

(2008) 02 KL CK 0042
In the High Court Of Kerala
Case No : C.R.P. No. 661 of 2005

Manoj Pandarakalathil

APPELLANT

Vs

Kollamthodi Narayanan

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 5, Order 21 Rule 6, Order 21 Rule 7, 141, 144
Constitution of India, 1950 — Article 226, 227
Contempt of Courts (High Court of Kerala) Rules, 1971 — Rule 19, 2, 28, 29, 30
Kerala High Court Rules, 1971 — Rule 145, 146, 147, 148, 149

Citation : AIR 2008 Ker 132 : (2008) 1 ILR (Ker) 650

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : T. Krishnan Unni, for the Appellant; P.K. Suresh Kumar and K.P. Sudheer, for the Respondent

Judgement

K.T. Sankaran, J.—The question involved in this Revision is whether an order for costs passed by the High Court in a Writ Petition can be executed by filing an Execution Petition in the civil Court.

2. The revision petitioner, a cable T.V. Operator, was the respondent in a petition filed by the respondent before the District Consumer Disputes Redressal Forum alleging deficiency in service. The District Forum passed an order directing the revision petitioner to deposit Rs. 1,400/- and certain other amounts. The revision petitioner challenged the order passed by the District Forum in appeal before the Consumer Disputes State Commission. As the petitioner did not get an interim order of stay, he moved the High Court in W.P. (C) No. 24112 of 2003. The High Court dismissed the Writ Petition with costs by the judgment dated 3-6-2004. The office of the High Court certified the costs.

3. The respondent herein filed an Execution Petition before the Court of the Munsiff of Parappanangadi for execution of the aforesaid order to pay costs, passed by the High Court in the Writ Petition. The prayer in the Execution Petition

was to realise the amount by arrest and detention of the revision petitioner in civil prison. The revision petitioner resisted the Execution Petition and contended that the petition is not maintainable in law and that he has no means to pay the amount sought to be realised. Though it was contended that the Execution Petition was not maintainable, the revision petitioner had not stated on what ground it was not maintainable and apparently no arguments were advanced before the executing Court in that regard.

4. The learned Munsiff held that the revision petitioner has means to pay the amount of costs and that he has refused and neglected to pay the amount to the respondent herein. Accordingly, the Execution Petition was allowed finding that the revision petitioner is liable to be detained in civil prison. The executing Court granted fifteen days" time to the petitioner to pay the amount. The order passed by the Munsiff s Court in the Execution Petition is under challenge in this Revision.

5. Learned Counsel for the revision petitioner submitted that the order directing payment of costs in the Writ Petition does not amount to a "decree" or "order" capable of being executed before the civil Court. Learned Counsel for the respondent supported the order passed by the executing Court and contended that all Subordinate Courts are bound to honour the order passed by the High Court. He submitted that the revision petitioner is bound to honour the order to pay costs and, therefore, he cannot be heard to contend that the civil Court has no jurisdiction to execute the order to pay costs.

6. Chapter XI of the "Rules of the High Court of Kerala, 1971" (hereinafter referred to as the "High Court Rules"), captioned as "Proceedings under Articles 226 and 227 of the Constitution" consists of Rules 145 to 163. Rule 157 of the Kerala High Court Rules provides for cost and security. The rule reads as follows:

157. Cost and security:--(1) In all proceedings to which these rules apply, and in appeals therefrom, the Court may make such order as to costs and security as it may consider just and necessary.

(2) Where costs are awarded to a party, such costs may include the court-fees paid on the petition and other documents under these rules, the cost of making copies of the petition, affidavit etc. which are furnished to the Court and which by these rules are required to be served on the opposite party or parties, the cost of the paper book and the advocate's fees allowed by the Court.

Chapter XI of the High Court Rules does not provide for any mode in which the order for payment of costs shall be executed.

7. Rule 19(iii) of the "Contempt of Courts (High Court of Kerala) Rules under the Contempt of Courts Act, 1971" provides that the costs awarded in the proceedings to which the Rules relate shall be recovered as if it were a fine imposed under the "Code". As per the definition clause in Rule 2, "Code" means the Code of Criminal Procedure for the time being in force in the State of Kerala. A rule like Rule 19(iii) of the Contempt of Court Rules is specifically absent in the

Kerala High Court Rules.

