
(1961) 05 MAD CK 0001
In the Madras High Court

Malli Selva Iyer

APPELLANT

Vs

The Madurai Mercantile Bank, Ltd. and Another

RESPONDENT

Date of Decision : 05-05-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63

Citation : (1961) 74 LW 698 : (1962) 1 MLJ 251

Hon'ble Judges : Ramachandra Iyer, J; Ramachandra Aiyar, J

Bench : Division Bench

Judgement

Ramachandra Iyer, J.—These revision petitions arise from the orders of the Subordinate Judge of Madurai in E.A. Nos. 890 and 915 of

1956 rejecting two petitions filed under Order 21, Rule 58 of the CPC to raise the attachment before judgment effected on the property in the suit

and in the petitions. In O.S. No. 76 of 1949 on the file of the Sub-Court, Madurai. The Madurai Mercantile Bank, Ltd., obtained a decree for a

large sum of money against one Rajagopala Iyer. Immediately after the filing of the suit the bank obtained an order for attachment before judgment

of certain properties belonging to the debtor. Subsequently the bank was faced with financial difficulties. In O.P. No. 126 of 1953 the bank was

directed to be wound-up, by an order of this Court, dated 22nd July, 1953.

2. The Official Liquidator who thereafter took charge of the assets of the bank filed E.P. No. 71 of 1956 in Sub-Court, Madurai, for execution of

the decree in O.S. No. 76 of 1949. The petitioners claiming that they had acquired title to the property attached in a Court-sale in execution of a

mortgage decree obtained against Rajagopala Iyer filed applications in the Executing Court for raising attachment on the ground that they were

entitled to possession of the properties in their own right. The claims were resisted by the Official Liquidator of the bank inter alia on the ground

that the petitions filed under Order 21, Rule 58, CPC could not be entertained by the Executing Court by reason of Section 45-B of the Banking

Companies Act (X of 1949) as only the High Court would have jurisdiction to entertain all claims against a bank in liquidation. That objection

found favour with the learned Subordinate judge. The claimants challenge the correctness of the view taken by the lower Court in these petitions.

3. The question raised depends on a proper construction of Section 45-B of the Banking Companies Act which runs as follows:

The High Court shall have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up

or any application made u/s 391 of the Companies Act, 1956 (I of 1956) by or in respect of a banking company or any question of priorities or

any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding-up of a banking company, whether

such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for the winding-up of

the banking company or before or after the commencement of the Banking Companies (Amendment) Act, 1953.

The Section provides that the High Court should have exclusive jurisdiction to entertain and decide any claim made by or against the banking

company. It is contended for the petitioners that a claim made to the property attached in execution of the decree in favour of the banking

company which is under liquidation cannot be held to be one against the banking company as its assets have not in any way been affected thereby.

4. The argument is that the bank being merely an attaching decree-holder would have no interest in the property attached and therefore a claim

made in respect of the property would not be one by or against the banking company. In *V.R. Shenoy v. K.R. Raghunatha Shenoy* (1959) 72

L.W. 199 one of us had to consider the question whether Section 45-B of the Banking Companies Act would give jurisdiction to the Court in

control of liquidation proceedings over matters other than those affecting the realisation and disposal of the assets held by the bank. That question

was answered in the negative. But a claim to a property attached in execution of the decree obtained by the bank cannot be said to belong to that

category of cases. It would, on the contrary, be a claim arising in the course of winding-up of the company affecting as it would do the realisation of assets held by the bank.

5. It was next contended that a claim petition filed under Order 21, Rule 58, Civil Procedure Code, would not amount to a legal proceeding and

that therefore the provisions of Section 45-B would not apply to the case. Reliance was placed for the position on the observations of Raghava

Rao, J., in *The Palghat Wariar Bank Ltd. Vs. Mundan Kandath Purakkal Ramaswamy's son, Padmanabhan and Another*, where the learned

Judge while considering whether leave of the Court, u/s 171 of the Indian Companies Act was necessary for the filing of a claim petition against an

attachment effected in execution of a decree in favour of the bank in liquidation held that such a petition not being a legal proceeding would not

require the previous permission of the Company Court. Section 171 of the Companies Act. provides that no legal proceedings shall commence

against a company except by leave of Court and that too subject to such conditions as the Court may deem fit to impose. Section 45-B of the

Banking Companies Act is couched in wider terms than Section 171 of the Companies Act. In *Dhirendra Chandra Pal Vs. Associated Bank of*

