
(2016) 06 KL CK 0040
In the High Court Of Kerala
Case No : C.R.P. No. 229 of 2016

M/s. Shriram Transport Finance Co. Ltd.	APPELLANT
Vs	
Noufal	RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 30

Citation : (2016) 168 AIC 767 : (2016) 4 CivCC 475 : (2016) 3 KLT 871

Hon'ble Judges : Mr. K. Harilal, J.

Bench : Single Bench

Advocate : Sri. Rajesh Nambiar, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Mr. K. Harilal, J.—The petitioner herein is the petitioner/ claimant, in E.A. No.31 of 2016 in A.O.P. No.15 of 2013, on the files of the District Court, Thalassery, and the respondent is the respondent therein. An arbitration award has been passed in A.O.P. No.15 of 2013, directing the respondent herein to pay to the petitioner a sum of Rs. 10,09,983/- with interest at the rate of 12% per annum from 26.09.2012, till the date of realisation with cost of Rs. 4,405/-. The petitioner filed Execution Petition No.13 of 2016, before the District Court, Thalassery under Order 21 Rules 11, 37 and 38 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the C.P.C.") for executing the award by arrest and detention of the Judgment Debtor in civil prison.

2. During the pendency of the said Execution Petition, he came to know that the respondent herein holds landed properties. In that context, he filed another Execution Petition under Order 21 Rules 54, 64 and 66 of the C.P.C., for execution of the decree by attachment, proclamation and sale of the immovable property belonging to the respondent herein. The office of the District Court has not numbered the said Execution Petition. Feeling aggrieved, the petitioner filed E.A. No.31 of 2016, seeking a direction to number the Execution Petition. The court below found that two separate Execution Petitions, seeking arrest and

detention and by attachment and sale of immovable property respectively are not maintainable at a time. On the above finding, the court below dismissed the said E.A. with a direction to return the Execution Petition to the petitioner, so as to file a comprehensive Execution Petition for arrest and detention and sale of immovable property, after withdrawing the already existing Execution Petition. The legality and propriety of the reasonings, whereby the court below dismissed E.A. No.31 of 2016 with the direction therein, are under challenge in this Civil Revision Petition.

3. Heard the learned counsel for the petitioner.

4. The learned counsel for the petitioner advanced arguments, assailing the findings of the court below that simultaneous execution against the person and property by two separate Execution Petitions are not maintainable. So also, the direction given to the petitioner to withdraw the existing Execution Petition and to file a comprehensive Execution Petition is legally unsustainable, as the Decree Holder has the right to amend the earlier Execution Petition. According to the learned counsel for the petitioner, the Decree Holder is at liberty to file different Execution Petitions, at a time, seeking different mode of execution, to enforce the decree.

5. It stands undisputed that earlier, the petitioner has filed Execution Petition No.13 of 2016, before the District Court, Thalassery under Order 21 Rules 11, 37 and 38 of the C.P.C. for executing the award by arrest and detention of the Judgment Debtor in civil prison and that Execution Petition is still pending there and during the pendency of the said Execution Petition, the petitioner has again preferred the present Execution Petition under Order 21 Rules 54, 64 and 66 of the C.P.C. for execution of the same decree, by attachment, proclamation and sale of the immovable property belonging to the respondent herein. According to the impugned order, the finding of the learned District Judge is that simultaneous execution by arrest and detention and by attachment and sale of immovable property is possible on single comprehensive Execution Petition only and separate Execution Petitions for the same, at a time, are not maintainable, in view of Order 21 Rules 30 and 21 of the C.P.C. But, to support the Execution Petitions, one after the another, at the same time, seeking execution by arrest and detention and by attachment of the immovable property separately cannot be maintained.

6. In the above context, the question to be considered is, whether different Execution Petitions, seeking execution of the decree by arrest and detention and by attachment and sale of immovable property are maintainable at a time? Going by Order 21, Rule 30 of the C.P.C., statutory mandate is that every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the Judgment Debtor, or by the attachment and sale of his property, or by both.

7. Needless to say, comprehensive Execution Petition, seeking execution of the decree in both ways, alternatively or by both, is maintainable. According to Order 21, Rule 21 of the C.P.C., the court may, in its discretion, refuse execution at the same time against the person and property of the judgment debtor. On a combined reading of Order 21 Rules 30 and 21 of the C.P.C., in juxtaposition, it is well discernible that the Execution Court is vested with discretion to execute the decree alternatively by proceeding against the person or his property or by both. If that be so, this Court is also of the view that such an option can be exercised in a single Execution Petition, seeking such reliefs alternatively or by both and if the Execution Petitions are filed separately, such an option cannot be exercised and that legislative intent implied in Order 21, Rule 30 of the C.P.C. is a single Execution Petition at a time, seeking execution of the decree against the person or property alternatively or by both.

8. In the above view, this Court also endorses the views of the court below and finds that there is no illegality or impropriety in the finding that separate Execution Petitions one by one, seeking different modes of execution, at a time, are not maintainable.

9. Coming to the direction issued by the court below, even though, the court below directed the petitioner to withdraw the earlier Execution Petition and file a fresh comprehensive Execution Petition, the petitioner is at liberty to incorporate the relief of the second Execution Petition, in the first Execution Petition and proceed further.

10. This Civil Revision Petition is disposed of accordingly.