

Lakshmi Vs. Raman

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Court : Chennai

Decided On : Dec-20-2016

Judge : M.V. Muralidaran

Appeal No. : CRP(NPD)No. 3797 of 2011 & M.P. No. 1 of 2011

Appellant : Lakshmi

Respondent : Raman

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 14.07.2011 made in R.E.A.No.70 of 2011 in O.S.No.2423 of 2004, on the file of the Principal District Munsif Court, Salem.)

1. The judgment debtor/defendant is the revision petitioner before this Court, challenging the order passed in REP.No.70 of 2011 in O.S.No.2423 of 2004, dated 14.07.2011, on the file of the Principal District Munsif Court, Salem.

2. The case of the petitioner/judgment debtor is that the respondent/decreed holder has filed O.S.No.2423 of 2004 for permanent injunction, restraining the defendant from any way interfering with the plaintiff's possession and enjoyment of the suit property. The suit was decreed exparte and the suit was decreed on 04.04.2007 in favour of the respondent.

3. After the decree, the respondent/decreed holder has filed Execution Petition in REP.No.70 of 2011 under Order 21 Rule 32(1), 32(3), 32(5) r/w Section 151 of CPC, on the ground that the petitioner/judgment debtor has disobeyed the decree passed in the above suit and in the Execution Petition, he sought for the attachment of the Judgment debtor's property mentioned in the Execution Petition.

4. Initially notice was given to this petitioner/judgment debtor granted time to file counter, but counter was not filed and hence on 14.07.2011, the learned Principal District Munsif, Salem was pleased to pass an order to attach the petitioner/judgment debtor's properties. Challenging the said order dated 14.07.2011 in REP.No.70 of 2011 in O.S.No.2423 of 2004, the petitioner/judgment debtor has filed this Civil Revision Petition before this Court.

5. The petitioner/judgment debtor also states that the order passed by the learned Principal District Munsif Court, Salem is against the law, since the Court below exceeded the jurisdiction vested in it by allowing the application, merely because counter statement has not been filed by the respondent/decreed holder is bound to prove the allegations and make out a case for attachment.

6. The petitioner/judgment debtor also states that a duty is cast upon the Court to provide an opportunity to the judgment debtor as contemplated under Order 21 Rule 32(1) of CPC. Apart from this, the learned Judge has not assigned any reason for attachment of the immovable property of the petitioner/judgment debtor. Challenging the said order, no counter affidavit has been filed by the respondent.

7. I have heard Mr.T.Murugamanickam, learned counsel appearing for the petitioner and Mr.N.Umapathi, learned counsel appearing for the respondent and I perused the records.

8. This is a case where a decree was obtained by the respondent/decreed holder in O.S.No.2423 of 2004 dated 04.04.2007 for disobeying the decree, he has filed R.E.P.No.70 of 2011 under Order 21 Rule 32(1) of CPC for attachment of the petitioner/judgment debtor's property. He has filed the application under Order 21 Rule 32(1), 32(3), 32(5) and Section 151 of CPC. As per the Order 21 Rule 32(1), it is specified as follows:-

32. Decree for specific performance, for restitution of conjugal rights, or for an injunction.-(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights or for an injunction, has been passed has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced [in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

9. As per the above provision under Order 21 Rule 32(1) of CPC, where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights or for an injunction, has been passed under had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by his detention in the civil prison, or by the attachment of his property, or by both. In this case, as per Order 21 Rule 32, it is seen from the said sub-rule, two conditions must be established:

(i) the party had an opportunity to obey the decree

(ii) the party had wilfully failed to obey it.

Unless the two conditions are satisfied, the court cannot order attachment or detention in civil prison. Even if both the conditions are satisfied, still it is the discretion of the court to order attachment or detention in civil prison. It has been held that if the court had failed to apply its mind to exercise the discretion judiciously, then any order passed under Order 21 Rule 32 of CPC is bad.

10. During the course of argument, Mr.T,Murugamanickam, learned counsel appearing for the petitioner has produced the judgment rendered by this Court reported in Arjuna Gounder v. Govindaraju Reddiar reported in 1990-2-L.W., this Court held in paragraph 4, 8, 9, 10, 11 and 15 are as follows:-

4. The matter was actually taken up for disposal on 22.10.1987. On that day, the petitioner herein was absent and set ex parte. The executing court passed an order of attachment straightway without giving any finding as to whether the

petitioner was guilty of disobedience of the decree. The order passed on 22.10.1987 reads as follows:-

The respondent called absent. Set ex parte. Attach by 17.11.1987.

8. O.21 R.32(1) C.P.C., provides that where a decree is for specific performance of a contract or for restitution of conjugal rights, or for an injunction and the party against whom such a decree has been passed has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by the attachment of his property or by detention of the said party in the civil prison. It is seen from the said sub-rule that two conditions must be established. One is that the party had an opportunity to obey the decree and the other is that the party had wilfully failed to obey it. Unless the two conditions are satisfied, the court cannot order attachment or detention in civil prison. Even if both the conditions are satisfied, still it is the discretion of the court to order attachment or detention in civil prison. It has been held that if the court had failed to apply its mind to exercise the discretion judiciously, then any order passed under O.21, R.32, C.P.C. is bad.

9. In the decision reported in Pedapudi Nookaratnam v. Pedapudi Venkata Suryanarayana. Rajagopalan, J., pointed out that O.21, R.32(1) confers a discretion on the Court and the Court should exercise the same judiciously. It was also held by the learned Judge that a decree-holder was not automatically entitled to attachment of the movables, even in the event of a wilful failure on the part of the judgment-debtor to obey the decree.

