(1983) 04 MAD CK 0038

In the Madras High Court

Case No : C.R.P. No. 1950 of 1981

P.S. Ramamoorthy Sastry APPELLANT

Vs

Selvar Paints and Varnish Works (Pvt.) Ltd. RESPONDENT

Date of Decision : 28-04-1983

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 40, 40, 41, 42, 46
Constitution of India, 1950 — Article 215
Debt Relief Act, 1980 — Section 4(O)

Citation : AIR 1984 Mad 172 : (1984) 97 LW 71

Hon'ble Judges : K.B.N. Singh, C.J;Padmanabhan, J

Bench : Division Bench

Advocate : N. Rajaram, for the Appellant; K.T. Palvandian, for the Respondent

Judgement

Padmanabhan, J.—A question of considerable importance arises for consideration - in this'' civil revision Petition Pursuant to an order of

reference made by Natarajan. J. The learned Judge has referred the matter for decision by a Bench as he disagreed with the ratio of Ratnavel

Pandian. J. in K. P. Kesava .Mudaliar v. P. T. Sengoda Mudaliar. by Partner A. Raja Devan. 1981 TLNJ 149-C.R.P. 2583 of 1980. order

dated 10th Oct. 1980. The question is whether a decree for money Passed by a court outside the State of Tamil Nadu and transferred for

execution to a court within the State of Tamil Nadu. within whose jurisdiction the judgment debtor, has properties. can be declared to have been

discharged under S. 4 (1) of the Tamil Nadu Debt Relief Act. 1970 (for short the Act) and whether the execution petition filed by the decree-

holder can be said to have abated under S. 4 (c) of the Act. Ratnavel Pandian. J. held in the negative on the around that the cause of action arose outside the State of Tamil'' Nadu.

2. To appreciate the question of law that falls for decision. it is necessary to state a few facts. The debtor-debtor is the revision Petitioner. The

respondent is the a signee decree-holder. The original decree-holder obtained a decree against the Petitioner in A.S. 89 of 1967 on the file of the

City Civil court. Bombay and had that decree transferred to the file of the Sub. Court. ChinaleDut. for the purpose of executional The revision

Petitioner filed E. A. 32 of 1981 and claimed the benefits of the Act and Prayed that the execution Petition should be dismissed as having abated.

The execution court held that since the decree has. been Passed by the'' City Civil Court Bombay. the Provisions of the Act would not apply. in

view of this finding. the executing Court did not consider the question whether the revision Petitioner was a debtor within the meaning of the Act.

3. Before we consider the contention'' of Mr. Raahavan. it is necessary to refer to some of the Provisions of the Act. The Act is intended to

Provide relief to certain indebted Persons in the State of Tamil Nadu. The Preamble states: ""Whereas it is expedient to Provide relief to certain

indebted Persons in the State of Tamil Nadu from the usurious Practices of Dawn brokers money lenders and other constitutional sources of credit

and to give relief from the debts due such Dawn brokers monev lenders and other non-institutional sources of credit. Section 3(c) defines a debt

thus: ""Debt means any liability in cash or in kind whether secured or unsecured and whether decreed or not but does not include arrears of taxes

due to the Central Government or a State Government or a local authority. Section 3 (d) defines a debtor thus: ""Debtor means any person from

whom any debt is due and whose annual household income does not exceed four thousand and eight hundred rupees. The provision states that a

person share not be deemed to be a debtor under certain circumstances. S. 4 of the Act reads as follows:

4. Relief from indebtedness: (1) Notwithstanding anything contained in the Tamil Nadu Agriculturists Relief Act. 1938 - or in any other law for the

time being in force or in any contractor instrument having force by virtue of any such law and save as otherwise expressly provided in this Act. and

in particular sub-sec. (2) with effect on and from the commencement of this Act.

