

(2002) 03 MAD CK 0059

In the Madras High Court

Case No : Civil Revision Petition No. 215 of 2002 and C.M.P. No. 2542 of 2002

S.F. Abdul Jaleel

APPELLANT

Vs

V.M. Abdul Majid Rowther Trust at Vijayapuram

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 10, Order 21 Rule 11, Order 21 Rule 12, Order 21 Rule 13, Order 21 Rule 14

Citation : (2002) 2 LW 529 : (2002) 2 MLJ 427

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : K.V. Subramanian, for the Appellant; Srinath Sridevan, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—This is a revision under Article 227 of the Constitution of India by a tenant.

2. The first respondent herein - landlord filed a petition for eviction in R.C.O.P.No.18 of 1992 on the file of the Rent Controller, Thiruvavur against

the petitioner and the other respondents 2 to 4 herein. The said petition was allowed and an order was passed for eviction. There is no dispute

with regard to the above facts. The grievance of the petitioner is that instead of the first respondent filing the execution petition, one S.H. Amruthin

has filed the execution petition in his individual capacity and the same was numbered as E.P.No.73 of 2001. It is stated that in the Execution

Petition served on him shows one S.H. Amruthin's name alone as the petitioner and building owner. It is further stated that the schedule property

was also different from the schedule property in RCOP.No.18 of 1992. Therefore, there are lot of discrepancies in them. With these facts the

petitioner expected that the Execution Petition would be dismissed and he did not enter appearance. However, the learned Judge heard the

execution petition after filing of counter by respondents 2 to 4 and passed an order on 28.01.2002, allowing the said S.H. Amruthin to amend the

cause title so as to be in conformity with the decree without even a petition for amendment. According to the petitioner, the amendment was carried

out by the first respondent behind the back of the petitioner and other respondents. It is also his grievance that, without further notice and without

further opportunity for filing counter, the Court below allowed the Execution Petition and ordered delivery of possession.

3. Mr. K.V. Subramanian, learned counsel for the petitioner by drawing my attention to the above mentioned defects would contend that the

execution petition is not maintainable and liable to be dismissed u/s 47 of the CPC as the decree is inexecutable. He also contended that the Court

below ought to have heard the petitioner before passing an order of amendment. In the execution petition, particularly in the short cause title the

petitioner instead of describing the Trust, has mentioned the name of the Trustee, as if the Trustee alone has secured an order of eviction.

However, by order dated 28.01.2002, the short cause title as well as Clause 10 of the Execution Petition, the name of the Trust has been

corrected in terms of the decree. Learned counsel for the petitioner would states that for execution of a decree, proper application has to be made

as per Order 21 Rule 10. There is no dispute that where the holder of a decree desires to execute it, shall apply to the Court which passed the

decree or to the officer appointed in this behalf, or if the decree has been sent under the provisions of this Court to another Court or to such Court

or to the proper officer thereof. In other words, for execution of a decree, proper application has to be made. Rule 17 (1) speaks about procedure

on receiving application for execution of decree. It is clear that, on receiving an application for execution of a decree as provided by Sub Rule (2)

of Rule 11, it is incumbent on the part of the Court to ascertain, whether such of the requirements of Rule 11 to 14 applicable to the case have

been complied with; and, if they have not been complied with, the Court shall allow the defect to be remedied then and there or within a time to be

fixed by it. It is relevant to refer Rule 11.

11. Oral application:-

(1)

(2) Written application:- Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and

verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall

contain in a tabular form the following particulars, namely:-

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d).....

(e).....

(f).....

(g).....

(h).....

(i).....

(j).....

(3) The Court to which an application is made under sub-rule 92) may require the applicant to produce a certified copy of the decree.

HIGH COURT AMENDMENT (MADRAS): (i) After clause (f) insert cl. (ff) as follows: ""(ff). Whether the original decree-holder has transferred

any part of his interest in the decree and if so, the date of the transfer and the name and address of the parties to the transfer.

(ii) Add the following to sub-rule (2) (j):

In an execution petition praying for relief by way of attachment of a decree of the nature specified in sub-rule (1) of rule 53 of this Order, there

shall not be included any other relief mentioned in this clause.

(iii) Add the following proviso at the end of sub-rule (2):

provided that when the applicant files with his application a certified copy of the decree, the particulars specified in clause (b), (c) and (h) need not

be given in the application.

Rule 17. Procedure on receiving application for execution of decree:-

(1) On receiving an application for the execution of a decree as provided by Rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of Rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with (the Court shall allow) the defect to be remedied then and there or within a time to be fixed by it.

{(1-A) If the defect is not so remedied, the Court shall reject the application:

Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in clauses (g) and (h) of sub-rule (2) of Rule

11, the Court shall, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally

decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.}

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law

and presented on the date when it was first presented.