8. The question which arises for consideration is whether an order in a Writ Petition amounts to a "decree" or "order" as defined in the Code of Civil Procedure. If it were such a decree or order, it could be executed in the manner provided in the Code of Civil Procedure. "Decree" is defined in the CPC thus:

(2) "decree", means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation:--A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

Section 2(14) of the CPC as defines "order" as under "Order" means the formal expression of any decision of a civil Court which is not a "decree". To be an "order" within the meaning of Section 2(14), it must be passed by a Civil Court. Section 141 of the CPC states that the procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. The explanation to Section 141 provides that the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution. In view of the definition of "decree" and "order" and the explanation to Section 141 of the Code of Civil Procedure, it cannot be said that an order passed in a Writ Petition under Article 226 of the Constitution of India is a "decree" or "order" within the meaning of the Code of Civil Procedure. In Charanlal Vs. Shri Lal Bahadur Shastri Harijan Samuhik Krishi Sahakari Sanstha (Samiti) Saliya Barodi, , the Madhya Pradesh High Court held that an order in a Writ Petition cannot be regarded as a decree or an order capable of being executed by the Civil Court. In that case the order passed in a Writ Petition was sought to be executed before the Civil Court and a prayer was made for issuance of a warrant for delivery of possession of the land. The Court passed an order for issuance of warrant of possession and it was executed. Thereafter, an application was filed by the respondent therein before the executing Court stating that the proceedings were null and void. In that context, it was held by the Madhya Pradesh High Court in paragraph 7 of the Judgment as follows:

7. However, admittedly, no decree in civil suit instituted by the non-applicant was ever passed in any suit. Order passed by this Court in its extraordinary jurisdiction vested under Article 226 of the Constitution of India cannot be deemed to be a "decree" or an "order" falling u/s 36 and/or 38, Civil P. C.

Further, in paragraph 9, it was held:

So far as rules for proceedings under Article 226 of the Constitution of India are concerned, only the Rules 28, 29, 30, 31 and 32 talk of executability of an order relating to costs, that too in manner prescribed thereby. Here no costs have been awarded.

I am of the view that Charanlal Vs. Shri Lal Bahadur Shastri Harijan Samuhik Krishi Sahakari Sanstha (Samiti) Saliya Barodi, is not, as such applicable here, as specific Rules are available in Madhya Pradesh for execution of an order for costs passed in a writ petition.

9. In the case of a decree, it may be executed either by the Court which passed it, or by the Court to which it is sent for execution, as provided u/s 38 of the Code of Civil Procedure. Section 36 of the CPC provides that the provisions of the Code relating to the execution of decrees shall so far as they are applicable be deemed to apply to the execution of orders. Section 39 of the CPC provides for transfer of decree, on the application of the decree holder, to another Court of competent jurisdiction for execution. Clauses (a) to (c) of Sub-section (1) of Section 39 provides the circumstances under which such transfer could be made. Sub-section (2) of Section 39 gives power to the Court which passed a decree, of its own motion, to send it for execution to any subordinate Court of competent jurisdiction. Sub-section (4) of Section 39, which was introduced by the CPC (Amendment) Act 22 of 2002, provides that nothing in Section 39 shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the limits of its jurisdiction. A decree can be sent for execution to another State (Section 40). A decree passed by any Civil Court established in any part of India to which the provisions of the CPC do not extend, or by any Court established or continued by the authority of the Central Government outside India, may, in certain circumstances, be executed by the Court in the territories to which the Code extends (Section 43). Section 44 empowers the State Government, by notification in the Official Gazette, to declare that the decrees of any Revenue Court in any part of India to which the provisions of the CPC do not extend, or any class of such decrees, may be executed in the State as if they had been passed by Courts in that State. Section 44-A provides for execution of decrees by the Courts in reciprocating territory. Section 45 empowers the Courts to send a decree for execution to any Court established by the authority of the Central Government outside India, in certain circumstances.

