

(1980) 12 MAD CK 0046
In the Madras High Court

The liquidator and Co-operative Sub-Registrar (Stores)
P-2076 Melapalayam Nehru Multi-Purpose Co-operative
Society

APPELLANT

Vs

M.S. Sahul Hameed and Others

RESPONDENT

Date of Decision : 17-12-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 1
Provincial Insolvency Act, 1920 — Section 75(4)
Registration Act, 1908 — Section 77

Citation : (1982) ILR (Mad) 452 : (1981) 94 LW 324 : (1981) 1 MLJ 443

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Division Bench

Judgement

S. Nainar Sundaram, J.—The 1st defendant in O. S. No. 592 of 1969 on the file of the Additional District Munsif, Tirunelveli, is the appellant in this second appeal. The 1st respondent herein is the plaintiff and respondents 2 to 6 are the other defendants in this said suit, The plaintiff laid the suit to set aside the claim order passed by the Deputy Registrar of Cooperative Societies, Tirunelveli, in R.C. No. 18972 of 1967, dated 30th December, 1967 and for declaration of his title over the suit property. The 1st defendant alone contested the suit and the other defendants remained ex parte Apart from the merits, the 1st defendant also raised the plea of limitation in that, the suit having come to be filed on 11th December, 1968, six months beyond the date of the order of the Deputy Registrar, is barred under Rule 76(3) of the Tamil Nadu Co-operative Societies Rules, 1963, hereinafter referred to as "the Rules". The first Court went into the questions and held against the plaintiff both on merits and on the question of limitation. The plaintiff appealed and the appeal A. S. No. 278 of 1975 was heard and disposed of by the II Additional Subordinate Judge, Tirunelveli and the lower Appellate Court found that the suit is in time, computing the period of six months prescribed under the said Rules from the date of obtaining the copy of the order of the Deputy Registrar, namely, 23rd August, 1968, and also held that the plaintiff is a bona fide purchaser for consideration and hence the order of the

Deputy Registrar is liable to be set aside and consequently decreed the suit of the plaintiff as prayed for with costs. The present Second Appeal is directed against the judgment and the decree of the lower Appellate Court.

2. At the time of the admission of the Second Appeal the only substantial question of law mooted out for consideration ran as follows:

Whether the suit filed on 11th December, 1968 to set aside the claim order dated 30th December, 1967 is barred by limitation by virtue of Rule 76(3) of the Madras Co-operative Societies Act and Rules?

3. The order of the Deputy Registrar dismissing the claim application of the plaintiff was passed on 30th December, 1967. According to the plaintiff, he had no knowledge of the same and he came to know about it only on 7th June, 1968 when he applied for the copy of the order and the copy of the order was furnished to him on 23rd August, 1968, and hence the suit filed on 11th December, 1968 cannot be held to be barred under Rule 76(3) of the Rules. Rule 76(3) of the Rules reads as follows:

When a claim or an objection is preferred the party against whom an order is made may institute a suit within six months from the date of the order to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

There is no provision either in the Tamil Nadu Co-operative Societies Act or the Rules framed thereunder enjoining upon the authorities thereunder to pronounce the order in open Court, similar to the provisions under Order 20, Rule 1 of the Code of Civil Procedure. It is not stated before me that notice of the pronouncement of the order by the Deputy Registrar was given to the plaintiff. There is no challenge of the stand of the plaintiff that he came to know of the order of the Deputy Registrar only on 7th June, 1968 when he applied for the copy of the said order. It is common ground that the copy of the said order was actually furnished only on 23rd August, 1968. The 1st defendant is not putting forth the grievance that the time taken by the plaintiff for obtaining the copy of the order of the Deputy Registrar, namely the time between 7th June, 1968 and 23rd August, 1968, ought not to have been excluded from the period of six months stipulated under Rule 76(3) of the Rules. If time is computed from 23rd August, 1968, the suit filed on 11th December, 1968, will be within time. Hence, the only question is as to whether the time between 30th December, 1967 and 7th June, 1968 should stand excluded from the period of six months stipulated under the said Rules.

