
(2002) 06 KAR CK 0055

In the Karnataka High Court

Case No : Civil Revision Petition No. 1039 of 2001

Mary Associates

APPELLANT

Vs

Smt. Padma Lalitha K.V.

RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 11, 8

Citation : (2002) 4 KCCR 2183

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : D.S. Hosmath, for the Appellant; K.V. Siva Prasad and Associates, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—This revision petition arises out of an order passed by the Small Causes Court, Mysore, in Execution Proceedings No. 413 of 1999 whereby the objections raised by the Defendant/judgment-debtor to the execution of the decree passed against it, have been overruled and further steps for recovery of the decretal amount directed to be taken.

2. The Petitioner has suffered a decree for payment of a sum of Rs. 1,28,236/- in O.S. No. 77 of 1994 on the file of the Small Causes and Additional Civil Judge, Mysore. The amount represents the arrears of salary recoverable from the Petitioner-Institution by the Respondent/decreed holder who, it appears, was working as a teacher with the former. Aggrieved by the said judgment and decree, Regular First Appeal No. 151 of 1996 was filed by the Petitioner-Institution in this Court which was dismissed by Mr. Farooq, J., in terms of his order dated 31.5.1999. Execution Proceedings No. 413 of 1999 were in due course instituted by the decree-holder before the Court below, to which judgment-debtor appears to have filed its objections. By the impugned order the Executing Court has overruled the said objections.

3. Appearing for the Petitioner/judgment-debtor, Mr. Hosmath submitted that the decree sought to be executed against the Petitioner was a nullity in the eye of law, hence inexecutable. He urged that the suit filed by the Respondent-teacher was not maintainable having regard to the provisions of Sections 8 and 11 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975. The Executing Court, according to Mr. Hosmath, ought to have examined the question raised by the judgment-debtor and passed a speaking order regarding the same instead of over-ruling the objections summarily.

4. On behalf of the Respondent/decreed-holder Mr. Shivaprasad urged that the question whether or not a civil suit was maintainable for recovery of arrears of salary was raised by the Petitioner/judgment-debtor in the appeal filed by it and was specifically examined by this Court while disposing of the same. This Court having recorded a finding that the suit filed by the Plaintiff/decreed-holder was maintainable, it was not open to the judgment-debtor to urge or the Executing Court to question the correctness of the said finding.

5. There is, in my opinion, considerable merit in the submission made by Mr. Prasad. The question whether or not the suit filed by the Plaintiff/decreed-holder was maintainable in the light of the provisions of the Act mentioned earlier was specifically raised and examined by this Court while disposing of Regular First Appeal No. 151 of 1996 filed by the judgment-debtor. This Court had, as pointed out by Mr. Shivaprasad, recorded a finding that the suit filed by the Plaintiff was maintainable as the same was a simple suit for recovery of arrears of salary. The following paragraph appearing in the judgment of this Court places the matter beyond the pale of any controversy.

As could be seen from the above section, under Sub-section (1) of Section 8 appeal lies against an order made by the Board of Management to the Educational Appellate Tribunal. In the case, there is no order made by the Board of Management of the Appellant/school. Non-payment of salary cannot be said to be an order made by the Board of Management. Even if there is dispute about the payment of salary which has been accrued, the matter falls under the ordinary civil law and not under the provisions of Section 8 of the Act. This is a simple suit claiming arrears of salary. Merely, because the Defendant has disputed about the monthly salary as fixed by it, the said dispute cannot be said to come u/s 8(1) of the Act, I am therefore, clearly of the view that the suit filed by the Plaintiff which is a clear suit for arrears of salary is maintainable

(Emphasis supplied)

6. The objection raised by the judgment-debtor regarding the validity of the decree on a ground which had already been examined and answered against the judgment-debtor could not, therefore, be raised once again nor was it necessary for the Executing Court to dilate upon that matter any further. In as much as the Executing Court held that the objections raised by the judgment-debtor was unsustainable, it committed no error to warrant interference. Needless to say

that the judgment-debtor if aggrieved of the finding recorded by this Court on the question of maintainability of the suit filed by the Plaintiff/decreed-holder, its remedy lay by way of a review before this Court or an appeal before the Supreme Court. Execution proceedings could not provide a substitute forum for agitating a matter which stood concluded by the judgment in the appeal. There is no merit in this revision petition which fails and is hereby dismissed.