

(2017) 02 KL CK 0087
In the High Court Of Kerala
Case No : 2230 of 2015 (O)

PUSHPADASAN

APPELLANT

Vs

SHEELA JERALD

RESPONDENT

Date of Decision : 17-02-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Code of Civil Procedure, 1908, Section 36,
Section 151

Citation : (2017) 02 KL CK 0087

Hon'ble Judges : P.Somarajan

Bench : SINGLE BENCH

Advocate : G.S.REGHUNATH, RAM MOHAN.G., G.P.SHINOD, MA-NU V. GOVIND
PADMANAABHAN, AJIT G.ANJARLEKAR

Judgement

1. An interim order of mandatory injunction sought to be executed through execution court in E.P.No.380 of 2014 in O.S.No.467 of 2011 on the file of the Court of the Additional Munsiff, Thiruvananthapuram. After hearing both sides, the execution court decided to proceed with the execution by the impugned order in this petition under Article 227 of the Constitution of India.

2. Heard Sri.G.S.Raghunath, learned counsel appearing for the petitioner and Sri.Ram Mohan G., the learned counsel appearing for the respondents.

3. The short questions came up for consideration are: (1) whether it is permissible to exhaust the remedy under Order XXI CPC in the matter of implementation of an interim order of injunction with the aid of Section 36 and Order XXI Rule 32 CPC ? (2) what would be the forum available for executing such orders?

4. A glaring jurisdictional error crept in the order of the lower court regarding the application of Section 36 read with Section 2 (14) and Order XXI Rule 32 of the Code of Civil Procedure. Section 36 of CPC has to be read along with Order XXI

CPC. The provisions relating to execution of decrees are applicable under the Section to the execution of orders. The term "order" is defined in clause (14) of Section 2 as the formal expression of any decision of a civil court which is not a decree. An interim injunction order cannot be treated as an order which would come under the definition of "order" in Section 2(14) as it is only an interim measure either to be granted or to be refused pending adjudication of the matter in dispute. The wording "formal expression of any decision of a civil court" has to be understood as the one rendered adjudging the dispute involved. An interim order granted cannot be brought under the purview of an order as defined in clause (14) of Section 2 CPC as it is only an interim measure granted pending adjudication of the matter in dispute. Further, in so far as violation of Order 39 of CPC is concerned, provision/remedy is provided under the Code itself and the aggrieved party can prosecute for the violation of the order under Order XXXIX Rule 2-A of CPC. It is also permissible in extreme urgency to have a recourse under Section 151 CPC for implementing the order passed under Order XXXIX Rule 1 CPC. The first remedy available is under Rule 2-A of Order XXXIX CPC and the power under Section 151 can be invoked only after exhausting the remedy under Rule 2-A of Order 39 CPC.

5. The language employed under Order XXI of CPC is confined only to the execution of decrees, especially Order XXI Rule 5 CPC which deals with the written application for execution. The powers of the execution court are enumerated and spread over under Order XXI of CPC in the matter of execution of decrees. A temporary order of injunction, either prohibitory or mandatory, cannot be substituted in the place of a decree. It is wholly impermissible to have recourse under Order XXI of CPC for executing an order of temporary injunction, either prohibitory or mandatory, and it would not come under the purview of Section 36 of CPC. Rule 32 of Order XXI deals with the question of execution of a decree for specific performance, for restitution of conjugal rights and it has no application in the matter of order of temporary injunction granted under Order XXXIX CPC. Hence the execution proceedings initiated before the execution court by filing execution application will not stand. The order of the lower court in E.P.No.380 of 2014 in O.S.No.467 of 2011 dated 17.8.2015 is hereby set aside. The execution petition is dismissed. The parties are at liberty to exhaust the remedy as provided under Rule 2-A of Order XXXIX of CPC before the trial court. The Original Petition is disposed of as above. No order as to costs.