(a) every debt advanced or incurred before the first day of January 1980 (including appeals. revisions. attachments or the debtor to the creditor

shall be deemed to be wholly discharged:

(b) No civil Court shall entertain any suit or other proceeding against the debtor for the recover of any amount of such debt (including interest. it

any):

Provided ....

(c) all suits and other proceeding (including appeals. revisions. attachments or execution proceedings) pending at the commencement of this Act

against any debtor for the recover of any such debt (including interest. if any) shall abate:

Provided ....

Since Section 4 provides that ever debt a4vanced or incurred before the first day of January. 1980 and parable by the debtor to the creditor shall

be deemed to be wholly discharged and all suits and other proceedings pending at the commencement of the Act against any debtor for the

recover of any such debt. Shall abate. It is clear that it enacts a substantive provision of law.

4. The contention of Mr. Raghavan the learned counsel for the petitioner is that the definition of the debt does not make distinction between a debt

incurred within the State of Tamil Nadu and outside and also ''between a debt decreed by a court within the State of Tamil Nadu or outside.

Further. according to the learned counsel the definition of debtor only refers to a person from whom any debt is due and no emphasis is made on

the person to whom it is due. It is the submission of Mr. Raghavan that all laws are territorial and consequently that Act will be applicable to all

debtors within the State of Tamil Nadu from whom a debt is due.

5. As rightly pointed out by Mr Raahavan. all legislations are territorial in Operation. Art. 215 of the Constitution which adumbrate this principle

states-

(1) Subject to the provisions of this Constitution. Parliament may make laws for the whole or any Dart of the territory of India. and the legislature

of a State may make laws for the whole or any Dart of the State:

(2) No law made by Parliament shall be deemed to be invalid on the . around that it would have extra-territorial operation"".

In other words. all Acts of Tamil Nadu State Legislature can have only territorial operation.- It cannot and will not apply to persons outside the

State or affect events that ''take place outside. Extra-territorial application of a legislation will arise only where there is a nexus between the

legislation and the person or thin placed outside the territories. Consequently. there is no difficult in holding that the Act will apply to all persons and

debts within the State of Tamil Nadu.

6. But from the above legal position it does not follow that a debt which had ripened into a decree in a court outside the State of Tamil Nadu will

get discharged and execution proceedings will bate in respect of the said decree which stands transferred for execution to al Court in Tamil Nadu.

In this connection. it is necessary to refer to certain provisions of the Civil P. C.

7. Section 38. C.P.C-. states that a decree may be executed by the. court which passed the decree or be the court to which it is sent for

execution. S. 39 deals with the procedure for the transfer of a decree. S. 40 states that where a decree is sent for execution to another State it shall

be sent to such court and executed in such manner as may be prescribed by rules in force in that State. S. 41 states that the court to which a

decree is sent for execution shall certif. 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. S. 42 which deals with powers of court in- executing transferred decree reads thus:

42. (1) The Court executing a decree sent to it shall have the same Dowers in executing such decree as if it had been passed by itself. All Persons

disobeying or obstructing the execution of the decree shall be Punishable by such court in the same manner as if it had Passed the decree. And ''its

order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been Passed by itself:

(2) Without Prejudice to the generality of the Provisions of sub-see. (1) the powers of the court under that sub-section shall include the. following

Dowers of the court which Passed the decree. namely-

(a) Dower to send the decree for execution to another court under S. 39.

(b) Dower to execute the decree against the legal representative of the deceased debtor-debtor under S. 50:

(c) Dower to order attachment of a decree.

(3) A court passing an order In exercise of the powers specified in sub-section (2) shall send a copy thereof to the court which Passed the

decree.

