
(1942) 09 MAD CK 0024
In the Madras High Court

Mahalakshmi Ammal and Others

APPELLANT

Vs

Subramania Chettiar and Another

RESPONDENT

Date of Decision : 17-09-1942

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 57

Citation : AIR 1944 Mad 43 : (1943) 56 LW 562 : (1943) 2 MLJ 513

Hon'ble Judges : Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Aiyar, J.—The appellants were the decree-holders in O.S. No. 41 of 1925 on the file of the Court of the Subordinate Judge of Cuddalore. Their execution petition was dismissed by the lower appellate Court on the ground that it was barred by limitation. The decree in this case was passed on 28th March, 1933. The first application for execution was filed on the 28th June, 1933. The judgment-debtor was committed to jail under an order passed on 8th July, 1933. A second application was filed on the 4th July, 1936. It was returned for amending some of the entries therein on the 8th July, 1936, but was re-presented on the 30th July, 1936, with a prayer that the delay in re-presentaion may be excused and praying for ten days more to comply with the requirements. The delay was excused and the time was granted. It was re-presented on the 10th August, 1936, and it had to be returned again as some of the defects pointed out were not rectified and ten days more was granted on the 18th August, 1936. On the 26th August, 1936, the defects were rectified but the petition was presented with an endorsement that it was not pressed and that the petition may be dismissed for the present. On the 28th August, 1936, the learned Subordinate Judge passed an order " rejected ". The application out of which this appeal arises was the petition filed on 26th August, 1939. It was contended for the judgment-debtor that the petition was barred by limitation inasmuch as the previous petition had been rejected on the ground that it was not pressed and without being numbered.

2. The first Court held that the requirements had been complied with, that there were no defects, that it was only a case of default in prosecution of the application, that therefore there was a final order on a petition filed in accordance with law passed on the 28th August, 1936, on the previous application and that therefore this petition was in time. The learned District Judge on appeal held that the petition was not in time inasmuch as the previous application had been rejected without being numbered or admitted.

3. The learned District Judge appears to have dealt with several applications of a similar character in which the orders passed on previously filed re-presented applications were claimed to be the fresh starting points of limitation and he has written a judgment in one of them and has referred in the judgment appealed against to that order as containing the reasons for his decision. He relies there on the decisions in *Sathappa Chettiar v. Chockalingam Chettiar* (1940) M.W.N. 69 T.S.P.L.P. *Chidambaram Chettiar Vs. Murugesam Pillai and Others*, , and *G.R. Naidu and Others Vs. Yerramsetti Venkataswami Naidu*, for the conclusion arrived at by him. He seems to be of opinion that these decisions support his view that when a petition is not numbered and is rejected, the order of rejection cannot be taken to be a final order passed on an application filed in accordance with law and cannot furnish a fresh starting point of limitation. In this case, as already pointed out: above, the defects pointed out in the original application were rectified and the petition was dismissed not because of any defects in the petition as amended. As the petitioner did not press the application it was dismissed for default of prosecution. It is true that it was not registered and admitted by its being given a number.

4. The decision in *Sathappa Chettiar v. Chockalingam Chettiar* (1940) M.W.N. 69 has no application to the facts of this case. There their Lordships had to consider the effect of an order on an execution petition which was rejected without being registered on the attachment effected at the instance of the decree-holder prior to the filing of that petition. The question was whether under Order 21, Rule 57, Civil Procedure Code, the dismissal of the petition terminated the attachment. It was found by this Court that as the requirements of Order 21, Rules 10 to 14 were not complied with the petition was dismissed and His Lordship Justice Varadachariar referred to the rejection under Order 21, Rule 17, as indicating that it was not a petition filed in accordance with law. As a matter of fact it was found that several of the requirements of Order 21, Rules 10 to 14 were not complied with and the order of rejection was therefore considered to be an order passed on a petition which was not in accordance with law and hence the dismissal would not terminate the attachment. It cannot be taken to be an authority for the position that an order on a petition which was not numbered even though it be final in the sense that the Court cannot grant any further relief on that petition after the passing of that order, cannot amount to a final order on a petition filed in accordance with law for the purpose of Article 182, Clause (5), of the Limitation Act. In that particular case it was definitely held that it was not an order passed on a petition filed in accordance with law.

5. The other cases relied on by the learned District Judge are all cases in which the order relied upon was an order of return and not any other final order by the Court apart from the order of return.

6. In these circumstances, I do not think the fact that the petition was not numbered or registered is a circumstance from which it could be held that the petition was not one filed in accordance with law. The order admitting the petition or directing it to be registered is an order to be passed after the filing of the petition. If the petition was one in accordance with law when it was presented, the fact that it was not registered cannot make it one not in accordance with law. But if the order of rejection was based on the fact that it was not one in accordance with law by reason of non-compliance with "the provisions of Order 21, Rules 10 to 14, Civil Procedure Code, then the petition would be not in accordance with law not merely because of the order but because it had not complied with the requirements of the law. The order is only an evidence of the fact that the petition was not one in accordance with law. In the order in question in this case it is not stated that the petition was dismissed because it was considered to be not in accordance with law. There is the positive fact that the defects pointed out had been remedied when the petition was re-presented, the petition was dismissed because the decree-holder did not want to prosecute the application and wanted the Court to dismiss it. In these circumstances, I find that the decisions relied on by the learned District Judge have no application to the facts of this case and that in this case the appellants had complied with all the requirements of law and the order dismissing it though it is one for default of prosecution is a valid final order contemplated by Article 182(5) of the Indian Limitation Act. Vide *Chidambara Nadar v. Rama Nadar* (1940) M.W.N. 69.

7. In the result, the order of the lower appellate Court is set aside and the execution petition is remanded to the first Court, namely, the Court of the Subordinate Judge of Cuddalore, for being proceeded with inasmuch as it is not barred by limitation. The first respondent will pay the costs of the appellants both here and in the lower appellate Court. Leave refused.