

(2005) 09 KAR CK 0011

In the Karnataka High Court

Case No : Civil Revision Petition No. 261 of 2005

Shriram Chits (Bangalore) Ltd.

APPELLANT

Vs

Sri Panchakshari and Another

RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Chit Funds Act, 1982 — Section 68, 69, 71, 71 (a)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 10, 39, 42

Citation : (2006) ILR (Kar) 498 : (2006) 6 KarLJ 652 : (2005) 4 KCCR 2878 : (2006) 1 RCR(Civil) 368

Hon'ble Judges : N.S. Veerabhadraiah, J

Bench : Single Bench

Advocate : R.B. Sadasivappa, G.S. Venkatasubba Rao, for the Appellant; A. Keshava Bhat, for R1 and K.M. Nataraj Advocate for R2, for the Respondent

Final Decision : Allowed

Judgement

N.S. Veerabhadraiah, J.—This is the decree holder's revision being aggrieved of the order passed in Ex. Case No. 130/2000 on the file of the II Addl. Civil Judge (Sr. Dn), Mangalore, dated 2-2-2001 dismissing the Execution Petition as not maintainable.

2. The brief facts of the case are as follows:

The petitioner M/s Shriram Chits (Bangalore) Ltd., Hampankatta Branch, Mangalore is a Chit Company registered under the Chit Funds Act, 1982. The subscriber viz., the principal debtor Sri Shyam Bhandary of Uppinangady was a member of the Chit Fund and drawn the chit amount on the co-obligation of respondents Sri Panchakshari and Sri M.P. Balakrishna Bhandary. The subscriber defaulted in payment of the subscription due in accordance with the terms of the chit agreement. In respect of the recovery of the dues, the petitioner initiated proceedings as provided under Chapter XII of the Chit Funds Act, 1982, before the Development Officer, Bantwal, who is the nominee for adjudication of the disputes and an award came to be passed against the principal debtor and the

sureties. The award appears to have been submitted to the Joint Registrar of Chits, Mysore Division, Mysore for certification as required u/s 71(a) of the Chit Funds Act, 1982. A certificate dated 10.1.2000 was issued by the Joint Registrar of Chits, Mysore Division, Mysore. The decree holder presented an execution petition before the II Additional Civil Judge (Sr. Dn), Mangalore, for recovery of an amount of Rs. 52,016/- from the judgment debtors and sought for attachment of salary of respondents 1 and 2. The learned Civil Judge issued warrant for attachment of salary of Rs. 1,500/- p.m. out of the salaries of the respondents.

3. The respondent having entered appearance filed I.A. No. 2 u/s 151 CPC to recall the order of salary attachment and also notice to garnishee to remit the salary. The Learned Civil Judge after hearing both side Counsels rejected I.A. No. 2. It is thereafter the respondents filed objections questioning the jurisdiction of the Executing Court. After hearing both side Counsels, the learned Civil Judge dismissed the execution petition as not maintainable. It is this order which is questioned in the present revision.

4. Learned Counsel Sri Sadashivappa contended that there is no dispute regarding the award being passed by the Development Officer of Bantwal, South Canara District. The parties therein also reside within the jurisdiction of the South Canara District and the award in question came to be certified by the Joint Registrar of Chits, Mysore Division, Mysore, by his order dated 10.1.2000 within whose jurisdiction the parties reside and transaction has taken place. Therefore, the execution petition came to be filed before the learned Civil Judge (Sr. Dn.,) who is competent to exercise jurisdiction for recovery of the amount. He has further submitted that Section 71(a) of the Chit Funds Act, 1982 makes clear that on being issued a certificate by the Registrar or its nominee, is deemed to be a decree of the Civil Court and the same has to be executed in the same manner as the decree of such Court. Therefore, submitted that the impugned order is erroneous and not sustainable. Secondly contended that even otherwise if there is any error of jurisdiction in entertaining the execution petition, that the learned Civil Judge ought to have returned the execution petition for being presented before the proper Court to proceed further which is not so. Therefore, on this count also the impugned order is not sustainable. Accordingly, prayed to set aside the impugned order by allowing the revision or in any case, to permit him to present the execution petition after its return. Learned Counsel thirdly contended that the Joint Registrar of Chits, Mysore Division, Mysore, who issued certificate exercises jurisdiction over Mysore Division inclusive of the revenue districts of Mysore, Mangalore, Hassan, Udupi, Chamarajanagar, Madikeri, Mandya and Chickmagalur. Therefore, the presentation of the execution petition is also before the proper Court. On these counts prayed to allow the revision.

