
(1998) 05 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Revision petition No. 04 Of 1997 Civil Tr. Application No.9 Of 1997

State of Jammu and Kashmir and others	APPELLANT
Vs	
Syed and Co.	RESPONDENT

Date of Decision : 04-05-1998

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 21, 82

Citation : (1999) 1 SriLJ 4 : (1999) SriLJ 4

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : M.A.Qadri, H.I.Hussain, Advocates appearing for the Parties

Judgement

1. In Civil original suit, Syed and Co Vs. State of Jammu and Kashmir, the court of District Judge, Srinagar passed judgment Dated 18/7/1995, decreeing the plaintiffs suit for recovery of an amount of Rs. 3,45,762.00 (as excess royalty), Rs. 24,009/ (sinking fund) and Rs.24,009/ as security deposit with 12% interest per annum w.e.f 8881 in addition to delivery of 9004 cft of Kail 3292 cft of run This decree dated 18.7.1996, against the State government and officers of Forest Department was presented for execution, when the decree holders counsel filed an application seeking attachment of the decretal amount from A/C No. 2406 of Forest Department at Saddar Treasury and attachment of the timber. The executing court of District Judge Srinagar on 23/10/1996, itself passed an order of freezing an amount of Rs.24,62,954,00 in A/C No.2406 of forest department at Saddar Treasury Srinagar with direction to the Treasury Officer to deposit the amount in the District Court. Besides, the timber was ordered to be attached from parimpora Depot of the State Government.

2. This order is impugned in this revision by the state on the grounds that the execution of the decree has been filed before the District Court by

Mr.G.H. Nehvi Advocate, as on that date the plaintiff {Syed Mohd Fazili) had died. The District court without any notice to the state, straightway

fushcd to attach the amount even though the application for setting aside the decree is pending before that court'. Even after filing an application for

vacation of the impugned order of attachment on the ground that the execution application in absence of succession certificate is not maintainable,

no orders thereto have been passed. The department having not been allowed to examine the file to take necessary steps in the matter of

prosecution of the application for setting aside the exparte decree, the respondents have every fear that they may not get justice from the district

Court, Srinagar and request for transfer of the case.

3. Heard counsel for the parties and perused the record. The decree is against the State of Jammu Kashmir and Chief Conservator of Forests.

Section 82 C.P.C. provides that, where a decree is passed against the Government or the public officer in respect of any act purporting to have

been done by it or him in his official capacity, such a decree shall not be executed against the government, Unless it remains unsatisfied for the

period of three months computed from the date of decree.

4. The whole purpose and object of this section it appears, is to allow sufficient opportunity and time to the Government and its public officer (s) to

satisfy the decree amicably and eliminate inordinate delay before the executive proceedings are initiated against them. It is seen in this case that the

decree, being exparte, the state Government would not be expected to have knowledge/ notice of the decree. It was quite logical that the court

below should have sent a requisition to the judgment debtors to satisfy the decree instead of rushing to attach and freeze account operated by the

Forest Department which even included the whole salary and pay dues of the employees of the department. The normal mode of execution was to

realisation of the decretal amount for deposit in court or to pay to the decree holder out of court subject to certification of payment and adjustment

by decree holder to the court, Admittedly, in the first instance the prescribed mode of execution of the money decree is not attachment. As the

State Government and forest officials had no notice as the decree was passed

exparte and sought to be executed without notice. A precept for payment or deposit of decretal money in court was normal course and in case of default, the other coercive process prescribed under order 21

C.P.C should have been resorted to. After all the state and its officials being the judgment debtors, it cannot be held that the decree would be defeated by delay in execution.

5. The then District Judge has failed to appreciate the contention raised by the counsel for the state/judgment order regarding the requirement of

succession certificate for proceeding in money decree by the heirs of the deceased plaintiff/decree holder after his death. The court also not

considered the contention raised that the application for setting aside the exparte decree already pending before the District Court has not been

considered and the application for stay of this decree moved thereto has not been as well considered. Infact, it appears from record that the

District judge has been in a hot haste to execute the decree and in the process has ignored the fundamentals of justice and fair play. It fairly

emerges from record that the District Judge has acted with material irregularity in exercise of jurisdiction, leading to failure of justice.

6. For the aforesaid reason, the impugned order is set aside. Case is remanded back to District Judge, Srinagar to pass fresh orders after hearing

the parties in accordance with law. The contention of the counsel for the petitioner that these execution proceedings as also the application for

setting aside the exparte decree pending before the District Judge, may be transferred to some other court of competent jurisdiction, cannot be

countenanced for the reason that the district Judge has been transferred and this change in circumstances has rendered the prayer of transfer of

case as ""infructuous"". With the result that the request for transfer of execution petition and motion for setting aside the exparte decree are declined.

7. Certify the decision to the court below while forwarding the record to the court concerned.