
(2013) 02 KL CK 0103
In the High Court Of Kerala
Case No : O.P. (C) No. 256 of 2013

Srimad Sudhindra Thirtha Swamiji

APPELLANT

Vs

Raghavendra Thirtha Swamiji

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 21 Rule 32(1), Order 21 Rule 32(5), Order 21 Rule 48, 151

Citation : (2013) 2 KHC 554 : (2013) 2 KLJ 611 : (2013) 2 KLT 203

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : R.D. Shenoy, R. Lakshmi Narayan and R. Ranjini, for the Appellant;
T. Krishnanunni and G. Rajagopal, for the Respondent

Judgement

Thomas P. Joseph, J.—A decree for prohibitory/mandatory injunction was passed by IVth Additional District Judge, Tirupathi in O.S. No. 34 of 2000 of that court. That decree restrained respondent/judgment debtor from interfering with the affairs of Kashi Math Samsthan. Decree for mandatory injunction directed respondent to return the deities, insignia and paraphernalia of the said Samsthan to the petitioner. On the request of petitioner, decree certificate was transferred to the District Court, Ernakulam for its execution. There, petitioner filed E.P. No. 167 of 2011. That petition was made over to the Ist Additional District Court, Ernakulam for execution. There, respondent raised various objections including executability of the decree and territorial jurisdiction of the Additional District Court, Ernakulam to execute the decree. Those objections were overruled and that has attained finality. For execution of the decree for mandatory injunction, petitioner took various steps including issue of warrant of arrest of respondent obviously for his detention in the civil prison as permitted under O. XXI, R. 32(1) of the CPC (for short "the Code"). In the meantime, properties (stated to be) belonging to the respondent was placed under attachment. While requesting to set aside the ex parte order against him in the execution proceeding, respondent claimed that properties attached do not belong to him personally. In the

meantime, warrants of arrest issued to the respondent were returned for one reason or other including that respondent could not be traced. At that stage, petitioner filed Ext. P3, application of E.A. No. 345 of 2012 under S. 51(e) and S. 151 of the Code requesting the executing court to direct the Director General of Police (State Police Chief, Kerala) to arrest and produce respondent in the executing court to facilitate his detention in the civil prison within a time to be fixed by the court and to direct the said officer to locate paraphernalia and other items in terms of the decree sought to be executed.

2. Application was resisted by the respondent on various grounds. Executing court by Ext. P5, order dated 28.11.2012 refused to grant relief as prayed for in Ext. P3, application. Thus challenge to Ext. P5, order in this Original Petition.

3. Learned Senior Advocate has contended that even as found by the executing court, respondent is not abiding by the orders of court and makes his persons scarce even for execution of warrant by the Amin but the executing court felt helpless in the matter and has refused to allow the request in Ext. P3, application if not in the form it is made, by moulding relief. It is also contended that many of the decisions relied by the executing court have no application in view of the explanation to O. XXI R. 32(5) of the Code added by Act 22 of 2002. Reliance is placed on the decision in Kochupennu Ambujakshi and Others Vs. Veluthakunju Vasu Channar and Others, to contend that in appropriate cases, so far as it is not interdicted any provision in the Code, it is within the power of the executing court to order police assistance to the Amin to execute the decree. Learned Senior Advocate submitted that having regard to the manner in which respondent has conducted himself, this court may not feel helpless in assisting petitioner to reap the fruits of the decree by directing the police to render necessary assistance to the Amin.

4. Learned Senior Advocate for the respondent has contended that property stated to be belonging to the respondent is placed under attachment and hence it was not necessary to direct detention of the respondent in civil prison though, it was permissible for the court to direct both. It is also contended that R. 32(5) of O. XXI of the Code has no application to the facts of the case since that direction would apply only when there is a failure on the part of judgment debtor to do something, it is within the power of decree holder to do that act on his own volition which is not the case on hand. It is further contended that at any rate, in view of sub-s. (4) of S. 39 added by Act 22 of 2002 power of the executing court cannot go beyond its territorial jurisdiction while the prayer in Ext. P3, application is as if the police is to arrest the respondent wherever he is found whether or not he is beyond the local limits of the territorial jurisdiction of the executing court. Reliance is placed on the decision in Sarup Singh Vs. Daryodhan Singh, and Sreekumaran Nair P.N. Vs. Dhanalakshmi Bank and Others, .

5. It is admitted that property stated to be belonging to the respondent is placed under attachment invoking power under R. 32(1) of O. XXI of the Code but it is within the power of the executing court to enforce the decree for injunction

(which takes in a decree for mandatory injunction as well) by ordering detention of judgment debtor in the civil prison or by attaching his property or by both. The executing court in this case issued warrants of arrest several times but the warrants could not be executed.

6. The question is whether it was possible for the executing court to order police assistance if not in the manner prayed for in Ext. P3, application but in the manner known to law? It is seen that the learned Additional District Judge has referred to various decisions to take the view that the police assistance cannot be ordered in the way it was requested for. Learned Senior Advocate for the petitioner has contended that those decisions have no application in view of the explanation added to O. XXI R. 32(5) of the Code by Act 22 of 2002.

