
(2012) 06 KL CK 0191
In the High Court Of Kerala
Case No : C.R.P. No. 200 of 2010

Moosa, C.K. and others

APPELLANT

Vs

Bank of Baroda

RESPONDENT

Date of Decision : 13-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1(a), Order 47 Rule 3, Order 7 Rule 10, Order 7 Rule 10A, 115

Citation : (2012) 3 BC 818 : (2012) 3 ILR (Ker) 61 : (2012) 3 KLJ 368

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : B. Krishnan and Sri R. Parthasarathy, for the Appellant; Devan Ramachandran, Sri K.M. Aneesh and Sri Santhosh Kumar, K., for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice V. Chitambaresh

1. Is a foreign judgment conclusive between the parties where it has not been given on the merits of the case and the proceedings therein are opposed to natural justice? This is the question frequently asked by the Gulf returnees in the State of Kerala when confronted with the steps by the bank after their business had floundered abroad. The respondent Bank instituted Case No. 2173/90 on the file of the Abu Dhabi Court against the loanees who included the revision petitioners. The case was decreed for a sum of Dirhams 199728.21 (approximately about Rs. 20 lakhs) with interest thereon at 9% per annum. The Bank thereafter filed a suit as O.S. No. 43/1993 on the file of the Court of the Subordinate Judge of Thalassery. The court below has by the order impugned held that the foreign judgment is conclusive between the parties. Resultantly the suit was transferred to the Debt Recovery Tribunal since the plaint claim exceeded a sum of Rs. 10 lakhs. The order holding the foreign judgment as conclusive is challenged in this Civil Revision Petition u/s 115 of the Code of Civil Procedure.

2. The bank on the other hand maintained that the foreign judgment though passed ex parte is nevertheless one given on the merits of the case. It was also contended that the loanees were put on notice by substituted service as per the Civil Procedures Law applicable in the foreign country. The Bank pointed out that the civil court has jurisdiction to decide the conclusiveness of the foreign judgment based on which the suit is filed. It is only after rendering such a finding by the civil court can the suit be transferred to the Debt Recovery Tribunal. Heavy reliance was placed on the judgment in P.K. Shahal Hassan Musaliyar v. Bank of Baroda and others 2007 (4) KLT 90. The Bank reiterated that the court below has exercised a jurisdiction vested in it by law and that the order is not vitiated by material irregularity.

3. I have heard Mr. B. Krishnan, Advocate on behalf of the revision petitioners who has a wealth of experience in the moffusil courts. I have also heard Mr. Devan Ramachandran, Advocate on behalf of the Bank.

4. It is the option of the Bank to sue based on the foreign judgment or on the foot of the original obligation in the local jurisdiction. A reference in this connection to the judgment in Kunhiman, C.V. v. P.M.K. Idrosekutty 1957 KLT 1035 is apposite. It is not contended before me that Abu Dhabi is a reciprocating territory for execution of the decree by resort to Section 44A of the Code of Civil Procedure. The suit therefore when based on foreign judgment alone has to satisfy the test of conclusiveness u/s 13 of the Code of Civil Procedure. The relevant portion thereof as is necessary for this case is extracted below:

13. When foreign judgment not conclusive.--A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except--

(a)

* * * * *

(b) Where it has not been given on the merits of the case.

(c)

* * * * *

(d) Where the proceedings in which the judgment was obtained are opposed to natural justice.

(e)

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(f)

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5. It is trite law that an ex parte judgment is nevertheless a judgment on merits when the intrinsic evidence is seen assessed therein. The Abu Dhabi Court has ascertained information regarding the transaction between the Bank and the loanees. The amount due from the loanees has been arrived at after noticing that there is "no opposing evidence" on the part of the loanees. The mere fact that there has not been much of a discussion on evidence does not reduce the judgment as one given not on merits. The law in this regard is succinctly laid down in M/s. International Woolen Mills Vs. M/s. Standard Wool (U.K.) Ltd., . The contention that the foreign judgment is not conclusive for infraction of Section 13 (b) of the Code of the Civil Procedure is straight away rejected.

6. The plaint in Case No. 2173/90 filed in Abu Dhabi Court on 13-9-1991 contains a foot note as follows:

The case is registered after paying the fees to the sitting of 24-12-1990. The defendants should be notified by the plaintiff.