8. Thus. it is clear that Ss. 40 and 42 of the Civil P, C. are procedural and do not deal with substantive law. ''In such manner as may be prescribed

by rules in force'' in that State'' occurring in Section 40. C.P.C. refers to the procedure under which the execution should be had and not to the

right of execution. Similarly. the Dower that is conferred on the transferee court under S. 42. C.P.C. is the Dower for the purpose of execution of

the decree. It should be remembered that not with standing the transfer of the decree to another court for execution the transferor court retains

control over the decree. For instance. S. 46 entitles the court passing a decree to issue a precent to any other court corn Detent to execute the

decree-to attach any propertv belonging to'' the judgment-debtor which the latter court is bound to obey. S. 41 requires the Court to which a

decree''s transmitted for execution to certify to the court which Passed it ''the fact of such execution. or where the -former court fails to tending

such failure''. These provisions seem clearly to show that though the execution may be actually carried- on by a different court. the court passing

the decree has a large measure of control over the execution. In other words. S. 42. C.P.C. does not have the effect of converting the decree into

a decree passed by it for all purposes. S. 42 does not warrant any such assumption except for the limited purpose of execution. The other point to

be remembered is that the Act does not Provide for execution of decrees or the Procedure relating thereto. There may be Provisions in the Act by

which the debtors for whose benefit the Act has been passed are given relief in execution Proceedings. To that extent. The Act provides remedies

in arrest of execution proceedings and not for carving on of the execution.1 In the circumstances. we have to turn to the general law for an answer.

9. A decree is only a step in the course of the realization of a debt. as Pointed out by Lord Macmillan in AIR 1933 101 (Privy Council) . It is not

for all Practical our poses different from the decree into which it has reddened. Regarded as a judgment debt the decrees sought to be executed

are choses in action. Choses in action are situate in the country where judgments have been obtained. In Attornev General v. Bouwans (1838-4 M and WRv 171) it is stated thus:

As to the locality of many description Of effects. Household and movable goods for instance there never could be any dispute: but to prevent

conflicting jurisdictions between different ordinaries. with respect to choses in action and titles to property. it was established as law. that judgment

debts were assets. for the purposes of jurisdiction. where the judgment is recorded.

In Dicey & Morris. the Conflict Laws. 10th Edn. v. 532. it is stated:-

Judgment debts are situate in the country where the judgment is recorded.

In Cheshire''s Private International Law. 8th Edn. at D. 380 it is stated:-

For the purposes of jurisdiction to make a grant of probate or administration. however. it has long been settled with respect to chooses in action

and titles to property that judgment debts are assets where the judgment is recorded.

What then is a judgment debt? The iudgment debt is the result of a contract entered into between the debtor and the creditor inside the State e.g..

in this case in Bombay. outside the State of Tamil Nadu. How such a contract. the debt resulting there from and the decree evidencing the debt can

be solved is a matter of substantive law. What will be the substantive law that ought to be applied in such cases will have to be determined by the

application of the Principles of Private International Law, Dicey in his ''Conflict'' of Laws'' 10th Edn. states in Rule 146 at D. 775-

The formation of a contract is governed by that law which would be the Drover Jaw of the contract if the contract was validly concluded.

In Rule 145 at D. 747 it is stated.

The term ''proper law of a contract'' means the system of law by which the Parties intended the contract to be governed or. where their intention is

neither expressed nor to be inferred from the circumstances. the system of law with which the transaction has its element and most real connection.

Dicey has further observed as follows at v. 748-

Subject to a number of exceptions the formation and validity of the contract its interpretation and its discharge are all governed by the same law

which thus aplies to the ''creation'' as well as to the ''Performance'' of the contract. This law. and. exceptions a part this law alone can by its legislation affect the contractual obligation and thus e.g. modify. discharge or annul a debt based upon the contract.

Rule 152 (at D. 818) states:-

The discharge of a contract normally depends upon the Drover law of the contract:

(1) A discharge in accordance with the Prower law of the contract is valid and effective in England.

(2) A discharge not in accordance With the proper law of the contract is not valid or effective in England.