7. I am inclined to think that one need not go into that question at all since it is not disputed before me and I am also inclined to think having regard to the wordings of sub-r. (1) of R. 32 of O. XXI, that the said provision takes in a decree for mandatory injunction as well. Therefore, as aforesaid it was well within the power of the executing court to order detention of the respondent. S. 51(e) of the Code states that apart from the manner prescribed by clause "a" to "d", it is well within the power of the executing court to enforce the decree in such other manner as the nature of relief granted may require. Learned Senior Advocate has an argument that the said clause can be applied only when clauses "a" to "d" are not applicable. But what is stated in S. 51(e) is that the executing court can execute the decree in such other manner as the nature of relief granted may require. Assuming that the said argument of learned Senior Advocate has to be accepted, still I am not inclined to think that the executing court is powerless as against a judgment debtor who makes his presence scarce within the local limits of its jurisdiction or refuses to abide by the warrant of arrest issued to him and sought to be executed by the officer of the court concerned. To hold so, will amount to holding that the executing court is powerless to execute a decree against a recalcitrant judgment debtor or a judgment debtor who is capable of refusing process of court being sought to be executed by the Amin concerned. In such a situation, I am inclined to think that as held by this court in Kochupennu Ambujakshi and others Velutha Kunju Vasu Channar and Ors. (supra) the inherent power of the court under S. 151 of the Code which is available to the executing court must come in aid. I must also notice that in the said decision, the court was considering enforceability of an order of temporary injunction. It is not as if the executing court had no power to enforce an order of temporary injunction. Still, this court held that in appropriate cases it is well within the power of the execute court to get police assistance for effective implementation of the order of temporary injunction. The same view was taken in Mammoo v. Krishnan (1978 KLT 901), Pulikkalath Mohammed Vs. C. Mohammed Haji and Another, and Dohara Beevi Vs. Bhaskaran, . The executing court has the inherent power under S. 151 of the Code if necessary, to enforce its orders with police assistance.

8. In Ext. P3, application relief sought for is not properly couched. In Ext. P3, application request made is that the State Police Chief be directed to arrest and produce the respondent before the executing court to facilitate detention of the judgment debtor. None of provisions of the Code empower the executing court to direct the police to arrest and produce the respondent in execution of the decree. For, warrant of arrest issued by the executing court has to be enforced through its officer. Hence there could be no direction to the State Police Chief or any other police officer as the case may be to arrest and produce the respondent before the executing court.

9. Another objection raised by the learned Senior Advocate for the respondent also requires consideration. That is based on sub-s. (4) of S. 39 of the Code also brought in by Act 22 of 2002. Consequence of the said sub-section is that it is not within the power of the executing court to execute the decree in any manner whatsoever beyond its local limits. That limitation is available to the transferee executing court as well. Learned Senior Advocate has, in this connection brought to my notice the decision in Sreekumaran Nair v. Dhanalakshmi Bank (supra) where, referring to sub-s. 4 of S. 39 brought into the Code by Act 22 of 2002, this court held that except in the manner specifically provided by R. 48 of O. XXI of the Code, even salary of judgment debtor where the disbursing officer is beyond local limits of jurisdiction of the executing court cannot be attached. Therefore, request made by petitioner for assistance of police beyond territorial limits of jurisdiction of the Ist additional District Court, Ernakulam cannot be entertained.

10. Another prayer made by the petitioner in Ext. P3, application is to direct the State Police Chief to locate the paraphernalia and other items. Assuming that the police cannot directly do so, they cannot assist the Amin in locating the paraphernalia and other items covered by the decree and which remains to be handed over to the petitioner. Therefore, notwithstanding the manner in which relief was sought for in Ext. P3, application, I am inclined to think that the executing court ought to have moulded the reliefs.

11. Learned Senior Advocate for petitioner has submitted that after Ext. P5, order, the executing court again ordered warrant of arrest to the respondent and the execution petition is posted on 19.3.2013. Having regard to the manner in which respondent has conducted himself with respect to the orders passed by the executing court, there is no reasonable possibility of the Amin executing that warrant of arrest. Having heard learned Senior Advocates on both sides, I am inclined to interfere with Ext. P5, order dismissing Ext. P3, application. Relief prayed for in Ext. P3, application has to be moulded.

Resultantly, this Original Petition is allowed in part as under:-

1) Ext. P5, order dated 28.11.2012 on E.A. No. 345 of 2012 in E.P. No. 167 of 2011 in O.S. No. 34 of 2000 of the Ist Additional District Court, Ernakulam is set aside.

2) E.A. No. 345 of 2012 is allowed as under:

- a) The I.G. of Police, Central Range is directed to constitute a team of police officers who shall render necessary assistance to the Amin appointed by the learned Ist Additional District Judge, Ernakulam to trace, arrest and produce the respondent before the said court.
- b) Such police team shall assist the Amin appointed by the learned Additional District Judge to trace the paraphernalia and other items which are required to be delivered over to the petitioner as per the decree in the case and to produce the same in the said court.
- c) It is made clear that the above order is only to the effect that the police shall assist the Amin in discharge of his duties as aforesaid, within the local limits of the territorial jurisdiction of learned Ist Additional District Court, Ernakulam.
- d) Registry shall forward a copy of this judgment to the I.G. of Police, Central Range, Ernakulam for compliance.