
(2006) 08 KL CK 0075
In the High Court Of Kerala
Case No : C.R.P. No. 761 of 2001

State Bank of Travancore

APPELLANT

Vs

Jaffar Ali

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11, Order 21 Rule 12 , Order 21 Rule 13 , Order 21 Rule 14 , Order 21 Rule 15

Citation : (2008) 1 BC 84 : (2006) 134 CompCas 201 : (2006) 4 KarLJ 42

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : O. Ramachandran Nambiar, for the Appellant;

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Decree holder, State Bank of Travancore, is the revision petitioner. Bank is aggrieved by the order of the Munsiff Court rejecting its application as barred by limitation.

2. O.S. 320 of 1988 was a suit filed by the Bank for realisation of money from the respondent. Suit was decreed on 29-10-1988. The period of limitation to file an execution petition was 12 years. Consequently, execution petition should have been filed on or before 29-10-2000. Decree holder bank filed execution petition on 28-10-2000 without producing the copy of the decree. Executing court therefore returned the execution petition on 2-11-2000 with a direction to produce the copy of the decree within three days. Execution petition was resubmitted with an application to enlarge further period of two weeks for production of decree copy. Decree copy was then produced on 14.11.2000. Holding that the decree copy was not produced within three days the executing court refused to accept the decree and rejected the petition on 16.11.2000 even though the copy of the decree was filed in the court on 14.1.1.2000, before the court passing the order. The legality of the order rejecting the execution petition is under challenge in this revision petition.

3. Order XXI, Rule 17 lays down the procedure on receiving application for execution of a decree and enjoins upon the court the duty to ascertain whether the requirements of Rules 11 to 17 have been complied with. As per Order 21 Rule 17(1) on receiving an application for execution of a decree as provided by Rule 11, Sub-rule (2) the court shall ascertain whether such of the requirements of Rule 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. Rule 17(1-A) states that if the defect is not so remedied, the court shall reject the application. Sub-rule (1) of Rule 17 of Order 21 has given considerable power on the court to satisfy the requirements of Rules 11 to 14. Sub-rule (3) of Rule 11 of Order 21 states that the court to which an application is made under Sub-rule (2) may require the applicant to produce a certified copy of the decree. The expression used in Sub-rule (3) of Rule 11 of Order 21 is "may". When we read Sub-rule (3) of Rule 11 of Order 21 along with Sub-rule (1) of Rule 17 of Order 21 it is clear that the court has got considerable discretion in granting time for production of decree copy or to give time to remedy the defects. It is in exercise of that power the court has granted three days time.

4. Decree holder, however, could not produce the decree copy within three days though the execution petition was filed within the period of limitation. Before the court rejecting the application for further extension of time for two weeks the decree holder made available the certified copy of the decree. In such circumstance, the question is whether the court can exercise discretion to accept the decree and proceed with the execution petition. Apex Court in *Smt. Jiwani Vs. Rajmata Basantika Devi and others*, while dealing with the scope of Order 21 Rule 17 has stated as follows:

It is no doubt correct that the rules of procedure are handmaids of justice and ordinarily the provisions of Order 21, Rule 17 are to be interpreted liberally and an amendment to the execution application should be permitted. It is further not disputed that an amendment when permitted dates back to the original filing of the application.

I am of the view that since the Bank had already submitted certified copy of the decree the court should have exercised discretion in favour of the decree holder to entertain the execution petition. Though notice was taken out by the Bank and the service is complete there is no representation on the side of the respondent. Under such circumstance, I am inclined to allow the revision petition and direct the executing court to entertain the execution petition filed by the Bank in O.S. 320 of 1988 and proceed with the same in accordance with law.