

(1973) 02 MAD CK 0023
In the Madras High Court
Case No : A.A.O. No. 283 of 1969

R.M.S. Shanmugham Chettiar and Others	APPELLANT
Vs	
Gian Cheng Kiet	RESPONDENT

Date of Decision : 13-02-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 39, 44
Foreign Exchange Regulation Act, 1973 — Section 21, 21(3), 5

Citation : AIR 1974 Mad 349 : (1974) ILR (Mad) 7 : (1978) 87 LW 119 : (1974) 87 LW 119

Hon'ble Judges : N.S. Ramaswami, J; Kailasam, J

Bench : Division Bench

Judgement

N.S. Ramaswami, J.—This civil miscellaneous appeal is against the order of transmission made by the learned District Judge,

Ramanathapuram. The respondent before us is a resident of Singapore. He obtained a decree for money in the High Court of Singapore against

the appellants in this Civil Miscellaneous Appeal. A certified copy of the decree passed by the High Court of Singapore was filed before the

learned District Judge, Ramnad at Madurai, u/s 44(A), Civil P. C. with a prayer that the decree may be transmitted to the Court of the

Subordinate Judge, Devakottai, for execution. The appellants before us who are the judgment-debtors raised various objections to the above said

application filed by the decree-holder. The learned District Judge Ramnad, overruled all the objections and ultimately by his order dated 11-7-

1969 ordered transmission of the above said foreign decree to the Court of the Subordinate Judge, Devakottai. Now, the judgment-debtors in this

civil miscellaneous appeal have raised various contentions. However, the learned counsel for the judgment-debtors-appellants raised only one

contention before us and that is that the decree-holder was debarred in filing the application before the District Judge, Ramnad, under the

provisions of the Foreign Exchange Regulation Act. The contention is, without prior permission of the Reserve Bank or the Central Government

under the relevant provisions of the Foreign Exchange Regulation Act, no execution could be levied by the decree-holder who is a foreigner.

Sections 5 and 21 of the Foreign Exchange Regulation Act are the relevant provisions regarding this point. Sec. 5 as far as it is material for our

purpose is as follows-

Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section which may be

granted conditionally or unconditionally by the Reserve Bank, no person in, or resident in India shall-

(a) make any payment to or for the credit of any person by order or on behalf of any person resident outside India;.....

Section 21(3) of the said Act as far as it is material for our purpose is as follows:

(3) Neither the provisions of this Act nor any term (whether expressed or implied) contained in any contract that anything for which the permission

of the Central Government or the Reserve Bank is required by the said provisions shall not be done without that permission, shall prevent legal

proceedings being brought in India to recover any sum which, apart from the said provisions and any such term, would be due whether as a debt,

damages or otherwise, but-

(a) the said provisions shall apply to sums required to be paid by any judgment or order of any Court as they apply in relation to other sums; and

(b) no steps shall be taken for the purpose of enforcing any judgment or order for the payment of any sum to which the said provisions apply

except as respects so much thereof as the Central Government or the Reserve Bank, as the case may be, may permit to be paid; and.....

The contention of the learned counsel for the judgment-debtors-appellants is that reading Sections 5 and 21 of the Act, though a suit for money

may be filed in any Court in India by a resident outside India without obtaining the previous permission of the Reserve Bank or the Central

Government, as the case may be, no execution can be levied by such foreigner before obtaining such permission. On the contrary, the learned

counsel for the decree-holder-respondent contends that the provisions of the Act do not bar even the levy of execution of decree for money even

though the decree-holder may be a resident outside India, but permission from the Reserve Bank or the Central Government would have to be

obtained only before the decree-holder wants to draw the money from Court. We are of the opinion that the contention of the learned counsel for

the respondent-decree-holder overlooks the specific provisions contained in sub-clauses (a) and (b) of sub-section (3) of Section 21, quoted

earlier.

2. Section 5 totally prohibits making of any payment to or for the credit of any person resident outside India without the necessary permission as

contemplated under that section. Sub-sec. (3) of Section 21 is in the nature of an exception to the above said provision contained in Section 5, for

this sub-section says that legal proceedings for recovery of money can be taken even without obtaining the necessary permission from the Reserve

Bank or the Central Government. But, then sub-clauses (a) and (b) of the above said sub-section (3) are in the nature of exception to exception.

