

(2014) 02 KL CK 0133

In the High Court Of Kerala

Case No : OP (C) No. 2135 of 2012

The Chief Engineer (Irrigation) Public Office and The
Executive Engineer (Irrigation) Irrigation Division

APPELLANT

Vs

K. Reghunathan

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 6, Order 21 Rule 21 141 37 38
Constitution of India, 1950 — Article 226 227

Citation : (2014) 02 KL CK 0133

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

**Advocate : C.S. Manilal by Government Pleader, for the Appellant; Ajith
Krishnan and Sri. Devan Ramachandran, for the Respondent**

Final Decision : Dismissed

Judgement

V. Chitambaresh, J.—Can the judgment rendered in a Writ Petition under Article 226 of the Constitution of India be executed in a civil court when there is an express declaration therein that the same is in the nature of a decree? The petitioners in this Original Petition filed under Article 227 of the Constitution of India are the Chief Engineer and the Executive Engineer of the Irrigation Department and the respondent is an independent contractor. The respondent successfully completed fourteen items of work entrusted to him by the Irrigation Department and later submitted bills to the petitioners for settlement. The failure to settle the bills and even pay the admitted amounts led to the respondent filing a writ petition. O.P. No. 26920/1999 on the file of this Court filed by the respondent was disposed of by Ext. P1 judgment dated 07.12.1999. The operative part of the same read as follows:-

Since the contract work was completed and there was no dispute regarding admissibility, the admitted bills should be paid within three months from the date of receipt of a copy of this judgment, failing which it will carry 12% interest from

the date of submission of the bills.

2. The petitioners did not comply with the directions contained in Ext. P1 judgment compelling the respondent to initiate proceedings in contempt. C.C.C. No. 1150/2000 on the file of this Court filed by the respondent was disposed of by Ext. P2 judgment dated 06.04.2001. It inter alia read as follows:-

In the nature of the directions given in the judgment in the original petitions, by nonpayment of the bill amount within the period allowed in each judgment, what the petitioner can claim is only interest at the rate granted in each judgment. The judgment is in the nature of a decree which the petitioner can get executed against the respondents for the principal amount and interest thereon. If the principal amount is not paid within the time granted, the liability on the respondent is to pay interest. We are therefore of the view that by mere non-payment of the principal amount within the time granted, the respondents cannot be proceeded against under the provisions of the Contempt of Courts Act.

(Emphasis supplied)

3. The admitted bill amount was paid by the petitioners who however did not care to pay interest to the respondent on account of belated settlement. The claim of the respondent that the admitted amount would carry interest from the date of submission of the bills fell on deaf ears. The respondent therefore filed yet another writ petition seeking the issue of a writ of mandamus to pay interest. WP(C) No. 3470/2007 on the file of this Court filed by the respondent was disposed of by Ext. P3 judgment dated 27.05.2009. The concluding part of the judgment read as follows:-

I am of the opinion that the writ petition itself is not maintainable in view of Ext. P4 Full Bench decision in the contempt case filed by the petitioner himself, in so far as the Full Bench has held that since the judgment is in the nature of a decree, the petitioner has to get it executed against the respondent for principal amount and the interest thereof. Subsequently, the petitioner was paid the principal amount. In the above circumstances, without prejudice to the right of the petitioner to seek execution of Ext. P2 judgment appropriately, this writ petition is dismissed.

(Emphasis supplied)

4. Thus the respondent was literally driven from pillar to post to get interest on the admitted amount even though his entitlement was upheld in Ext. P1 judgment. There was no contentious issue to be adjudicated between the parties necessitating the respondent to file a suit. There already exists a declaration in Exts. P2 and P3 judgments that Ext. P1 judgment "is in the nature of a decree". What then disables the respondent to levy execution proceedings on the file of the court of the Subordinate Judge of Thiruvananthapuram? The fourteen items of work were executed within the jurisdiction of the Subordinate Court of Thiruvananthapuram only. The seat of the petitioners was also at

Thiruvananthapuram which legitimized the levy of execution proceedings thereat. Ext. P4 Execution Petition in E.P. No. 340/2009 was accordingly filed by the respondent to which Ext. P5 objection was filed by the petitioners. There is no whisper in Ext. P5 objection that Ext. P1 judgment cannot be executed by resort to Order XXI of the Code of Civil Procedure, 1908. The execution court by Ext. P6 order dated 01.02.2011 directed an attachment of Rs. 26,13,115.81/- due to the respondent. The execution court later clarified the account number of the Irrigation Department by Ext. P7 order dated 12.06.2011. Thus Exts. P6 and P7 orders directing attachment and specifying account number are under challenge herein.

5. I heard Mr. C.S. Manilal, Special Government Pleader on behalf of the petitioners and Mr. Devan Ramachandran, Advocate on behalf of the respondent.