5. Learned Counsel Sri K.M. Nataraj, firstly contended that though the certificate is issued by the Joint Registrar of Chits, Mysore Division, Mysore exercising power throughout the Mysore Division, the Court cannot ignore the mandatory

provisions of Sections 38 and 39 of the CPC r/w Order 21 Rule 10 CPC. Unless the decree is transferred to the Court which can exercise jurisdiction, it cannot be entertained by such Court. Learned Counsel further contended that the plain reading of Section 71(a) of the Chit Funds Act, 1982 makes clear that the Court which passed the decree is alone competent to execute the decree. When the certificate is issued by the Joint Registrar of Chits, without obtaining appropriate orders for executing the decree, the Court at Mangalore will not get jurisdiction. Thereby, the very filing of the execution petition is not sustainable. In support of his contentions, he has relied on the decision in the case of Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, and submitted that the Court while interpreting the meaning of "such Court" in a criminal case held that it is before the very Court where proceedings were pending that cognizance can be taken for the purpose of rendering evidence etc., and that the same analogy applies to the facts of this case. He has further contended that the notification produced shows that it is only for administrative purpose and it cannot act as Court as such. Therefore, unless and until transferred and the decree is obtained, it cannot be executed.

6. In the light of the submissions, the point for consideration that arises is:

Whether the certificate issued for recovery of the amount by the Joint Registrar of Chits, Mysore Division, Mysore could be construed as an award or a decree of a Civil Court for purposes of exercising jurisdiction under Order 21 and execute it as if it is a Civil decree?

7. It is not in dispute that an award was passed by the Development Officer of the Co-operative Societies, Bantwal against the respondents in Dispute No. 190/98-99. After the award was passed, a certificate was issued as provided u/s 71(a) of the Chit Funds Act, 1982 which reads as follows:

"CERTIFICATE

(Under Section 71(a) of the Chit Funds Act, 1982)

This is to certify that an award has been passed by this Court against the opponents in the above dispute on 15/7/1999 for a sum of Rs. 41,774/- (Rupees Forty one thousand seven hundred seventy four only) along with interest at 18% per annum on Rs. 36,143/- from 1/3/1999 to the date of repayment plus Advocate's Fees and Court costs. The said amount is ordered to be recovered by sale of movable or immovable properties or both belonging to the opponents.

Given under my hand and seal of this Court on 10.1.2000.

Sd/- Joint Registrar of Chits Mysore Division, Mysore.

8. The decree-holder presented an execution petition on the basis of the certificate issued by the Joint Registrar of Chits, Mysore Division, Mysore.

9. Section 71 of the Chit Funds Act, 1982 provides the mode as to how the money has to be recovered which reads as follows:

"71. Money how recovered,-Every order passed by the Registrar or the nominee u/s 68 or Section 69 and every order passed by the State Government in appeal u/s 70 for payment of any money shall, if not carried out,-

(a) on a certificate issued by the Registrar, be deemed to be a decree of a Civil Court, and shall be executed in the same manner as a decree of such Court, or

(b) be executed in accordance with the provisions of any law for the time being in force for the recovery of amounts as arrears of land revenue,

Provided that no application for execution under Clause (b) shall be made after the expiry of three years from the date fixed in the order, and if no such date is fixed, from the date of the order."

10. Section 71(a) of the Chit Funds Act, 1982 makes clear that when a certificate is issued by the Joint Registrar of Chits, it can be enforced as if it is a civil decree or in the alternative, the certificate or award also can be enforced to recover the amount as if it is the arrears of land revenue. Thereby it is clear that for purposes of recovering the amount, one is through execution of the decree by Court and another is by way of arrears of land revenue. In the present case, the certificate is issued by the Registrar which has got the effect of a decree for purposes of recovery of the amount.