Sub-clause (a) makes it clear that in spite of what is stated in sub-section (3) the provisions of the Act (the prohibition u/s 5 of the Act) shall apply

to sums required to be paid by any judgment or order of any Court as they apply in relation to other sums. Then sub-clause(b) says that no steps

shall be taken for the purpose of enforcing any judgment or order for the payment of any sum to which the said provisions apply. The learned

counsel for the decree-holder contends that sub-clause (b) would apply only to cases where the decree-holder prays for payment out and not to

execution petitions themselves. The learned counsel is not right. The words "any judgment or order for the payment of any sum" have to be read

together. The words "for the payment of any sum" qualify the words "any judgment or order." The sub-section specifically says that no steps shall

be taken for the purpose of enforcing such judgment, viz., a judgment for the payment of any sum. Undoubtedly, the judgment in question is one

for payment of money and the decree-holder is a resident outside India. No steps shall be taken for the purpose of enforcing this judgment without

obtaining the necessary permission of the A.B. Lobo Vs. Fateh Khan, one of us had to consider a similar question. It was held there that execution

of a decree by a resident outside India cannot be levied before obtaining the necessary permission of the Reserve Bank or the Central

Government. On a plain reading of Section 21(3), sub-clauses (a) and (b), we are satisfied that execution of a judgment by a resident outside India

cannot be levied without obtaining the necessary permission as contemplated under the various provisions of the Act. The learned counsel for the

decree-holder-respondent referred to the judgment of Ismail, J., in W. P. No.86 of 1968 (Mad). That writ petition was filed by a judgment-debtor

contending that before a decree-holder who is a resident outside India gets the necessary permission from the Reserve Bank under the provisions

of the Act, he (judgment-debtor) was entitled to be heard by the Reserve Bank authorities and the permission granted by the Reserve Bank

without he being so heard was bad. The learned Judge rightly rejected such a contention and dismissed the writ petition. We are unable to see how

this decision has any relevance to the present case. Here we are not concerned with the question whether the judgment-debtor has any right to be

heard by the Reserve Bank authorities before granting the necessary permission under the Act. We are concerned with the question whether the

decree-holder who is a resident outside India can enforce the judgment before obtaining the necessary permission of the Reserve Bank as per the

provisions of the Act. As we said earlier, we are quite clear that though a resident outside India can file a suit for recovery of money without the

prior permission of the Reserve Bank or the Central Government, as the case may be, he should necessarily obtain such permission before levying

execution for the recovery of the money.

3. Even so, the judgment-debtor-appellants cannot get any relief as far as the present civil miscellaneous appeal is concerned. The order appealed

against is one u/s 44-A, Civil P. C. for receiving the foreign judgment and transmitting the same u/s 39, Civil P. C. to the Court of the Subordinate

Judge, Devakottai for execution. The decree-holder cannot be said to have taken steps for enforcing the judgment as contemplated under sub-

clause (b) of sub-section (3) of Section 21 of the Act in filing the certified copy of the foreign judgment in the Court of the District Judge, Ramnad

with a request that the same may be transmitted to the Court of the Subordinate Judge, Devakottai. The Court of the Subordinate Judge,

Devakottai, is going to be the executing Court. Undoubtedly, the decree-holder cannot take steps to proceed against either the person or the property of the judgment without getting the necessary permission as contemplated under the Act. But, we are quite satisfied that the steps so far taken by the decree-holder do not come within the purview of sub-clause (b) of Section 21(3) of the Act, for the mere filing of the certified copy of the judgment of the foreign Court and praying for transmission of the same to the executing Court cannot be said to be step for the enforcing of the judgment as contemplated under the abovesaid provisions. Therefore, the civil miscellaneous appeal fails.

4. The learned counsel for the judgment-debtor-appellants raised another point, vi., that the decree-holder has given the rate between the Malayan dollar and the Indian rupee wrongly and that has got to be corrected. But, that question is not before us. The only order that is appealed against is the order transmitting the decree to the Court of the Subordinate Judge, Devakottai. We are concerned only with the question whether that order is legal or not. As we said earlier, there is nothing wrong about that order. Therefore, the civil miscellaneous appeal has to be dismissed. The question as to the correct exchange value has to be agitated in the proper forum. The civil miscellaneous appeal is dismissed. There will be no order as to costs.

5. Appeal dismissed.