
(1979) 10 MAD CK 0008
In the Madras High Court

M. Veluchamy Gounder and Another

APPELLANT

Vs

K. Mani

RESPONDENT

Date of Decision : 16-10-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 145

Citation : (1980) ILR (Mad) 468 : (1980) 93 LW 569 : (1980) 1 MLJ 512

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Judgement

S. Mohan, J.—The revision arises under the following circumstances:

2. The respondent/decreed holder filed E.A. No. 258 of 1978 in E.P.No. 152 of 1978 in OS. No. 172 of 1977 u/s 145 of the Code of Civil

Procedure, to direct the revision petitioners to produce the attached movables, which are in their custody, failing which necessary orders may be

passed permitting the decree holder to proceed against the revision petitioners/sureties.

3. The said suit was originally dismissed for default on 6th December, 1977 Later, the order of dismissal was set aside and the suit was restored to

file and the suit was decreed ex parte on 28th March, 1978. The movable properties of the judgment-debtor were attached before judgment on

30th of September, 1977, as evidenced by Exhibits A-1 to A-3 and A-7, since the defendant did not furnish security.

4. The 1st petitioner herein took possession of the movables attached before judgment and petitioners 1 and 2 executed surety bonds as

evidenced by Exhibits A-5 and A-6 for the satisfaction of the suit amount. The judgment-debtor contested the attachment and after contest, the

attachment was made absolute on 12th December, 1977. The decree holder levied execution against the judgment-debtor by way of arrest in

E.P.No. 79 of 1978 and arrest was ordered and the defendant/judgment-debtor filed I.P. No. 12 of 1978 on 22nd September, 1978 and asked

for interim protection. The same was ordered and the Execution Petition was closed. Thereafter, the application against the sureties for the same

relief was filed. It was contended on behalf of the sureties that inasmuch as the suit was dismissed for default on 6th December, 1977, the

attachment ceased and consequent to the cessation of that attachment, their liability to produce the movables as undertaken in terms of Exhibits A-

5 and A-6 also ceased. Therefore, the application by the decree-holder was liable to be dismissed.

5. The learned Subordinate Judge of Udumalpet overruled this objection and granted permission to proceed against the present petitioners, who

stood sureties for the production of the movables under Exhibits A-5 and A-6 for the realisation of the decree-debt. It is under these

circumstances, the present revision has been preferred.

6. It is urged by the learned Counsel for the petitioners that having regard to the terms of Order 38, Rule 11(A)(2), once the suit was dismissed

for default on 6th December, 1977, the attachment ceased and therefore, the liability to produce the movables equally ceased. That being the

position, the Court below erred in according permission to the decree-holder to proceed against the revision petitioners based on the terms of the

suretyship as evidenced by Exhibits A-5 and A-6. The suretyship lasted only as long as the attachment lasted and not afterwards. The effect of the

order under revision would be to enable the decree-holder to realise the decree amount from persons, who were not the judgment-debtors. Nor is

there anything to suggest under Exhibits A-5 and A-6 that the revision petitioners undertook to pay off the decree amount. As against this, the

learned Counsel for the respondent would urge that notwithstanding the cessation of the attachment by the dismissal of the suit on 6th December,

1977, yet inasmuch as the sureties were to satisfy the decree, the order under revision must be held to be correct.

7. In order to appreciate the point involved I may extract Order 38, Rule 11(A)(2) which is to the following effect:

(2) An attachment made before judgment in a suit which is dismissed for default shall not become revived merely by reason of the fact that the

order for the dismissal of the suit for default has been set aside and the suit has been restored.

The corresponding form is Form No. 6, which deals with the security for property; that also may be extracted:

Security for the production of property... Whereas at the instance of... the plaintiff in the above suit... the defendant has been directed by the Court

to furnish security in the sum of Rs... to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed;

Therefore, I... have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall

produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such

portion thereof as may be sufficient to satisfy the decree; and in default of his so doing I bind myself, my heirs and executors, to pay to the said

Court, at its order, the said sum of Rs... or such sum not exceeding the said sum as the said Court may adjudge.

Schedule...

Therefore, the sureties under Exhibits A-5 and A-6 were only burdened with the obligation to produce the movables and if the movables are not

so produced, to pay the sum as ordered by the Court. This cannot by any means have the effect of satisfying the liability under the decree of the

judgment-debtor. Once in terms of the Order 38, Rule 11(A) Sub-rule (2) the attachment ceased, the liability to produce the movables also

ceased and the payment of the sum in the alternative, as contemplated in Form No. 6 also would come to an end. Therefore, the Court erred in

granting permission to the decree-holder to proceed against the revision petitioners, who were merely the sureties for the production of the

movables pursuant to the order of attachment before judgment. It may be stated that they did not in any manner undertake to discharge the liability

of the judgment-debtor under the decree. That is virtually what the Court below has done. Therefore I set aside the order under revision. The Civil

Revision Petition is accordingly allowed. There will be no order as to costs.