

(1926) 10 MAD CK 0037
In the Madras High Court

(Vemareddi) Ramaraghavareddi and Others

APPELLANT

Vs

Raja of Venkatagiri

RESPONDENT

Date of Decision : 27-10-1926

Acts Referred:

Citation : AIR 1927 Mad 355

Hon'ble Judges : Odgers, J; Jackson, J

Bench : Full Bench

Judgement

Odgers, J.—This is an appeal against an order of the Subordinate Judge of Nellore wherein he allowed a review of a previous order of his own and restored an execution petition which he had dismissed on the 1st March 1926. The application to restore was made u/s 151, Order 9, Rule 9 or Order 47, Rule 1, Civil Procedure Code. It is admitted that Order 9, Rule 9 does not apply and it is but faintly contended that Order 47, Rule 1, applies in view of the decision of the Privy Council in Chajju Ram v. Neki A. I. R. 1922 P. C. 112 as to the meaning of the words "or for any other sufficient reason" which occur in the rule. In that case their Lordships laid down that the words "any other sufficient reason" mean a reason sufficient on grounds at least analogous to those specified previously. In the present case, the dismissal on 1st March 1926 was for default of appearance of the petitioner or his vakil. There is no doubt to my mind that Order 47, Rule 1, can have no application to the present case. The petitioner is thrown back on Section 151 and he argues that as there is no provision in the Code other than Order 21, Rule 57 with regard to dismissals of execution applications for default the dismissal must have been u/s 151 and restoration of the petition must also fall under the same provision.

2. It may be pointed out that under Order 21, Rule 57 the Court is not bound to dismiss the application in default of appearance. Stress is laid on the case in Bholu v. Ram Lal A. I. R. 1921 Lah. 67 wherein it was held that by virtue of its inherent power a Court can restore an application for execution after it has dismissed it for default and that it should do so notwithstanding that the

applicant has an alternative remedy if he satisfies the Court that it should exercise its inherent jurisdiction *ex debito justitiae*. That case has been disapproved in a recent case of this Court reported in *Narayanan Chettiar v. Muthu Chettiar* A. I. R. 1926 Mad. 980 which also held that the absence of a pleader is not a ground for review. 51 M. L. J. 219, Foll. That was a matter in execution and the learned Judges held *inter alia* that Order 9, Civil P. C., does not apply to execution proceedings and that a Court has no power to restore to file an application which was dismissed for default. They also point out that the fact that a fresh application for execution may be barred by limitation is not a ground for invoking the inherent power of the Court, a consideration which seems to have weighed with the learned Judges of the Lahore High Court in *Bholu v. Ram Lal* A. I. R. 1921 Lah. 67.

3. It is then said that there is an inherent power of review, reliance being placed on *Mani Lal v. Durga Prasad* A. I. R. 1924 Patna 673 This case seems to me to be no authority for us after the case in *Narayanan Chettiar v. Muthu Chettiar* A. I. R. 1926 Mad. 980 The matter was one of Court-fee and the learned Judges held that as there is no appeal from an order fixing a valuation or demanding an additional Court-fee the Court has ample power to review its decision for good and sufficient reason. Apart from Order 47, Rule 1 it has such an inherent power u/s 151 to make such orders as may be necessary for the ends of justice. It seems to me to be a very strong proposition to say that when an execution petition has been dismissed under the Court's extraordinary power that extraordinary power should be again invoked in order to restore the petition. As a last alternative, it was suggested that although there may be no power to review u/s 151, there must be a power to restoration. This seems to me to be directly negated by the decision in *Narayanan Chettiar v. Muthu Chettiar* A. I. R. 1926 Mad. 980.

4. The whole trouble has arisen through the Subordinate Judge observing that he takes this to be an application for review of his order. Had he been simply content to set aside his order on good cause shown it is probable that we should have heard nothing about it. A review is clearly incompetent under Order 47, Rule 1 with its limited scope as now defined by the Privy Council and explained in *Nathu Lal Vs. Raghubir Singh and Others* I am of opinion that the inherent power of the Court cannot and ought not to be invoked in a matter of this kind and in this view the order of the learned Subordinate Judge is wrong and must be set aside with costs throughout.

Jackson, J.

5. Appeal against the order of the Subordinate Judge of Nellore in E. A. No. 73 of 1923 in O. S. No. 9 of 1923, Sub-Court, Nellore.