10. Rule 5 of Order XXI of the CPC provides for the mode of transfer of a decree. The Court which passed a decree shall send the decree directly to the transferee Court. Rule 6 of Order XXI of the CPC provides that the Court sending a decree for execution shall send:--(a) a copy of the decree; (b) a certificate setting forth that satisfaction of the decree has not been obtained; and (c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect. Rule (7) of Order XXI of the Code states that the Court

to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded, requires such proof. Section 41 of the CPC states that the Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure. Section 42 provides for the powers of Court in executing transferred decrees.

11. The scheme of the provisions of the CPC as mentioned above is such that if a decree is transferred to another Court for execution, the Court which passed the decree or order, would be fully aware whether the decree has been executed in part or full. If a decree or part thereof is executed by the transferee Court, the latter Court shall intimate the Court which sent the decree for execution, the result of such execution. A decree could be sent for execution to one Court and later to another Court and so on. If the Court which passed a decree is not aware of the result of such execution, it could not be said with certainty, whether the decree has been executed at all or whether it has been executed in part or in full. The built in procedure in the CPC ensures that the Court which passed the decree gets all the necessary details in regard to the execution of such decree, whether made by a transferee Court or by itself. A decree holder is not entitled to file an Execution Petition in a Court other than the Court which passed it, unless the decree is sent for execution to that Court as provided in the Code of Civil Procedure.

12. Rules 273 to 277 of the Civil Rules of Practice, Kerala provide for transmission of decree for execution and the procedure thereof. For transmission of a decree to another Court for execution, it is necessary to file an application under Rule 273 to the Court which passed the decree. On transmission of the decree, an application for execution shall be made to the transferee Court. If the decree holder does not apply for execution within six months from the date of receipt of the decree by the transferee Court, the latter Court shall certify the fact to the Court which passed the decree and shall return the decree to that Court.

13. As the provisions of the CPC and the Civil Rules of Practice as such do not apply to the proceedings under Article 226 of the Constitution, it is expedient that specific Rules are framed to facilitate execution of the order for payment of costs made in a Writ Petition. In the Rules of the High Court of Kerala, 1971, there is no specific rule providing as to how an order for costs passed in a Writ Petition under Article 226 shall be executed.

14. The civil Court has no jurisdiction to entertain an Execution Petition for execution of the order for payment of costs passed by the High Court in a Writ Petition, unless the High Court specifically issues a direction thereof. The order for payment of costs in a Writ Petition is not a decree u/s 2(2) or an order under 2(14) of the Code of Civil Procedure. For the aforesaid reasons, I am of the view

that the revision petitioner/ judgment debtor is justified in contending that the executing Court had no jurisdiction to entertain the Execution Petition and pass the order impugned in this Revision. The order passed by the executing Court is, therefore, set aside.

15. To my mind, the matter should not rest there. An order passed by the High Court, or for that matter by any other Court, is to be honoured and complied with by the party concerned. The records reveal that the order passed by the High Court for payment of costs has not been complied with by the Revision Petitioner and in the absence of a specific rule, the executing Court is incapable of executing the order for payment of costs. The jurisdiction vested in me under Article 227, I think, would enable me to issue the following directions. The Registrar shall issue a certificate for recovery of the costs awarded in W.P. (C) No. 24112 of 2003. The certificate shall be issued under the signature of the Registrar and seal of the Court. The certificate, together with a copy of the judgment in W.P. (C) No. 24112 of 2003, shall be forwarded to the Munsiff's Court, Parappanangadi for execution of the order for payment of costs. Munsiff's Court, Parappanangadi shall execute the order for payment of costs as if it were a decree passed by a Civil Court.

16. The respondent/decreed holder shall file an Execution Petition within six months from today before the Munsiff's Court, Parappanangadi, whereupon that Court shall issue notice to the revision petitioner and proceed with the Execution Petition. The procedure for execution of a decree of the Civil Court shall be followed in such Execution Petition. The Munsiff's Court, Parappanangadi shall certify to the High Court the result of execution and the proceedings taken in the Execution Petition.

17. The Civil Revision Petition is disposed of in the manner indicated above. No order as to costs. The Registry will forward a copy of this order to the Committee for framing High Court Rules and High Court Service Rules.