11. The contention of the Learned Counsel Sri K.M. Nataraj for the respondent is that though the certificate is issued, it cannot be filed before the Civil Court for execution unless the decree-holder obtains an order of transfer of the decree. In support of his contention, the Learned Counsel relies on the decision in the case of Co-operative Society of Debts Vs. Nandlal, Wherein at para 3, it is observed thus:

3. The first point for consideration in this appeal is as regard the jurisdiction of the Registrar functioning under the co-operative Credit Societies Act in respect to execution of decrees. The decision of this question depends on the interpretation to be placed on the language employed in Section C1340 F. as amended. This section is in these terms:

If an award given by the Registrar or by a person nominated by him or by a committee of arbitrators is not acted upon, then the Registrar can have it enforced,

(a) through a Civil Court on a certificate issued by him. The Civil Court will treat the award in the same way as its own decree.

(b) through a Revenue Court or officer by issuing a certificate to that Court or Officer.

The language employed in this Section does not place the Registrar on the same pedestal as a Court passing the decree under the Civil Procedure Code. Under the Code, a Civil Court passing the decree is also the Court executing the decree. It has a dual capacity, (1) of the Court passing the decree and (2) of the

executing Court. The Registrar, it appears has the first capacity of a Civil Court but he has not been placed in the matter of execution in the same capacity as a Civil Court passing a decree. The only jurisdiction conferred on the Registrar is that he can issue a certificate and on that certificate he can send a decree either to the Civil Court or to a Revenue officer. It may be after issuing a certificate, he may be entitled to cancel the certificate or issue another, or he may by withdrawing the certificate withdraw execution from a Civil Court and send it to a Revenue Court and vice versa. On the plain words of the section, it cannot be held that the Registrar has been constituted an Executing Court or that any powers in the matter of the execution of the award decree have been conferred upon him. The question that arises for consideration is, whether in view of this construction of the section, it was open to the Registrar to intervene during execution proceedings that were pending in a Civil Court on the basis of the certificate granted by him. In order to determine this point, it is necessary to see precisely what the Registrar actually did in this case. After a default had been made in the payment of the first instalment and the whole decree debt had become due and execution had been taken out for recovery of the amount, the Registrar accepted the amount of the first instalment and asked the executing Court to stop further proceedings. The act of the Registrar in accepting the first instalment was a clear trespass on the duties of the Executing Court. It is only in the Executing Court where payment towards satisfaction of the decree, the execution of which had been taken out could be made, unless the Court passing the decree has also the jurisdiction to execute it. As already indicated, this jurisdiction is not possessed by the Registrar. That being so, in our opinion, the requisition of the Registrar to the Executing Court to stop execution proceedings and his act in accepting the first instalment were in excess of the jurisdiction conferred on him and the Executing Court was entitled to ignore it. Moreover, the Registrar could not alter or amend the decree passed by the Arbitrator at this stage.

12. There cannot be any dispute regarding the principles in so far as the recovery of the amount by two methods. One is through the Court and another as arrears of land revenue. The relevant portion reads as follows:

The only jurisdiction conferred on the Registrar is that he can issue a certificate and on that certificate he can send a decree either to the Civil Court or to a Revenue Officer.

13. The learned Counsel stresses on the word "send". This makes clear that the procedure contemplated for recovery of the money is of 2 modes. It is also observed that when once a certificate is issued for execution, the Registrar has no power to meddle or interfere with the jurisdiction of the Civil Court, In that view of the matter, it is held the Registrar could not alter or amend the decree passed by the Arbitrator when the matter is pending before the executing Court.

14. That in so far as the powers of the Registrar of Co-operative Societies are concerned, in the decision *supra*, at Para 4, it is observed thus:

All the Courts below have interpreted the section to mean that the Registrar as the Court passing the decree has the same power as the Court executing it. We are unable to agree in this view in view of the clear language employed in the section. The analogy of decisions given in respect of Civil Courts is not available in interpreting this Act. Under the CPC the Parent Court i.e., the Court passing the decree always retains jurisdiction to execute the decree even it has been transferred to one or more Courts for the purpose of execution. Primarily, it is the function of the Court passing the decree to execute it, but when it is found that it is not possible for it to effectively execute it, provision has been made in the Code authorising it to send it to other Courts for the purpose of execution, but none of these provisions in any way affect the jurisdiction of the Court passing the decree to execute whenever it thinks fit to do so and the order transferring execution to their Courts does not take away its jurisdiction in the matter. The position however in the case of the Registrar is entirely different. He himself has been given no jurisdiction to execute his own decree. The only power conferred on him is to get it realized through a Civil Court or a Revenue Court and the only authority conferred on him is to issue a certificate for that purpose.