6. The respondent, decree-holder in O. S. No. 9 of 1923, was taking out execution under E. P. No. 80 of 1924, and the proceedings had reached the proclamation stage. On 1st March 1926, the respondent's vakil failed to put in

an appearance and the petition was dismissed. He applied for review u/s 151, Order 9, Rule 9 or Order 47, R.1 and the lower Court, finding that in law a review will lie allowed the review without further discussion of reasons or circumstances. Against this order appellant now appeals. Presumably the dismissal of the execution petition was under Order 21, Rule 57. It was urged on behalf of respondent that the Court has an inherent power to dismiss execution petitions for default of appearance, but when a definite provision of the Code is applicable to the circumstances of a dismissal it is unnecessary to invoke inherent power. It is not argued that Order 9, Rule 9 applies.

7. The only means by which an order regularly passed under the Code can be restored to file is a review order under Order 47, Rule 1. The learned Subordinate Judge was right therefore in assuming that the respondent's application was an application for review. Order 47, Rule 1 must be read as in itself definitive of the limits within which review is to-day permitted "; and the reasons justifying a review, must be those specified in that order, or reasons analogous to them, [Chajju Ram v. Neki A. I. R. 1922 P. C. 112. Default of appearance is not a reason contemplated by Order 47, Rule 1, nor is it analogous to any such reason. The lower Court therefore was not authorized to allow a review, and its order must be set aside.

8. In Narayanan Chettiar v. Muthu Chettiar A. I. R. 1926 Mad. 980 where it is held that absence of a pleader is not a ground for review,. the case-law on this subject has been fully considered and the ruling of the. Judicial Committee in Chajju Ram v. Neki A. I. R. 1922 P. C. 112 is cited as conclusive in the matter. Kumar Gopika Raman Ray Vs. Mahar Ali and Others, which in effect seeks to override that ruling cannot be accepted as authoritative. It has been argued that although the lower Court treated the case in terms as one of review, its action nevertheless was u/s 151. Even on that supposition its order cannot be. justified. In Bholu v. Ram Lal A. I. R. 1921 Lah. 67 the facts are not set forth; but apparently an execution petition had been dismissed for default under circumstances to which Order 21, Rule 57 was not applicable. This may be inferred from the admission of the petitioner's vakil that the Court in dismissing the application could only have acted u/s 151.

9. It was held in Babui Ritu Kuer v. Alakhdeo Narain Singh [1918] 4 Pat. L. J. 330 that

execution creditors have ample facilities under the existing law in restoring cases dismissed for default, and there is no reason why the extraordinary and vague jurisdiction given by Section 151 should be resorted to for supplementing those facilities.

10. This is described in the Lahore case as no hard and fast rule of general application and their Lordships proceed to lay down that inherent power u/s 151

can be invoked in the case of an application for execution dismissed for default when it is clear that the Code contains no express provisions on the subject. If a

party can satisfy the Court that it should exercise its inherent jurisdiction *ex debito justitiae* there is nothing in the law to debar the Court from exercising that inherent power.

11. The only case cited in support of this proposition *Debi Bakhsh Singh v. Habib Shah* [1913] 35 All. 331 is, as pointed out in *Narayanan Chettiar v. Muthu Chettiar* A. 1926 Mad. 980 one in which new and important matter was discovered, and there had been an abuse of the process of the Court; it affords no analogy to a case where it is simply a question of excusing default.

12. The mere fact that the Code contains no express provision for restoring an execution petition dismissed for default would not by itself warrant the invocation of Section 151. The circumstances in which an order can be reviewed are carefully defined in Order 47, Rule 1, and there is no assumption that a Court can overstep those provisions in the exercise of its inherent jurisdiction. If that were so, there would be no need of Order 47, Rule 1 at all, for Courts could review their orders for any reason. The predominant principle is that an order once passed is final; not that an order once passed is always liable to be set aside for any reason that the Court may think equitable; and the reason why the Code contains no express provision for setting aside the dismissal of an execution application, is that the party can always put in a fresh one. This may lead to inconvenience; but the party can prevent that by reasonable diligence: and if the Court is averse to exercising its disciplinary action so far as to drive the party to a fresh petition, it is entirely a matter within the Court's discretion. Even under Order 21, Rule 57 the Court is not bound to dismiss the application, and so too in an earlier stage of the proceedings it can adjourn, or strike the petition, for statistical purposes, off its file. The trouble in these cases to which Order 21, Rule 57 does not apply arises from the Court first of all invoking an inherent power, not specified in the Code, and hardly warranted either by abuse of its process or the ends of justice, in order to dismiss outright, an execution petition, and then changing its mind and again invoking Section 151 to reverse its own order. If the Court would simply strike off such cases, to be restored if necessary on the appearance of the party, there would be no trouble at all.

13. I agree that the appeal should be allowed with costs throughout.