There is a candid admission in the plaint in O.S. No. 43/1993 on the file of the court of the Subordinate Judge of Thalassery about the absence of loanees in station. The same is extracted herein below:

While the said Ceekay Stores was availing the credit facilities "in accordance with terms and conditions of the documents executed by them in favour of the plaintiff, all the defendants fled the country (Abu Dhabi) on 15th or 16th August, 1990 and their business premises are seen closed to the utter surprise of the plaintiff.

The irresistible conclusion therefore is that the loanees had fled the foreign country in the month of August 1990 long before the case was filed in the month of September, 1991.

7. The Civil Procedure Laws applicable in Abu Dhabi has been made available to me and Article 8 (4) applicable to the case on hand reads as follows:

However if none of the persons mentioned in the preceding paragraphs are available at the time of the service of the notice, or if any of them abstains to receive the notice or if he appears to be incapacitated, the notice server shall record that in the original and in the photocopy and shall refer the matter to the competent Judge or to the head of the court circuit as the case may be; so that he will order to affix a copy of the notice on the notice board and at the door of the place in which the person to be notified resides or at the door of the last place in which he resided or by publishing the notice in a widely circulated daily news paper issued in the state in Arabic language.

There is nothing in the judgment of the Abu Dhabi Civil Court in Case No. 2173/90 that the notice server recorded so or that the same was brought to the notice of the concerned.

8. The Supreme Court in R. Viswanathan and others v. Rukn-ul-Mulk Syed Abdul

Wajid AIR 1963 Supreme Court 1 has held as follows:

By S. 13 of the CPC a foreign judgment is made conclusive as to any matter thereby directly adjudicated upon between the same parties. But it is the essence of a judgment of a Court that it must be obtained after due observance of the judicial process, i.e., the Court rendering the judgment must observe the minimum requirements of natural justice--it must be composed of impartial persons, acting fairly, without bias and in good faith, it must give reasonable notice to the parties to the dispute and afford each party adequate opportunity of presenting his case. A foreign judgment of a competent Court is conclusive even if it proceeds on an erroneous view of the evidence or the law, if the minimum requirements of the judicial process are assured: correctness of the judgment in law or on evidence is not predicated as a condition for recognition of its conclusiveness by the Municipal Court.

(Emphasis supplied)

The Supreme Court reiterated this position in law in Y. Narasimha Rao and Others Vs. Y. Venkata Lakshmi and Another, wherein it is observed as follows:

If the rule of audi alteram partem has any meaning with reference to the proceedings in a foreign court, for the purposes of the rule it should not be deemed sufficient that the respondent has been duly served with the process of the court. It is necessary to ascertain whether the respondent was in a position to present himself/herself and contest effectively the said proceedings.

The specific case of the loanees is that the foreign judgment is not conclusive since the proceedings in which it was obtained are opposed to natural justice. This pointed question as regards the infraction of Section 13 (d) of the CPC has not been considered in the proper perspective. The court below has merely observed that "the contention that there is violation of natural justice does not hold water" since the loanees had already left the country. I have therefore no option other than to remit the suit to the court below to render a finding on the specific issue aforesaid.

9. I also find that the court below by order dated 26-6-2006 (13 years after the suit was filed) returned the plaint on the premise that it lacked jurisdiction. The plaint was returned under Order VII, Rule 10 of the CPC for presentation to the Debt Recovery Tribunal. The remedy if any of the Bank was to proceed under Order VII, Rule 10A of the Code of Civil Procedure. This is particularly so since no appeal was preferred therefrom under Order XLIII, Rule 1 (a) of the Code of Civil Procedure. It appears that the suit papers remained in the registry of the court despite a specific order of return. The successor in office by order dated 28-8-2008 (2 years after) suo motu reviewed the order and proceeded with the suit. This was done in view of the judgment of this court in P.K. Shahal Hassan Musaliyar's case aforequoted. The said judgment only held that the Civil Court has to decide the conclusiveness of the foreign judgment before transferring the suit to the Debt Recovery Tribunal. But nevertheless the loanees should have

been put on notice and heard before the review was done. This is imperative under Order XLVII, Rule 3 of the CPC which is allegedly flouted in the instant case. The court below shall therefore proceed afresh from the date on which the plaint was originally directed to be returned. I set aside the order dated 23-12-2009 in O.S. No. 43/1993 on the file of the court of the Subordinate Judge of Thalassery and remand the suit. The parties will appear in the court below on 1-8-2012 and the issues will be reconsidered in the light of the observations supra.

The Civil Revision Petition is allowed. No costs.