

(1961) 12 KL CK 0017
In the High Court Of Kerala
Case No : C.R.P. No. 988 of 1960

Vasudevan Namboodiri

APPELLANT

Vs

Gopala Pillai

RESPONDENT

Date of Decision : 11-12-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 4, Order 40 Rule 4(3), 51

Citation : (1962) KLJ 161

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : M.K. Narayana Menon and N. Neelakantan Namboodiri, for the Appellant; M. Ramanathan Pillai, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Raghavan, J.—The short question of law involved in this Civil Revision Petition is whether a receiver can be arrested in execution of an order passed against him for payment of money in his capacity as receiver. The respondent, who is a vakil, was appointed receiver in O. S. No. 692 of 1118 on the file of the Court of the Munsiff of Thodupuzha and that court found that a sum of Rs. 795/- was due from him as receiver to the estate and he was therefore directed to pay the amount to the petitioner on 7th March, 1957 with 6 per cent interest. The respondent failed to pay the amount and the petitioner applied for the issue of a warrant to arrest the respondent in execution of the order. The respondent then filed objection claiming that he was not liable to be arrested and that he had no means to pay the decree debt. The learned Munsiff accepted this plea and on appeal by the decree holder the same was confirmed by the learned District Judge. The Civil Revision Petition canvasses the correctness of the aforesaid decision. The learned Advocate of the petitioner draws my attention to Section 51 of the Code of Civil Procedure; sub-section (c) whereof lays down that the court may, on the application of the decree-holder, order execution of the decree by-arrest and detention in prison of the judgment-debtor. Proviso (c) to this

section provides that where the decree is for payment of money, execution by detention in prison shall not be ordered unless the court, for reasons recorded in writing, is satisfied that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account. On the basis of these provisions the Learned Counsel of the petitioner contends that the sum for which execution is now sought against the receiver being one for which he was bound in a fiduciary capacity to account, he may be arrested and detained in prison. But it may be noted that under Order XL of the same Code special provisions are made regarding the appointment of receivers, their remunerations, their duties and the enforcement of such duties. Rule 4 of Order XL specifically deals with the enforcement of receiver's duties. Sub-rule 2 thereof makes provision for an enquiry by the court as to what amount is due from the receiver and for making an order for payment of the same by the receiver either into court or otherwise. Sub-rule 3 then provides that, if the receiver fails to pay such amount which he has been ordered to pay under sub-rule 2, the court may direct such amount to be recovered either from the security furnished by him or by attachment and sale of his property. It is not disputed in this case that the order for payment of Rs. 795/- by the receiver was made under sub-rule 2 of Rule 4 of Order XL. If so, the only further question is whether in such a case the receiver can be arrested and detained in prison under the provisions of Section 51 or whether he can be proceeded against only under the provisions of Order XL, Rule 4(3). When a special provision like Order XL, Rule 4 is made for passing the order for payment against the receiver and also for the enforcement of the same and when the order sought to be enforced is such an order passed under the special provision, it can be enforced only in the manner contemplated by the provision for the enforcement of such an order. That means the order for payment of money involved in the present case can be enforced only in the manner prescribed by sub-rule 3 of Rule 4 of Order XL. It stands to reason that it should only be so. If any authority is required for this clear position, G. Gurumurthi Aiyar Vs. Ramaswami Chettiar, may be referred to. Therefore, the order of the lower court is correct and the Civil Revision Petition has no merits. The Civil Revision Petition is dismissed but, in the circumstances of the case, without costs.

2. I would express my dissatisfaction regarding the manner in which the receiver was appointed by the lower court viz., without taking any security from him and also about the manner in which the receiver has behaved.