4. Apart from authorities it appeals to the judicial sense that where an order is passed by a statutory authority of which no notice has been given to the party affected, for the said party to agitate against that order, he must come to know of it so as to enable him to take the appropriate proceedings to vindicate his rights. If a statutory authority passes an order without putting the party to be affected on notice of the pronouncement of the order and keeps it in the file

without either communicating the same to the party affected or furnishing a copy of the same suo motu, it will be highly unfair and offending all sense of equity and fairplay to interpret any rule of law with regard to the limitation of time and hold that time for agitation by the party affected must run from the date of the order of which the concerned party had no notice at all. In the absence of statutory provision as found in the CPC and in the absence of express rules governing the proceedings of the statutory authorities, any computation of time with reference to agitation against any order passed by any such statutory authority must definitely run only from the date of the knowledge of the said order by the said party either actually or constructively.

5. The above principles have found exposition in a number of authorities and it will be worthwhile to refer to them to appreciate now the Courts have interpreted the rule of law which has not expressly enjoined upon the authorities concerned either to pronounce the order openly after due notice to the parties or to communicate the same to the said parties.

6. In *Sagarmal M(sic)wari v Lachmisar an Misri* AIR 1923 Pat 189. a Division Bench consisting of Dawson Miller, C J, and Mullick, J., considered a matter which arose under the CPC and they deprecated the practice of not pronouncing judgment in open Court, which they characterised as a direct breach of the practice laid down in Order 20, Rule 1 and they held that in all case that Rule ought to be complied with.

7. In *Kavanna Vana Ena Swaminathan alias Chidambaram Pillai Vs. Letchmanan Chettiar and Others*, . a Division Bench of this Court consisting of Venkatasubba Rao and Madhavan Nair, JJ., de(sic) with a case arising under the Registration Act with reference to laying of a suit against the order of the District Registrar, u/s 77 thereof which lays down that the person affected by the order of the District Registrar, may within 30 days after the making of the order of refusal, institute a suit for a decree directing the document to be registered. I find that the separate judgments of the two learned Judges deal with the question in a very elucid(sic)itive manner. The observations of Venkatasubba Rao, J. run as follows:

I have now referred to the relevant sections of the Act and shall proceed to consider the points raised. Apart from authority, it seems to me that there can be no valid order unless it is made after notice to the parties affected by it, or, it is communicated to them in the absence of such notice. To take a contrary view seems opposed to (sic)son and principle. The learned Advocate-General, for the defence contends that we must have regard to the express wording of the Act and that the words "making of the order" are too distinct to admit of any liberal construction. The answer is : no two construction are possible, the meaning I have suggested being the only reasonable construction of the words. The very word "order" by necessary imolica(sic)ion means in law that the party affected has had reasonable notice of it. Not a single case in India has been brought to our notice which takes a different view. On the contrary every decision on the point seems to recognise the principle I have stated. That any particular ruling

proceeds on the special provision of any Act makes, in my opinion no difference Abdul Ali v. Mirjakhani (1904) ILR 26 Bom 8. is a case u/s 77, Registration Act and is directly in point. The same rule has been laid down without equivocation in Annamalai v. Cloete (1883) ILR 6 Mad 189. Seethamma v. Bankara (1889) ILR 12 Mad 1. Secretary of State v. Gopiseti Narayanaswami (1911) ILR 34 Mad 151. and Mahipati v. Lashman (1900) ILR 24 Bom 426. The essence of the rule is, that the decision should be passed in such circumstances that the parties should have reasonable notice of it. If when a petition is presented or a case is heard, the order is then and there made in the presence of the parties, no further question arises; if the making of the order is postponed, parties should be given notice of the adjourned date, so that they may be present and hear the decision when passed. If, in these two cases, the party owing to his own fault, does not become aware of the order, it nevertheless takes effect at once. If an order is made without previous notice, it does not become operative until it is communicated. These in my opinion, are rules which are in conformity with justice and commonsense.

