
(2017) 01 MAD CK 0111
In the Madras High Court
Case No : C.R.P.(MD)No. 405 of 2007

R. Kannan

APPELLANT

Vs

M. Anbazhagan

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46B, Order 21 Rule 48

Citation : (2017) 3 LW 76 : (2017) 3 MLJ 829

Hon'ble Judges : Mrs. J. Nisha Banu, J.

Bench : Single Bench

Advocate : Mr. S. Subbiah, Advocate, for the Petitioner; No appearance, for the Respondents

Final Decision : Allowed

Judgement

Mrs. J. Nisha Banu, J.—This Civil Revision Petition has been filed against the order dated 11.12.2006 passed in E.P.No. 577 of 2005 in O.S. No. 1299 of 1994 on the file of the Additional District Munsif of Madurai Town.

2. The case of the petitioner is that an execution petition was filed against the garnishee for payment of money due by the judgment debtor, namely, the first respondent herein and the execution Court has dismissed the same. Aggrieved over the same, the petitioner is before this Court.

3. The first respondent/judgment debtor was the employee of the official respondents 2 and 3 herein. The petitioner contends that the executing Court has failed to see that the second respondent was the disbursing authorities within the meaning of Clauses (a) and (b) of Sub Rule 1 of Rule 48 Order 21 of Code of Civil Procedure and the second respondent ought to have withheld the portion of the salary as provided under Section 60 of Code of Civil Procedure and on his failure to remit the amount, the second respondent is bound and liable to pay the decree amount to the petitioner. The petitioner further contends that when prohibitory order under Section 46 of Civil Procedure Code was served

upon the respondents 2 and 3, they have not raised any objection and if really, the second respondent was not the disbursing authority, he ought to have raised an objection in the earlier Execution Petition in E.P.No.498 of 1995 made on 11.07.1995 and the same had been overlooked by the Executing Court. Once such objection has not been raised then as provided under Order 21, Rule 46B of the code of Civil Procedure Code, he is deemed to be the disbursing authority. The official respondents by not appearing before the Court has remained silent and allowed the Executing Court to close the execution petition on 20.08.1997 and now, he cannot turn around to say that as if he was not the disbursing authority, when the execution petition had been filed against them for paying the amount due to the petitioner. It is also the duty of the respondent to bring the further events before the Court below which had taken place, which they have failed to do so.

4. It is further stated by the petitioner that if the first petitioner was suspended and he is not in service, it is the duty of the respondents to bring the same to knowledge of the Court and findings of the learned Judge that the petitioner ought to have filed documentary evidence to show that the first respondent continue to be an employee at the time when the order of prohibition was passed is perverse. The prohibitory order was served on 20.06.1996 itself and though according to the respondents, the petitioner's left the service on 09.11.2006 on the date of serving prohibitory order, the petitioner was in service. The silence of the second and the third respondents in not utilising the opportunity given to them and not filing any objections before the Court below in the earlier execution proceedings has to be taken note of by this Court and now they cannot take a stand that they are not disbursing authority and as per the provision of the Act, the respondents 2 and 3, are liable to pay the amount, as that of the judgment debtor and therefore, the Executing Court ought to have allowed the execution petition proceedings and therefore, sought for interference of this Court.

5. The second and the third respondents in their counter in E.P.No.577 of 2005 has stated that the first respondent had been compulsorily retired from service on 09.11.1996 since he was charge sheeted in the departmental enquiry and the punishment of compulsory retirement was imposed on him and prior to this, he had been placed under suspension and hence, the order of E.P. No. 498 of 1995 could not be complied with. Further, the salary disbursing authority/garnishee of the judgment debtor is only the Senior Manager of Account Section, Madurai and not the Deputy General Manager at Circle Office in Madurai and in the provision, it is stated that the officer whose duty is to disburse the salary shall withhold and remit to the court, the amount due under the garnishee order. In the present case, the notice was not served on the salary disbursing officer, namely, the Senior Manager, Account Section, Canara Bank, Madurai and it is stated that the office of the Deputy General Manager is perpetual one and the salary of the Deputy General Manager cannot be as such attached for the debts of the bank employees. The Deputy General Manager is the circle administrative head. In this connection, the respondent has relied on a judgment reported in Chief Accounts

Officer v. Indira, AIR 1951 Cal 315 under Order 21, Rule 48 (2) that the duty of the salary of the disbursing officer is to return the order of attachment stating the ground of his objection and if considering objection, the Court refuses to withdraw the attachment, no liability attaches to the salary disbursing officer. Under the circumstances, the present petition is not maintainable. It was also alleged that the garnishee order was not served on the office of the Deputy General Manager and hence, it is not deemed to be an effective service under law. Hence, the present application is not maintainable and pray for dismissal of this Civil Revision Petition.

6. Heard the submissions of the learned Counsel for the petitioner. Despite printing the name of the official respondents/Bank in the cause list, they did not choose to appear and therefore, this court proceeded with the materials placed before this Court.

7. First of all, in the case on hand, the prohibitory order was served on the official respondents herein even before the first respondent retired from service and remaining silent and allowing the first respondent to retire cannot be countenanced and therefore, the judgment relied upon by the official respondents is not applicable to the present case on hand. Further, on going through the entire records, on the face of it, it is crystal clear that as pointed out earlier the prohibitory order was served when the first respondent was in service under the official respondents and as such, they ought to have appeared before the Court below and filed an objection, however, they have failed to do so for the reasons best known to them. Therefore, the official respondents cannot take shelter under the guise that the first respondent was not in service at the time of passing the prohibitory order is nothing but an evasive reply. Therefore, the findings of the Court below that the petitioner should have let in evidence to show that the first respondent was an employee at that point of time, when the Prohibitory Order was passed is totally erroneous and liable to be rejected. In this connection, it is more relevant to useful extract relevant provisions for better appreciation of the facts :-

46B. Order against garnishee.- Where the garnishee does not forthwith pay into Court due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

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48. Attachment of salary or allowances of servant of the Government or railway company or local authority.- (1) Where the property to be attached is the salary or allowances of a [servant of the Government] or of a servant of a railway company or local authority [or of a servant of a corporation engaged in any trade or industry which is established by a Central Provincial or State Act, or a

Government company as defined in Section 617 of the Companies Act, 1956], the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of Section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as [the appropriate Government may by notification in the Official Gazette appoint [in this behalf,-

(a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be;

(b) where such salary or allowances are to be disbursed beyond the said limits. The officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time to be disbursed by the aggregate of the amounts from time to time remitted to the Court."

8. In the light of the categorical provisions as stated supra that if the garnishee does not raise his objections in the appropriate time, then he is liable to pay the decreed amount of the judgment debtor and in the present case, admittedly, the official respondents have not appeared to the notice issued by the Court below, then, the garnishee has no option but to comply with the decree amount passed against the judgment debtor. In other words, the official respondents herein are liable to pay the decreed amount passed against the first respondent herein.

9. For the foregoing reasons, I do not have any hesitation to set aside the order impugned in this Civil Revision Petition and accordingly, it is set aside.

10. Resultantly, this Civil Revision Petition is allowed. No costs.