4. Apart from these provisions, it is also relevant to refer Rule 139 and 141 of Civil Rules of Practice. Rule 139 says that, except when made

under Rule 11 (1) of Order XXI of the Code, an application for execution of a decree shall be by petition and in addition to the particulars set

forth in Rule 11 (2) of Order XXI of the Code, shall be headed with the cause title of the suit and separately numbered in each suit. The petition

shall if it relates to any property of the judgment debtors, pray for the realisation thereof in the manner appropriate to the nature of the property as

in Form No.53 and shall also set, out the whole of the relief which the applicant requires at the time of the presenting the same. The Court shall not

grant any relief not claimed by execution petition. As per Rule 141 a petition not complying with the provisions of the Code or Civil Rules of

Practice or not claiming any substantial relief, shall be returned for amendment or rejected. By pointing out the above provisions, particularly Order

21 Rule 17, learned counsel for the petitioner would contend that the Court below ought to have heard the petitioner before passing an order of

amendment.

5. Mr. Srinath Sridevan, learned counsel for the first respondent by relying on a Division Bench decision of the Bombay High Court in the case of

M/s. T.A. Darbar and Company and others Vs. Union Bank of India, would contend that, even if the application is found to be defective the same

can be amended with permission of Court. In the case before the Division Bench, the relief sought for in the petition for execution was under Order

21 Rule 22 and therefore the execution application was defective inasmuch as the mode in which the decree to be executed was not specifically set

out therein. The defect was not noticed by the Court and the notice under Rule 22 was issued and made absolute on the assumption that it was

free from any defect. The Division Bench after referring Order 21 Rule 17, 22, 11 (2) (j) of the Code, held that the application for execution was

not invalid even though there might be defect in the application and the decree holder could be permitted to amend the application, since a party

should not suffer for the error of the Court. They further held that the execution application is required to be filed for seeking assistance of the

Court for enforcement decree by various modes set out in Order 21 Rule 11 itself. The stage for issuance of the notice under Rule 22 arise only

when the application is examined by the executing Court and admitted after the defects, if any, are remedied by the decree holder. The language of

Order 21, Rule 17 (1) makes it clear that the duty is cast upon the executing Court to ascertain whether the requirements of application for

execution as contemplated by the Code are satisfied and if not, to permit the decree holder to remedy the defects. In case the defects are not

remedied then the power is bestowed upon the Court to reject the application and as long as the application is not rejected by the executing Court

in exercise of powers under Rule 17 (1A), the application remains alive, even though there may be defects in the application. It was always open

for the Court, after noticing the defect, to permit the decree holder to amend the application and on such amendment in accordance with Rule 17

(2), the application shall be deemed to have been presented on the date on which it was originally presented. Their Lordships further held that the

Court should take a practical view and not a limited or restricted view of the provisions of Rule 17 should not defeat the decrees by technical

considerations. The party should never suffer for the error of the Court or the Court Officer. The power to call upon the decree holder to remedy

the defect is not exhausted merely because notice under Rule 22 is made absolute. It is clear from the Division Bench decision, even if there is any

defect in the execution application, the same can be amended with permission of Court and once permission is granted to the decree holder to amend the application and on such amendment in accordance with Rule 17 (2), the application shall be deemed to have been presented on the date on which it was originally presented. The Division Bench has also not suggesting that notice to be ordered to the other respondents before making such amendment.

6. Mr. Srinath Sreedevan, has also relied on the judgment of K.Govindarajan,J., in the case of Feroz Khan Vs. S.M.S.S.A. Farook Ali, . While considering the very same provisions, namely Order 21 Rule 11 (2), 11(3), 22 of the CPC and Rule 139, 140, 141 of Civil Rules of Practice and after referring various earlier decisions, the learned Judge has held that, no notice is necessary if eviction petition is filed within two years from the date of decree. In that case the decree holder filed execution petition by furnishing name and address of the tenant before alteration by Corporation authorities without notice to tenant. In that context, after referring the above provisions the learned Judge held that, "" no notice is necessary since eviction petition was filed within two years from the date of decree."" I have already referred to the High Court amendment (Madras) to Sub-section (3) of Rule 11. It is clear that when the applicant files with his application a certified copy of the decree, the particulars specified in Clause (b) (c) and (h) in Rule 2 need not be given in the application.

7. In the light of what is stated above, I am satisfied that in the execution petition, though the decree holder is not properly described in the short cause title, the same had been rectified by filing amendment petition and the initial defect was allowed to be corrected by the Court. The above referred provisions of the Code and Civil Rules of Practice enable the decree holder to file such application and the Court has to pass orders respectively. Accordingly, the petitioner cannot be allowed to contend that he was not given notice or heard before passing an order of amendment.

8. Regarding the wrong description of the property in the execution petition, the Court below on verification came to a conclusion that the execution petitioner has properly described the schedule in terms of the decree, hence there is no substance in the said contention.

9. Under these circumstances, there is no error or infirmity in the impugned proceedings, consequently, the civil revision petition fails and the same is dismissed. No costs.