6. The petitioners contend that the provisions of the Code of Civil Procedure, 1908 are inapplicable to proceedings under Article 226 of the Constitution of India. The explanation to Section 141 of the Code of Civil Procedure, 1908 is relied on for this purpose. The petitioners assert that the expression "proceedings" does not include any proceeding under Article 226 of the Constitution of India. The plea of the petitioners in essence is that Ext. P1 judgment cannot be executed as if it is a decree passed by the civil court. The following decisions are relied on:

(i) Charanlal Vs. Shri Lal Bahadur Shastri Harijan Samuhik Krishi Sahakari Sanstha (Samiti) Saliya Barodi,

(ii) Bonbehari Roy and Others Vs. Kolkata Metropolitan Development Authority,

The above decisions dealt with cases wherein a mere judgment rendered in a writ petition was attempted to be executed in a civil court. There cannot be any dispute to the proposition that a writ court is not a "civil court" and the judgment therein is not a "decree" for the purpose of execution. The position in the instant case is however different in view of the unequivocal declaration in Exts. P2 and P3 judgments. It is declared therein that Ext. P1 judgment is "in the nature of a decree" which can be executed by the respondent. Ext. P1 judgment can as well be termed as a deemed decree in view of the declaration in Exts. P2 and P3 judgments. This is so notwithstanding that a decree has not been drafted in terms of Order XX Rule 6 of the Code of Civil Procedure, 1908. The trappings of Sections 37 and 38 of the Code of Civil Procedure, 1908 do not apply to a deemed decree of the nature passed. Section 37 defines the court which passed a decree and Section 38 specifies the court by which a decree may be executed. No decree in consonance with a judgment rendered in a writ petition could also be drafted to be transferred to the civil court u/s 39 thereof. This is because the proceedings under Article 226 of the Constitution of India are not regulated by the Code of Civil Procedure, 1908.

7. I should immediately note that Ext. P2 judgment in the Contempt of Court Case granting the above declaration for the first time has become final.

Nevertheless the petitioners contend that a court dealing with contempt petition cannot supplement the original judgment. The petitioners point out that only disobedience of the original judgment can be probed and there is no jurisdiction to issue further directions. The following decisions are cited to canvass the proposition:-

- i) Jhareswar Prasad Paul and Another Vs. Tarak Nath Ganguly and Others,
- ii) V.M. Manohar Prasad v. N. Ratnam Raju and Another [(2004) 13 SCC 610]
- iii) Prithawi Nath Ram Vs. State of Jharkhand and Others,

The above proposition of law admits of no doubt even though the same may not apply to the present fact situation evidenced by Ext. P3 judgment. I would have acceded to the contention of the petitioners had such a declaration been granted in the contempt proceedings alone. But the right of the respondent to seek execution of Ext. P1 judgment which is in the nature of a decree has been reiterated in Ext. P3 judgment as well. Ext. P3 judgment was rendered in a writ petition filed under Article 226 of the Constitution of India only. The writ petition was dismissed by Ext. P3 judgment without prejudice to the right of the petitioner to seek execution of Ext. P1 judgment. The objection of the petitioners that the respondent cannot take advantage of Ext. P2 judgment in contempt proceedings is hence overruled.

8. A Division Bench of this Court in W.A. No. 3025/2000 had permitted a contractor similarly situate to initiate proceedings before the Civil Court for recovery of interest. The operative part of the judgment therein dated 02.07.2002 is extracted hereunder:-

(i) If the undisputed amount payable to the respondent is not paid on or before 31st December, 2002, the appellants shall be liable and bound to pay simple interest at the rate of 12% per annum on such amount from the date of filing of the Original Petition.

(ii) The respondent shall be at liberty to adopt appropriate proceedings before the civil court for recovery of interest for an earlier period or at a rate higher than what we have directed.

(Emphasis supplied)

Another Division Bench of this Court in Muhammed Ashraf K.M. Vs. Mumtaz, Moidutty Haji, Shanavaz and Sub Inspector of Police observed as follows while dismissing a writ petition filed for the issue of a Writ of Habeas Corpus:

We direct that it will be sufficient that the petitioner pays that amount in five equal monthly instalments payable on or before the last working day of every month commencing from March 2010, without fail. It is further directed that in the event of the petitioner not paying that amount, Ajeesha will be entitled to treat this as an executable decree and put it for execution before the court of competent jurisdiction.

(Emphasis supplied)

A learned single Judge of this Court in Manoj Pandarakalathil Vs. Kollamthodi Narayanan, dealing with the realization of costs ordered in a writ petition observed as follows:

The Civil Court has no jurisdiction to entertain an Execution Petition for execution of the order for payment of costs passed by the High Court in a Writ Petition, unless the High Court specifically issues a direction thereof.

(Emphasis supplied)

9. There is a declaration in Exts. P2 and P3 judgments that Ext. P1 judgment is in the nature of a decree and a specific direction that the same can be executed. It necessarily follows that Ext. P1 judgment is a deemed decree which can be executed by resort to Order XXI of the Code of Civil Procedure, 1908. A sum of Rs. 26,13,115.81/- has been claimed in Ext. P4 Execution Petition by the respondent. The same denotes interest on the admitted amount from the date of submission of the bills to which the respondent is entitled by Ext. P1 judgment. Only the ascertainment of the actual amount due remains for which the execution court is the proper forum. It will be atrocious for the petitioner to be relegated to a civil court when his entitlement to interest has already been upheld. A judgment of this court is meant to be honoured and the fruits thereunder realised without the same allowed to be flouted. The respondent has knocked all possible doors for ventilation of his grievance and has eventually levied execution proceedings. The execution court has correctly passed Exts. P6 and P7 orders attaching a sum of Rs. 26,13,115.81 in the hands of the petitioners. The execution court has necessarily to quantify the amount due to the respondent and take the proceedings to a logical end. I do not find any error of jurisdiction in Exts. P6 and P7 orders as to warrant interference in this supervisory jurisdiction. I would have awarded exemplary costs to the respondent but for the fact that the petitioners have paid the admitted amount sans interest.

The Original Petition fails and is dismissed. No costs.