
(1933) 01 MAD CK 0047
In the Madras High Court

Nalabolu Ramireddi

APPELLANT

Vs

Thunga Chinna Venku Reddi and Others

RESPONDENT

Date of Decision : 20-01-1933

Acts Referred:

Citation : AIR 1933 Mad 510 : (1933) 38 LW 218

Hon'ble Judges : Anantakrishna Ayyar, J;Anantakrishna Aiyar, J

Bench : Division Bench

Judgement

Anantakrishna Ayyar, J.—In Order 8. No. 471 of 1932 on the file of the District Munsif of Kavali, defendant 1 filed an application under

Order 7, Rule 14, Order 11, Rule 15 and Section 151, Civil P. C, for directing the plaintiff to produce in Court the documents as per list, or give

inspection of the same to defendant 1 alleging that

it was not possible for defendant 1 to file his written statement without inspecting those documents.

2. The matter was contested. The learned District Munsif, after hearing the pleaders, of the parties, disposed of that application in these words:

The petition is struck off."" In connexion with execution applications, this phrase ""struck off was once a very favourite phrase which often found

acceptance with Courts, with the result that a lot of difficulties arose in subsequent proceedings in execution in construing what exactly was meant

by the phrase"" struck off ""in such orders. It is not necessary to refer to the legal history of the expression struck off"" with reference to its use in

connexion with execution applications. In Biswas Sonan Chunder v. Binanda Chunder (1884) 10 Cal 416, Field, J., who delivered the judgment of

the Court observed at p. 422 as follows:

It would be very desirable that Courts in the mofussil should abandon the practice of "striking cases off. There is no provision in the CPC for

striking off a case. The only proper mode of dealing with a case, whether a regular suit or a miscellaneous proceeding, when, the parties do not

appear, is to dismiss it.

3. It would still seem to be necessary to impress upon mofussil Courts the importance of the above observations. If the only proper mode of

dealing with a case, whether a regular suit or a miscellaneous proceeding, even when the parties do not appear, is to dismiss it, it would surely

seem to follow that when matter is contested and when the Court heard pleaders for both sides simply to say that the petition is ""struck off,"" is

entirely unwarranted and extremely undesirable. (The note attached to Civil Rules of Practice, Vol. 1, Rule 144, refers apparently to special

circumstances in connexion with execution petitions, where no further relief can be granted at the time, and I am not concerned with such execution

petitions at present. In *Ram Kirpal v. Rup Kuari* (1884) 6 All 269 Sir Barnes Peacock in delivering the judgment of the Privy Council observed at

p. 275 as follows:

In the course of those proceedings the case was for various reasons several times "struck off," that is to say struck off the file of the business

pending in the Court of the Subordinate Judge.

4. It is not necessary at this time of the day to refer to the various decisions in which Courts had to complain about the loose practice that obtained

in some Courts of directing execution applications to be ""struck off."" A case struck off the file of the business pending in the Court is not

necessarily dismissed or finally disposed of. Such an order, made evidently for the purpose of showing the Court's statistical returns that a case is

no longer pending, is illegal; the rights of the parties are not affected thereby and the application must be regarded as pending notwithstanding its

apparent removal from the file. As the order is not based on the judicial adjudication on the merits of the controversy, it would prima facie be no

bar to a fresh application.

5. But litigants in Courts are entitled to have a judicial determination on the merits of the controversy, instead of having the mere apparent

satisfaction of having the legal right to file a fresh application, no one knowing

whether that would end with better results. The use of the expression "struck off" in connexion with miscellaneous applications where substantial relief is prayed for is even more inappropriate and undesirable than its use with reference to execution applications. It is now understood that the expression has in practice now ceased to be used by Courts in connexion with orders passed even on execution applications. But the order passed by the learned District Munsif in this case would seem to indicate that expression though now not used with reference to execution applications still lingers and finds favour in other, though contentious, proceedings. To say that "the petition is struck off" is surely not a proper and legal mode of disposal of any important contested application, like the one before the lower Court, if it be a legal mode of disposal of any proceeding before the Court at all. There is no indication in the order in question as to what was passing through the mind of the learned District Munsif when he proposed to "strike off" the application, after hearing pleaders of the parties.

6. The position of defendant 1-petitioner-is surely embarrassing.. He has to file a written statement in the suit. Before filing his written statement, he thought he should be allowed to inspect certain documents referred to in the plaint. Whether he was entitled to it or not is not the matter for consideration by me at present. When he applied to the learned District Munsif for orders he surely had a right to be told whether he was to have such inspection or not, so that he might busy himself with his written statement accordingly. The order passed by the learned District Munsif striking off the petition leads to nowhere. Is the petition still pending, so that the defendant need not file his written statement before final and other orders are passed on his application? Or, is the petition taken to have been dismissed; if so, for what reason? I am obliged to remark that the learned District Munsif would seem to have not applied his mind at all to the question,, before him. I do not think it necessary to say anything more about the order passed by the learned District Munsif on the present occasion. The order as it., stands could not be sustained. I reverse the order of the learned District Munsif, dated 7th November 1932, and remand I.A. No. 1022/32 for fresh disposal according to law. The costs in the High Court will abide and follow the final order to be passed on the application.