Tripura Ltd. (In Liquidation), , it was held that Section 45-B was not confined to claims for recovery of money or property alone but would

comprise all sorts of claims which relate to or arise in the course of the winding-up. In *Shri Ram Narain Vs. The Simla Banking and Industrial Co.*

Limited, , the Supreme Court adverted to the wide terms of Section 45-B of the Banking Companies Act and held that proceedings taken to

execute a decree obtained by a creditor of the bank and all incidental matters arising therefrom like attachment, etc., would fall within the exclusive

jurisdiction of the Court in charge of the winding-up of the banking company. It therefore becomes necessary to consider the nature of the claim

proceedings; whether it can be said to amount to a proceeding taken by Or against the bank, or whether it is one merely by way of defence to or

incidental to a proceeding taken by the bank. In *Hemanta Coomer v. M.C. Ckkravarthy* ILR (1952) Cal. 732, the Calcutta High Court held that

a claim made under Order 21, Rule 58, Civil Procedure Code, by a liquidator of a banking company was one arising in the course of winding-up

of the company. In that case a decree was passed and execution was levied by a creditor of the bank in the Court of Alipur. The company came forward with a claim to the properties that were attached in that case. A day after the claim petition was filed, proceedings for the winding-up of the company were taken and a winding-up order followed. The liquidator duly impleaded himself as a party to the claim petition filed at the instance of the bank. The Executing Court held that the claim petition could be entertained only by the High Court and therefore transferred it to the High Court. It was held that the Executing Court had no power to transfer the claim petition. There is nothing however, in that decision which would support the contention of the respondents that objection to an attachment effected at the instance of a banking company could not be entertained by the Court which effected the attachment but could be so done only by the High Court. The contention of the respondent, if accepted, would lead to the anomaly that while the attachment is made by one Court, where such Court is not the High Court, the claim petition has to be decided only by the High Court. While it may be conceded that the claim petition is one that arises in the course of the winding-up of the company it cannot be held that it is a petition filed on the initiative of the claimant. The claimant is obliged to file a petition only because the decree-holder has attached his property. It is not disputed that if there is an objection to the attachment directed by the Executing Court it will be open to the judgment-debtor to raise his objections to the attachment in that Court itself. A claim petition is in substance only an objection to the attachment at the instance of a Third Party. There is no reason why there should be a difference between a case of a judgment-debtor objecting to the attachment and a case of a Third Party doing so. Order 21, Rule 58, Civil Procedure Code, in terms confers jurisdiction only on the Executing Court. The object of the provision is to have a summary and speedy disposal of objections to the execution. The claim petition itself would be entertainable only when there is an attachment subsisting. A decision given on a claim petition is of a summary nature concerning the question of possession alone. That decision is subject to the result of a suit under Order 21, Rule 63, Civil Procedure Code. Statutory finality of the decision under Order 21, Rule 63, Civil Procedure Code, itself applies only to claims under the decree in execution of which an attachment was effected

and would not apply to matters arising in execution of other decrees against the same judgment-debtor. Vide *Kandadai Narasimhachariar Vs.*

Raghava Padayachi, . It would be apparent from the nature of the claim petition that in essence it is only a defence to a proceeding already taken

by the decree holder. It is one made during the subsistence of the attachment. Where the company is able to execute the decree in a Subordinate

Court either by obtaining transfer of the decree from the High Court or otherwise it should on principle be held that the claim petition should be

entertainable by that Court.

6. In our opinion, the true position is as it has been stated by *Raghava Rao, J.*, in *The Palghat Wariar Bank Ltd. Vs. Mundan Kandath Purakkal*

Ramaswamy's son, Padmanabhan and Another, , where the learned Judge held that claim proceedings were merely incidental to the main

execution proceedings and if execution proceedings were entertained by a Court other than the Company Court the claim proceedings should also

be capable of being entertained by that Court. Where, however, the claim petition has been disposed of and a suit has been filed under Order 21,

Rule 63, Civil Procedure Code, different considerations will arise. Such a case would not be by way of defence or one merely incidental to

proceedings already started by or against the banking company but would be an independent one. Section 45-B will apply to the case - it was so

held by one of us in Application No. 435 of 1958 in O.P. No. 192 of 1947. We are, therefore, of opinion that the view taken by the learned

Subordinate Judge cannot be sustained. The Civil Revision Petitions succeed and are allowed. The execution petitions will be remanded to the

lower Court and the claim petitions will be disposed of in accordance with law. No order as to costs.