15. It is needless to say that the Registrar has no power to execute the decree, but for the purpose of executing the decree, the procedure that he has to follow is as provided u/s 71(1)(a) of the Chit Funds Act, 1982 by issuing a certificate. If such a certificate is issued, it can be enforced as if it is a decree of a Civil Court for recovery of such an amount. Therefore, there is no confusion or ambiguity in understanding the principles laid down in paras 3 and 4 of the decision *supra*. What the Court has to see is as to what is the method that has to be adopted or followed to execute a decree when a certificate is issued.

16. In the light of the decision *supra*, the Court have to give effect to what the Section provides for with proper interpretation to carry out the meaning of it. At the cost of repetition, it has to be said that when a certificate is issued, it can be enforced as if it is a Civil Court in the same manner as a decree of such Court. In other words to say, that the Court which is competent to execute the decree. In this regard, the Learned Counsel Sri K.M. Nataraj brings to the notice of the Court the decision in the case of *Nirmaljit Singh Hoon v. The State Of West Bangal and Ors.* (*supra*) in which at Head Note-(E) the interpretation of such Court is explained as follows:

The words "Such Court" in Clause(c) of Section 195(1) mean the very Court before which a party to a proceeding in that Court has produced or tendered in evidence a document in respect of which the offence is alleged to have been committed. Clause (c) in other words means that it is that Court before which there is a proceeding and a party to such a proceeding is said to have committed an offence in respect of a document produced or tendered in evidence by him, on whose complaint the offence can be taken cognizance of.

The language of Clause(c) does not warrant the proposition that once a document alleged to be forged is used in any proceeding before any Court at any

time, Section 195(1)(c) could at once be attracted and would be a bar against a complaint by a party complaining of its fraudulent user in any later proceeding.

If the Court before which the forged document was produced first, refrains from filing a complaint, the refusal is not a bar against any other Court from filing a complaint under Clause(c) where it is produced or tendered in evidence subsequently in a proceeding before it.

The proper construction of that clause therefore is that when a party to a proceeding before any Court produces or tenders in evidence a document in respect of which an offence e.g.,

Section 471 read with Section 467 Penal Code is alleged to have been committed, it is that Court before which the document is produced or tendered in evidence which can file a complaint regarding such an offence and a Magistrate can not take cognizance of such an offence except upon a complaint by such Court or a Court subordinate to it.

17. In the said decision, at the end of para 36, it is observed as follows:

The words "such Court" mean the very Court before which a party to a proceeding in that Court has produced or tendered in evidence a document in respect of which the offence is alleged to have been committed. Clause (c) in other words means that it is that Court before which there is a proceeding and a party to such a proceeding is said to have committed an offence in respect of a document produced or tendered in evidence by him, on whose complaint the offence can be taken cognizance of.

18. The Apex Court while interpreting "such Court" means the very Court before which a party to a proceeding in that Court has produced or tendered in evidence a document in respect of which the offence is alleged to have been committed.... But we are concerned with the mode or transfer of decree for its execution in a civil proceeding. Section 71(a) itself provides for issue of a certificate for its execution by a Civil Court as if it is the same Court which passed the decree. Each case has to be examined on its own facts and circumstances and there cannot be any hard and fast rule. Therefore, the meaning given while considering Section 195(1) of Cr.P.C. cannot be taken as the Registrar has no power to execute the decree and it is only the Civil Court which can execute the decree on issue of a certificate by the Registrar of Co-operative Societies.

19. Order 21 Rule 10 CPC provides for filing of application for execution of a decree which reads as follows:

10. Application for execution,- where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

20. The fruits of the decree have to be realised by presenting an application for execution before the appropriate Court which is competent to execute the decree either by way of filing an application or by obtaining a transfer of a decree as the case may be.

21. Section 38 of the CPC reads thus:

38. Court by which decree may be executed.-

A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

This makes clear that the Court may execute the decree which is passed by it or the decree passed by any other Court for realisation of the amount.

22. Section 39 of the CPC reads thus:

39. Transfer of decree.- (1) The Court which passed a decree may on the application of the decree-holder, send it for execution to another Court (of competent jurisdiction)

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purpose of this Section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

23. On a reading of Section 39 of the CPC, it makes clear that if the Court which passed the decree cannot execute the award or decree passed it can be transferred to the jurisdictional Court for its enforcement. The same is provided u/s 71(a) of the Chit Funds Act.

