to deposit the amount which it was bound to do under the earlier orders of Court that it came forward with a statement of account prepared by it under exhibit R-2 for which there was no attempt of corroboration by acceptable materials such as account books kept in the regular course of business. The bare statement of account was characterized by the learned City Civil Judge as clinching establishing that no amount was available with the garnishee as belonging to the judgment-debtor. We would characterize that piece of evidence which is certainly not admissible in law as specific evidence on record to establish that no amount is available with the garnishee. This supposition not only suffers from the defect that it is a misapprehension, but it also proves as to how the learned City Civil Judge did not even refer to or apply his mind to the provisions of law concerned and also bear in mind the elementary principle that self-serving statement-filed by a litigant cannot by itself be clinching evidence or specific evidence. In fact, it is not evidence at all under any provision of the Evidence Act unless it has been proved in a manner known to law by corroborative evidence which evidence also has to satisfy the test of acceptability under the provisions of the Evidence Act. This not having been done, I am of the view that no decision as contemplated under Order XXI, Rule 46-C within the meaning of the Madras amendment and certainly not a decision on an issue within the meaning of Order XXI Rule, 46-C of the main Code has been rendered by the Court below.

7. The order, therefore, is set aside, the Civil Revision Petition is allowed and the matter is remitted back to the file of the City Civil Court Madras for an enquiry. The learned City Civil Judge shall enquire into this in November, 1978 and report to this Court about its disposal by the end of November, 1978.