Dicey Proceeds to state further-

The proper law of the contract determines whether or not a contractual obligation has been validly discharged e.g. whether or not an act on the

Dart of the Promissory or debtor constitutes Performance and thus extinguishes the obligation. There is no doubt that a debt or the laws of that

country and that such a discharge may discharge liability arising in any country. if it extinguishes the debt or liability and does not ,merely interfere

with the remedies or course of Procedure to enforce it. will be an effectual answer to the claim. not only in the courts of that country but in every

other country.

At v. 819 it is stated as follows-

In Jacoba v. Credit Lvonnis. (18841 12 QBD 389 English law was the Proper law, but French law was the lex loci solutions and the court held

the question 6f. impossibility of Performance to be governed by English Law. In Mount Albert Borough Council v. Australians etc. Assurance

Society Ltd.. (1938) AC 224 (PC). the contract was governed by the law of New England. but the debt was Payable in the State of Victore. and

the Privy Council decided in accordance with the law of New Zealand and not in accordance with the law of Victoria whether the debt was

discharged by the Payment of interest at a Particular rate. We may therefore conclude that a contractual obligation which has been discharged by

the Drover law will not be enforced in -England. whether or not it has been discharged according to the law of the Place where it was to be

Performed. We may also conclude that a contractual obligation which has not been discharged by the Dropper law mav be enforced in England.

though by the lex loci solutions. it would have been discharged. The law of the''

Place where the Promissory or debtor resides or carries on

business is not. as such. reliever to the issue. A- contractual debt may and normally will. be regarded as ''situate'' at the debtor''s Place of

residence. but the discharge of a debt. whether by performance or through other events. is a matter subject riot to the lex situs of the debt but to

the proper law of the contract from which it arises. The court shave allied this Principle in many cases in which it was alleged that a contractual

liability had been discharged by legislation. The Dower of legislation to effect a contract by modifying or annulling some term thereof is a Question

of discharge of the contract. which in general is governed by the proper law ......Conversely. a debtor is not entitled to rely as a discharge of his

debt. on legislation which is enacted in the country of the locus solutions but not in that of the proper law. Nor can he for this purpose rely on the

legislation of a country it'' which he resides or carries on business of which he is a national if the contract is governed by another law. This principle

also applies to these various kinds of legislation which bear the name of ''Moratoria''. It appears now to be established that a moratoria endures for

the benefit of a debtor if the relevant legislation is enacted in the country of the proper ''law of the contract, irrespective of the place of pavement.

10. The above principles have been followed in Shankar Vishnu v. Maneklal Haridas. AIR 1940 Born 362.

11. The Dower of the transferee court under S. 42, C. P. C. and the substantive law that is applicable to exe6ution proceedings have now been

concedered in a series of cases. In Tincdwris Dawn v. Debendra Nath Mookeriee. ILR (1890) Cal 451. Willson J. held -

Havina regard to the provisions of Ss. 227 and 228 of the C.P.C. the Period of limitation avoidable to the execution of a decree, transmitted by

one Court to another for execution. Depends on the character of the court which Passed the decree and not on the character of the court executing

it.

A similar question arose for consideration before this court'' in Sree Krishna Das v. Alumbi Ammal. ILR (1913) Mad 108. The question that arose

for consideration was whether the law of limitation applicable for execution of a decree transferred from another court was the law of limitation

applicable to the court which Passed the decree or the law of limitation that was judicable to the court to which the decree was transferred for

execution. The learned Judges did not accept the argument that the law of limitation was merely Procedural. The learned Judges then observed as

follows:

Order XXI. R. 28 provides that any order of the Court by which the decree is passed in relation to the execption of such decree shall be binding

upon the court to which the decree is sent for execution. Sec. 46 of the resent Code entitles the court passess a decree to issue a precept to any

other court competent to expiate the decree to attach any property belonging to the judgment debtor which the latter court is bound to obey. S. 41

requires the court to which a decree is transmitted for execution to 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. These provisions seem clearly to show that though the execution

may be actually carried on by a different Court, the court - passing the decree has a'' large measure of control over the execution. Besides. to hold

that the court executing the decree may app1y a rule of limitation differing from that applicable to . a decree of the court transmitting it when the

latter itself is executing it would lead to anomalous consequences.