The observation of Madhavan Nair, J., runs as follows:

It is argued on one side that the expression "making the order of refusal" in Section 71, Registration Act, means only recording the order of refusal in writing and that the time should be calculated from the date of the "order of refusal" in which case the plaintiff's suit will be out of time; while on the other side it is contended that the expression means not merely the recording of the order in writing by the Registrar but communicating it to the party concerned and that in this case time should be calculated from the date when the order was communicated to the plaintiff in which case his suit will be in time. The answer to the question must depend on the special circumstances of each case. If the order of refusal is pronounced in the presence of the parties immediately after inquiry by the Registrar, so that the person concerned knows that his request has been refused, then there can be no doubt that time should be calculated from the date of the order but if the order was not so pronounced and the person concerned does not know that his request has been refused, then it would not be just to hold that time should be calculated from the date of the order. How is an aggrieved party to take any action unless he knows that an adverse order has been passed by the Registrar? If the construction contended for by the appellant is accepted, then it is clear that in cases of this kind the party aggrieved may be altogether deprived of the privilege of taking proceedings u/s 73(1) and Section 77 of the Act. It is not contended that the Sub-Registrar and the Registrar pronounced their orders in the presence of the parties after the inquiry was over, or that these officers fixed any day for pronouncing their orders or gave notice fixing any date for pronouncing them. In these circumstances it seems to me that in this case time should be calculated only from the date when the order was communicated to the parties. An order to be valid u/s 71 of the Act should be passed in the presence of the parties; or after notice to them; if no notice has been given, then it should be communicated to them; in other words the order to

be a valid one must be brought to the knowledge of the party against whom it has been passed. It is conceded that there is no provision in the Act for communicating the orders of the Registrar and Sub-Registrar to the parties concerned. It seems to me therefore that the intention of the Act is that the officers should pronounce their orders in the presence of the parties after the inquiry is over or should do so, after giving the parties notice.

8, In Chandu v. Mast Ram AIR 1934 Lah 135. the judgment was not communicated (sic) a particular date and it was held that the period of limitation for the appeal must be reckoned from the date of communication.

9. In Mohammad Zaman v. Hans Raj AIR 1938 Lah. 707. the Trial Court delivered judgment without having previously fixed a date for the same; the defendant was absent and the judgment was intimated to his counsel on some later day and limitation for appeal was held to run from the day on which the counsel for the defendant was informed of the judgment.

10. In L. Venkataswamy Chetty Vs. V.A. Ganapathia Pillai and Others, . Ramaswamy J., was dealing with a case arising under the provisions of Section 75(4) of the Provincial Insolvency Act, 1920. Following the observations of the Division Bench in Kavanna Vana Ena Swaminathan alias Chidambaram Pillai Vs. Letchmanan Chettiar and Others, . the learned Judge held that a person can become aggrieved only when the act by reason of which the grievance arises comes to his knowledge; the better and more commonsense view seems to be that in the case of parties to the proceeding the 30 days would be from the date of the order because they would have known of its pronouncement and in the case of third parties the starting point would be the date of Gazette notification which would fix him with knowledge of the order passed by the Court.

11. In Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, the expression "the date of the Collector's award" occurring in Section 18(2), Proviso (b) of the Land Acquisition Act, 1894, came up for interpretation and the Supreme Court held that the date means date of award either communicated to or is known by the party whether actually or constructively.

12. In State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, . the Supreme Court was concerned with the provisions of Section 18, Proviso (b) of the Land Acquisition Act, 1894 and the expression "six months from the date of the Collector's award" came up for consideration and they referred to the ratio of the decision in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, , that the party affected by the award must know it actually or constructively and the period of six months will run from the date of that knowledge. It has been further held as follows:

Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the

award is communicated to a party u/s 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in Court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award.

13. A similar view has been taken by the Delhi High Court in *Gian Chand Dhawan and Another Vs. Union of India and Others*, . following the dictum of the Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, .

14. The above authorities amply support the view which I have expressed earlier that where the provisions in a statute governing the pronouncement or passing of orders by the authorities constituted thereunder are silent as to the manner in which they should be pronounced or passed, in the absence of such pronouncements or passing of orders in the presence of parties or their authorised representatives the time stipulated under the relevant provisions for agitating over such orders can be computed only from the date of the communication of the order or knowledge of the order either actually or constructively. Viewed, in this angle, no exception could be taken to the view taken by the lower Appella(sic) Court that the suit filed by the plaintiff is within time.

In the said circumstances, there is no warrant for interference and the Second Appeal fails and the same is dismissed. But, there will be no order as to costs.