
(1942) 08 MAD CK 0053
In the Madras High Court

The South Indian Railway Company, Limited APPELLANT
Vs
M.C. Mayilvahanan RESPONDENT

Date of Decision : 20-08-1942

Acts Referred:

Citation : AIR 1943 Mad 334 : (1943) 56 LW 17 : (1942) 2 MLJ 803

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The appellant here is the South Indian Railway Company against whom a decree had been passed in O.S. No. 14 of 1935 on the file of the Subordinate Judge's Court of South Malabar. The company, filed an appeal in the High Court and applied for stay of execution. It was ordered by this Court to deposit the amount of the decree. This was done on 16th February, 1938, and an order granting interim stay was passed. This order was confirmed on the 22nd April, 1938, and the respondent was permitted to withdraw unconditionally the amount of the deposit which represented the costs awarded by the decree. In respect of the remainder of the sum the Court ordered that withdrawal could take place only on furnishing security. The amount of costs was accordingly withdrawn some months later, but no security was ever furnished and it was not until the appeal of the Railway Company had been dismissed that the respondent applied for the decree money. Application was made for that sum with interest up to the date of the application, that is, in August, 1940. The learned Subordinate Judge held that this application was good and ordered it. The Railway Company now appeals on the ground that there should have been no order for interest.

2. The period in question is from February, 1938 to August, 1940 and it falls logically into two well-defined periods. The first is one of a little over two months until the date of the final order upon the petition for stay. It seems to us that the appeal must fail in regard to this period. Order 21, rule 1, under the provisions of which the money was paid into Court lays it down that notice of such payment shall be given to the decree-holder. It has been held by this Court in Ramaraya

Shanbogue v. Sherbott Venkataramanayya ILR 1919 Mad. 576 that interest will continue to run from the date of the deposit until the date when that notice is given. We have now been referred by the learned advocate for the appellant to a ruling from Nagpur, Lakshmi Narayana v. Ghasiram AIR 1939 Nag. 191 in which Ramaraya Shanbogue v. Sherbott Venkataramanayya ILR (1919) Mad. 576 is dissented from, mainly on the ground that in an. intervening decision the Privy Council had laid it down that in a particular case payment into Court was equivalent to payment to the decree-holder. No doubt that was so upon the facts of the particular case which has been dealt with by the Privy Council. But we do not think their Lordships were laying down any general principle to be applied to all kinds of deposits in all kinds of circumstances, and that ruling, we think, cannot be utilised as authority overruling Ramaraya Shanbogue v. Sherbott Venkataramanayya ILR (1919) Mad. 576. We accordingly still consider ourselves bound and with due respect prefer to follow Ramaraya Shanbogue v. Sherbott Venkataramanayya ILR (1919) Mad. 576. Interest therefore could not cease to run before the 22nd April, 1938.

3. There then remains the much longer period from April, 1938 to 1940. The learned Judge has in this matter followed three rulings, one in Calcutta, one in Nagpur and one in Lahore and may very possibly in a normal case have correctly followed those rulings. It seems reasonable to say that when at the instance of an. appellant who pays money into Court the respondent is hampered in his attempts to obtain payment of that money into his hands, it is the conduct of the appellant which eventually prevents him from getting the money and the appellant therefore should continue to pay interest as the result of his conduct. Normally, we suppose, when in. cases of this kind appellants deposit money and try to persuade the Court that the money should not be paid except upon conditions to their opponents, they do so in order to make their own recovery of the money more easy if they should succeed in appeal. But the facts here are different. The respondent was a minor and the provisions of Order XXXII, rule 6 are explicit and peremptory; so that even if the Railway Company had not made any reference to the question of taking security the Court was still bound to pass some such order as it did in fact pass. In these circumstances we can see no logical principle upon which the Railway Company, having deposited the money in 1938 and having so far as we can see asked for security to be taken mainly on the ground that the respondent was a minor, should now be called upon to pay interest because the respondent's next friend has been unable to furnish the security which was necessarily ordered by the Court. In these circumstances we think that in respect of the second period the appeal must succeed and that interest must cease to run from the 22nd April, 1938. The appeal will be allowed to this extent and the parties will give and take proportionate costs throughout.