

K. Sudheesan Vs. Sunilkumar

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Court : Kerala

Decided On : Jan-13-2016

Judge : K. Abraham Mathew

Appeal No. : OP(C) No. 1563 of 2015 (O)

Appellant : K. Sudheesan

Respondent : Sunilkumar

Judgement :

1. Petitioner is the decree holder in a suit for money. The decree was challenged in appeal. The appellate court stayed execution of the decree on condition that the respondent/judgment debtor furnished security for the performance of the decree. Accordingly the respondent produced before the executing court fixed deposit receipts for a certain amount issued by a bank as security. The appeal was later dismissed. Thereupon, the petitioner filed Ext P4 execution petition requesting the court to send for the amounts covered by the fixed deposit receipts. The respondent filed an application to return the receipts. By Ext P8 order the court allowed the respondent's application and ordered return of the fixed deposit receipts to the respondent stating that the appeal was disposed of and the amount has not been attached.

2. Heard.

3. The respondent produced fixed deposit receipts issued by a bank pursuant to the orders passed by the appellate court as a condition for staying execution of the decree. Order 41 Rule 5(3)(c) C.P.C provides that no order of stay of execution shall be made under sub rule 1 or sub rule 2 unless the court making it is satisfied that security has been given by the applicant for due performance of such decree or order as may ultimately be binding upon him. It is not for due prosecution of the appeal security is furnished, but for due performance of the decree. The property will be held as security for the performance of the decree. Till the decree is performed, the security bond cannot be cancelled. It will continue to be in force till the decree is executed. It was illegal for the learned Munsiff to order return of the fixed deposit receipts produced by the respondent as security for the performance of the decree.

4. The executing court also took the view that the petitioner failed to attach the fixed deposit receipts and so the respondent has every right to get them back. The question is whether attachment was necessary. The fixed deposit receipts were before the court. They were produced in the case in which the decree is sought to be executed. Order 21 Rule 51 C.P.C is applicable only where the property is a negotiable instrument not deposited in court nor in the custody of a public officer. In other cases attachment of the negotiable instrument is not necessary. In this case, as the fixed deposit receipts were produced in the case in which the decree is sought to be executed, attachment was unnecessary.

5. The next question falling for consideration is how without attachment the amount covered by the fixed deposit receipts can be realised by the court. Section 51 C.P.C empowers the court to execute a decree in such manner as the nature of the relief granted may require. It was sufficient for the court to direct the bank to send to it the amounts covered by the fixed deposit receipts. It was for that purpose only the petitioner filed the execution petition. The executing court went wrong in rejecting the prayer. The order is liable to be set aside.

In the result, this O.P is allowed. The impugned order is set aside. The executing court is directed to send for the amounts covered by the fixed deposit receipts and allow the petitioner to withdraw it or the part of it which is sufficient to satisfy his

decree.

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