

(1999) 09 MAD CK 0043
In the Madras High Court
Case No : C.R.P. No. 227 of 1993

S.K.S. Rajamani Nadar and another

APPELLANT

Vs

Tuticorin Small Scale Salt Manufacturers Association and
another

RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

Citation : (2000) 2 CTC 23 : (2000) 1 MLJ 370

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : Mr. V. Shanmugham, for the Appellant; Mr. A. Sankarasubramanian,
for the Respondent

Judgement

1. This civil revision petition is directed against the order of the learned subordinate Judge, Tuticorin in E.A.No.1222 of 1991 in E.P.No.59 of

1989. The said applications came to be filed in O.S.No.61 of 1984.

2. In the E.P. filed by the decree holders, viz E. P.No.59 of 1989, the petitioners/ judgment-debtors while praying for setting aside the sale, in

E.A.No.1222 of 1991 had prayed for dispensing with furnishing of the security in terms of the Proviso to Order 21 Rule 90 of Civil Procedure

Code. The Execution Court, by its impugned order dated 1.10.1992 rejected the said petition and dismissed the same on the ground that the

judgment debtors have not filed necessary security deposit in terms of Order 21, Rule 90 of C.P.C. Aggrieved by the said order, the judgment-

debtors have filed the above revision petition.

3. In this revision, the judgment-debtors petitioners have questioned the validity of the Madras Amendment to Order 21, Rule 90 of C.P.C. It is

also contended that the condition to make such deposit is contemplated prior to the admission of the petition and as such, the point taken by the

learned counsel is that the petitioners should have been provided with an opportunity to furnish security, when once the Court had decided to

reject the petition to dispense with the deposit.

4. With reference to the issue of the validity of the Proviso to Order 21, Rule 90 of C.P.C, a Full Bench of this Court has already held that the

provisions are valid.

5. The only question that remains to be considered is that as to whether the order of the Execution Court amounts to denial of an opportunity to the

petitioners herein to comply with the terms of the provisions?

6. A perusal of the impugned order shows that the petition filed by the petitioners seeking dispensing of the furnishing of security had been

dismissed. No specific order has been passed by the Execution Court requiring the judgment debtors to furnish security. Therefore, according to

the learned counsel for the petitioners, the failure on the part of the Court to provide an opportunity to the judgment debtors to furnish or to make

deposit was erroneous and that a very reading of the Proviso to Order 21, Rule 90 shows that the requirement to make a deposit would arise only

in the event of a specific direction given to the executing Court.

7. Reliance is placed on the judgment of K. Govindarajan, J. in *Sambavathi v. Bhagavan Rao And 10 Others*, 1998 (3) L.W. 367, in support of

his contention that while rejecting the application to dispense with the production of security, the Execution Court ought to have issued notice or to

have afforded to the judgment-debtors an opportunity to furnish security. The learned Judge also held that the necessity to give such notice to the

concerned person was a mandatory requirement.

8. Proviso to Order 21, Rule 90 is extracted below:

Provided that-the Court may, after giving notice to the appellant, call upon him before admitting the application, either to furnish security to the

satisfaction of the Court for an amount equal to that mentioned in the sale warrant or to what realised by the sale whichever is less or to deposit

such amount in Court;

Provided also that the security furnished or the deposit made as Aforesaid, shall

be liable to be proceeded against only to the extent of the deficit on a re-sale of the property already brought to sale.....

Therefore, on a plain reading of the proviso itself, it is clear that the requirement of the judgment-debtors to furnish security would arise only when

the Court issues such a direction. In the present case, the judgment-debtors filed a petition to dispense with the said requirement and while

dismissing the said petition, no direction or opportunity has been given to the judgment debtors to furnish security.

9. According to the learned counsel for the respondents, when the Executing Court did not agree with the prayer as made by the judgment

debtors. It would amount to an order under the Proviso, I am unable to accept the contention raised by the learned counsel for the respondents. It

is true that the Executing Court is vested with the discretion either to dispense with the requirements of the deposit of the security amount or the

insist that the judgment-debtors should deposit the amount. But, while exercising the discretion against the judgment debtors, opportunity has to be

given to the judgment-debtors. In the present case, no such opportunity has been given and after dismissing the petition filed by the judgment-

debtors to dispense with the furnishing of security, the entire proceedings have been closed and as such, no opportunity has been given to the

judgment-debtors in terms of the Proviso to Order 21, Rule 90 of C.P.C.

10. The learned counsel for the petitioners also referred the judgment of the Division Bench of this Court in Ramaswamy Gounder Vs. T.S.

Ramaswamy Gounder and Another, Reference is made to paragraph 12 of the judgment, whereunder the Division Bench of this Court has dealt

with a similar case. In that case also the application was rejected by the lower Court only on the ground that the prayer for dispensing with the

furnishing of security was not permissible in terms of the Proviso. The Division Bench held that the order has to be set aside. In the result, the case

was remitted to the lower Court to consider afresh in accordance with law.

11. The reason given by the Executing Court is also not sustainable. Furnishing of security would be a pre-condition only if the Court passes an

order in terms of the Proviso. Until and otherwise an order is passed, it is not possible for the judgment-debtors to deposit the security. If the

Court is not inclined to dispense with, then the Court should pass an order

directing furnishing of security. In the present case, the court below had committed two errors. Firstly, the observation that it is a pre-condition and therefore, the condition cannot be dispensed with. Secondly, failure to provide opportunity to furnish security. The Court ought to have directed the judgment-debtors to furnish the security within a time frame, after due notice to him.

12. Hence, the civil revision petition is allowed and the matter is remitted back to the Execution Court. The Execution Court shall pass an order in

E.A.No.1222 of 1991 in accordance with law. In the event of the Court holding that the judgment-debtors should be directed to furnish security,

the Court should pass a separate order giving opportunity to the judgment debtors in terms of Proviso to Order 21, Rule 90 of C.P.C within a particular time frame.

13. In the result, the Revision Petition is allowed. No costs. It is always open to the decree holder to raise such objection as may be available to

him in the context of the prayer made by the judgment debtors to set aside the sale.