In N.V. Ranganandham and Others Vs. M. Ponnacharamma, . a Bench of the Patna High Court held:

Section 42 deals with the manner of execution and leaves the matter of limitation to be governed by the Limitation Act. When a decree Passed by

one court is sent to another court for execution the period of limitation applicable to the execution of the decree depends on the character of the

court which passed the decree and not on the character of the court executing it.

12. In Inderchand Kajriwal Vs. Bansropan Sahu and Others, a decree was obtained on the or'', - al side of the Calcutta High Court a it was

transferred for execution to the Shehabad Court in the Province of Bihar. In execution proceedings. the judgement debtor raised an objection that

the property sought to be proceeded against should be valued under the provisions of the Bihar Monet Lenders Act. 1939 and that only a portion

of the property should be sold in accordance with the Provisions of the Act. It was contended that since the decree was passed by the Calcutta

High Court on its original side. it would be executed by the Shehabad Court only in accordance with the provisions of the Bengal Money Lenders

Act. 1940. and not in accordance with the Bihar Money Lenders Act 1939. Sinha J. observed as follows:-

The first question to be determined in this appeal is whether the Shehabad Court in executing the decree is to execute it in accordance with the

DrOvisions of the law as it prevails in Beng4l. Under S. 40. t.P.C. which was added for the first time to the Code by the Act of 1908. the decree

has to be executed in such manner as may. be prescribed by the rules, in force in Bihar. Now. what is the significance of the rules referred to in that

section? In my opinion. have not the larger significance of rules of law inclusive both of adjectival as also substantive law. It may also be contended

that S. 42, C.P.C. confers upon the transferee court, that is the Shehabad Court in this case. the same powers in executing the decree as if it had

been Passed by itself. But the Powers referred to in this section area to. the Dowers of the exceptional Court in relation to the Procedure to be

followed and not in relation to the substantive law to be administered in executing the decree. In this connection reference may be made to the

decision of a Division Bench of this court in N.V. Ranganandham and Others Vs. M. Ponnacharamma, in which the Division Bench laid it. down

that S. 42. C.P.C. deals with the manner of execution and leaves the matter of limitation to be governed by the Limitation Act. and that the Period

of limitation applicable to the execution of the decree depended upon the character of the court which passed the decree, and not on that of the

court executing it on transfer. In this connection. reliance was Placed upon a decision of the Calcutta High Court in ILR (1890) Cal 491. To the

same effect is the decision of a Division Bench of the Madras High Court in ILR (1913) Mad 108.''Hence, it may be said that the Preponderance

of judicial authority appears to be in favor of the view that the transferee Court in executing has to do so in accordance with the law of Procedure

obtaining in that Court. But has to determine the rights and liabilities of the Parties in accordance with the substantive law obtained in the court

which passed the decree that is to say the transferor court. That being so. it must be held that the Bengal Act X of 1940 which regulates the

transactions of money lending in Bengal. must be referred to in order to determine the rights and liabilities of the Parties before us.

13. In Basheer Ahamed v. Padmanabha, AIR 1953 Mys. 37, a decree passed by the Madras High Court was transferred to ''the Court of the

district Judge. Bangalore for execution. The Judgement debtor raised an objection Pleading that he was an agriculturist within the meaning of S. 2

of the Mvsore Agriculturists Relief Act: that he should therefore be Permitted to Day the decree amount by annual instalments as provided by S.