24. Now the question that has to be considered is whether the decree holder has to file an application for transfer of the decree to the jurisdictional Court even though a certificate is issued as provided u/s 71(a) of the Chit Funds Act.

25. In the case of *Krishnaji Shridhar Bharde v. Mahadeo Sakharam Patil*, similar question came up for consideration and while considering Section 39 of the Code of Civil Procedure, 1908 as well as Section 43 of the Co-operative Societies Act, 1912 and the Rules, the Court delivered the judgment which reads as follows:

In this case, an award was made by an arbitrator in a dispute between certain parties, the arbitrator being appointed by the Registrar of Co-operative Societies as provided by the rules under the Co-operative Societies Act II of 1912. As one of the opponents resided in Bombay or had gone to Bombay, the petitioner applied to the Court of Small Causes at Poona for a certificate transferring the decree for execution at Bombay to the Court of Small Causes at Bombay. The rules passed u/s 43 of the Co-operative Societies Act provide under Rule 34 that the decisions and awards under Rule 31 shall on application to any Civil Court having local jurisdiction, be enforceable in the same manner as a decree of such Court.

The learned judge dismissed the application on the ground that u/s 39 of the Civil Procedure Code, it was only the Court which had passed the decree that could give a certificate under the section. It seems to us that is a somewhat narrow construction of Section 39, as the petitioner could apply to the Poona Court to execute the decree as if the Poona Court had passed it, and the next step would be that if the Poona Court could execute the decree as if it had passed that decree, then it could transfer that decree u/s 39, Civil Procedure Code. Therefore, the Rule will be made absolute. The order dismissing the application with costs must be set aside, and the petitioner's costs will be costs in the execution.

We may add that Rule 34 is not very clearly worded. If it means that a party who has obtained an award can execute it in a number of different Courts, that would certainly be contrary to the scheme of the CPC which provides that the Court which passes the decree shall execute it, and if required, shall send the decree for execution to another Court under the provisions of Section 39, with the result, that the execution of the decree really proceeds under the Court which passes the decree, whereas if the decree is being executed in half a dozen Courts, it would be impossible for those Courts to know what had been done outside their own jurisdiction.

26. Applying the same principles to the facts of this case, when once a certificate is issued by the Registrar of Co-operative Societies, it can be filed before the jurisdictional Court for enforcement of the decree. Even otherwise, if it is found that the Court in which the execution is filed has no jurisdiction, it empowers the Executing Court to pass an order of transfer of the decree u/s 39 of CPC to any competent Executing Court. Therefore, the submission of the learned Counsel Sri

K.M. Nataraj that the Registrar himself has to transfer the decree to such Civil Court for executing it is without any merit.

27. Similarly, in the case of Sital Prasad v. Messrs Clement Robson & Company ILR XLIII 394) while considering Section 42 CPC under Order 21 Rules 6 and 50, the Court observed as under:

Where an award made under the Indian Arbitration Act, 1899 has been made a Rule of Court, it may be transferred for execution to another Court just in the same way as a decree, and the court to which it is so transferred has, as regards any matters which are to be determined in execution proceedings, the same powers as the "Court which passed the decree," i.e., as the Court which ordered the award to be filed.

28. Here also it is made clear even assuming for a while that the certificate filed is before a wrong Court, it does not take away the jurisdiction of the Civil Court in transferring the decree to the Court which has jurisdiction. It is the duty of the Court to carry out the intention of the legislature which has enacted the Act for its enforcement and to carry out the true meaning of Section 71(a) of the Chit Funds Act, 1982. In that view of the matter, it has to be held that the certificate issued by the Registrar virtually is a decree which is executable by the Court as if it is a decree passed by the Civil Court. Therefore the Court has to follow the procedure contemplated under Order 21 for execution of such decree.

29. For the foregoing reasons, it is held that the certificate issued by the Registrar of Co-operative Societies itself is sufficient to file it before the competent Court which has jurisdiction. If such Court has no jurisdiction it can exercise powers u/s 39 for transferring of the decree for further proceedings before the competent Court. In that view of the matter, the dismissal of Ex. Case No. 130/2000, dated 2.2.2001 by the II Addl. Civil Judge (Sr.Dn.), Mangalore, is hereby set aside and it is ordered to restore the Ex. Case No. 130/2000 and proceed to pass appropriate orders in accordance with law.

30. Accordingly the revision is allowed by remanding the matter for fresh disposal in accordance with law.