12, Agriculturists Relief Act and that his immovable Properties could not be attached or sold except, under conditions contained in S. 14 of that

Act. Thus he wanted his status as an agriculturist to be determined before execution was Proceeded with. The ''District Judge overruled the

objections holding that -the transferee executing court cannot consider the questions and the judgment debtor appealed to the High Court. It was

contended before the High Court on behalf of the decree-holder that in cases like the one on hand the transferee court should execute the decree

in accordance with the .taw of Procedure obtained in the place, of the transferee court and cannot seek to determine the rights of the Parties

according to any substantive law of that Place'' and apply the incidents of such law to the decree in the course of execution Proceedings. Reliance

was placed before the learned Judges on the decision in Inderchand Kairiwal v. Banur,UDaM Sahu. AIR J948 Pat 245. The learned Judges

agreed with the reasoninig of the Patna High Court and dismissed the appeal.

14. In Ramavtar and Others Vs. Pop Sing Mahadeb Prasad, . a money decree has been Passed by the Calcutta High Court on the Original Side.

The decree was transferred for execution to the Court of the Subordinate Judge of Balasore in the State of Orissa. The iudament-debtor filed an

application for being allowed to Pay the decree debt in installments under S. 13 of the Orissa Monev Lenders Act. The application was dismissed

by the executing court as well is by the learned single Judge of the High Court. The learned Judges observed as follows (para 3):_

The only question for consideration is whether a transferee. court in Orissa in executing such a decree t)assed in a court in Bengal would have to

follow the Provisions of the Bengal Monev Lenders Act or that of the Orissa Act. Mr. A. K. Rao submits that as the decree is Pending execution

in a court in Orissa the Provisions of the Orison Act would apply and can be followed by the transferee court in this case. Mr. Rao contends that on the Provisions of Sections 40 and 42 of the C.P.C.. the transferee court in Orissa has to follow the law for such transactions in force in this

State and as such could grant instalments under the Orissa Act.

Section 40 C. P. C. lays down that a decree which is sent for execution to a court in another State shall be executed in such manner as is

Prescribed by rules in force in that State. It therefore states that the transferee court has to execute the decree in following the procedure

prescribed by rules in its own State. Section 42 lays down the powers of a court in executing a decree transferred to it.

Now it is well settled that the owners referred to In S. 42, C. P. C. purport only to mean the powers of the executing court in relation to the

procedure to be followed -and not in relation to the substantive law applicable in execution of the said decree go, therefore, the provisions of Ss.

40 and 42. C. P. C. it re purely Procedural. laying down only the adjective law for the execution of the decree and cannot therefore regulate the

substantive rights and liabilities of the concerned varies which were settled and determined with the court which transferred the decree in

accordance with the substantive law in force in that State and as such cannot again be subjected to and /or regulated by the law of the State to

which the decree is sent only for execution"".

To sum up, the legal position is this, The discharge of a decree debt will have to be determined by the law of the State where the contract arises

resulting in the creation of the debt and where it gets ripned into a judgment or a decree debt In I not by the law governing the place where it sent

for execution. The transferee court under S. 42. C.P.C, has the Dowers of the transferor court only for the limited purpose of execution in respect

of which the law of that court will apply. The law which determines the question. whether a rudiment debt stands discharged or satisfied will have

to be determined by the proper law of contract viz. the substantive law of the place where the debt arises and where the decree is passed. The

Act. as already stated, is a substantive]au., which by S. 4 states that all debts shall stand discharged and all execution proceedings shall abate. A

debt which ripned. into a decree in Bombay cannot be declared to have been discharged by the taw of Tamil Nadu State which is only the place of

lex loci solutions. We have therefore no hesitation in holding that. the Act will not be applicable to decrees passed outside the State of Tamil Nadu.

and which have been transferred to the State of Tamil Nadu for execution.

15. In the """result, we dismiss the revision petition. There will be, no order as to costs.

K.B. SINGH, C.J.

16. After the judgment has been delivered an oral prayer for a certificate has been made by the learned counsel for the Petitioner. We are not

satisfied that there is any substantial question of law of general importance in this case, which, in our opinion needs to be decided by the Supreme

Court. Hence. the prayer is rejected.

17. Petition dismissed.