10. In V.S.Alwar Ayyangar v. Gurusamy Thevar, Balasubramanyan, J., held that for an executing court to act under O.21, R.32 of the Code, there must be evidence of wilful disobedience of a decree for injunction. The learned Judge accepted the contention that the onus was on the decree holder to prove that there was such wilful disobedience.

11. In Shivamurthy v. Dannammadevi Cycle Mart, Rabakavi, the same proposition is reiterated. It was held that where the executing Court ordered detention of the judgment-debtor in civil prison on the finding that he had wilfully disobeyed the decreed for injunction merely on the basis of rival arguments heard by it and not

on the basis of any material placed before it by the parties, the order of detention would be invalid.

15. Hence, in the present case the order dated 22.10.1987 directing attachment of the judgment debtor's properties without a finding that the judgment debtor had wilfully disobeyed the decree is a nullity. Hence the consequential proceedings following that order are also invalid.

11. On going through the said judgments, it is made clear that the learned Judge of this Court in the above judgment cited supra, consider the case passed by this Court in earlier Judgment passed in Pedapudi Nookaratnam v. Pedapudi Venkata Suryanarayana.

12. It is held in the case reported in 61 L.W. 655, that Order 21 Rule 32(1) CPC, confers a discretion on the Court and the Court should exercise the same judiciously. In the said case, the learned Judge of this Court also held that the decree holder was not automatically entitled to attachment of the movables, even in the event of a wilful failure on the part of the judgment debtor to obey the decree. In one another case reported in V.S.Alwar Ayyangar v. Gurusamy Thevar reported in AIR 1981 Madras 354 that for an executing court to act under Order 21 Rule 32 of the Code, there must be evidence of wilful disobedience of a decree for injunction. The learned Judge accepted the contention that the onus was on the decree holder to prove that there was such wilful disobedience.

13. The Hon ble Karnataka High Court also consider the case which was reported in Shivamurthy v. Dannammadevi Cycle Mart, Rabakavi reported in AIR 1987 Karnataka 26, where the executing Court ordered detention of the judgment debtor in civil prison on the finding that he had wilfully disobeyed the decree for injunction merely on the basis of rival arguments heard by it and not on the basis of any material placed before it by the parties, the order of detention would be invalid.

14. Admittedly, in this case, though the respondent/decreed holder filed the execution petition in REP.No.70 of 2011 by supporting an affidavit along with the Execution Petition. But, the Court below has passed the order as follows in the above E.P. on 14.07.2011

Ample chances given. Counter not filed. Respondent called absent Set exparte.
Attach by 06.09.2011

15. On fair reading of the above order, it is made clear that the learned Principal District Munsif, Salem has totally failed to apply his mind in a proper manner and without gone through the above rules under Order 21 Rule 32, but simply passed the order by attachment without giving any valid reasons. It is common knowledge in law that any order has been passed by any Court of law, the Court must have give valid reason or any reason for passing such order. But, in this case, the learned Principal District Judge, Salem ought not to have applied his mind by considering the case of the respondent/decree holder by way of evidence, particularly the decree holder must have give evidence before the Court in box to support his case and thereafter only in the Execution Petition.

16. This Court issued orders and circular that the Courts below should pass orders on merits even in the exparte stage. But ignoring the same the learned Judge has passed this non-speaking order and also violative of the provision Order 21 Rule 32 of CPC.

17. When the provisions are so severe against the judgment debtor, it is the duty of the Court which passes orders under the rule and the Court must act strictly in accordance with the provisions of the rule. Thus, under sub-rule (1) of Rule 32, the requirement which should be satisfied is that the judgment debtor having had an opportunity to obey the decree has wilfully failed to obey it. Unless and until the court gives a finding to that effect, the Court is not entitled to pass any order of attachment or detention in civil prison. I am of the view that the jurisdiction of the Court to pass an order of attachment or detention in civil prison arises only after giving a finding that the judgment debtor has wilfully disobeyed the decree after having had an opportunity to obey the same. In the absence of such a finding, any order passed by the Court granting attachment of the judgment debtor's property is a nullity one.

18. The learned Principal District Munsif Court, Salem also have not applied his mind in a proper manner since the order of attachment of the judgment debtor's properties without finding that the judgment debtor has wilfully disobey the decree

has passed the present order. Since the said order dated 14.07.2011 is passed against the above provisions of law under Order 21 Rule 32 and 32(1) of CPC, and the Court has passed the order without giving any opportunity to the judgment debtor and without any evidence let in supporting of the affidavit filed by the respondent/decreed holder and granting attachment of the property is totally nullity.

19. In the above circumstances of the case, I am of the view that an opportunity must be given to the decree holder to prove that the judgment debtor had wilfully disobeyed the decree, in spite of his having opportunities to obey the decree. Hence, an opportunity must be given to both the parties to prove and contest the said claim respectively. Since the respondent/decreed holder has not let in any evidence in the case and the trial Court without recording evidence but on the basis of the affidavit has passed the present order of attachment and therefore, it is the duty of the Court below namely the Execution Court, first to decide the question and having the opportunity and to obey the same for the purpose of deciding this question, the Execution Court will record the evidence and to pass orders.

20. In the result, I am passing the following orders:

(a) this civil revision petition is allowed by setting aside the order passed in REP.No.70 of 2011 dated 14.07.2011, on the file of the Principal District Munsif, Salem.

(b) further the Executing Court namely the Principal District Munsif Court, Salem shall first decide the question whether the petitioner in stead of taking an opportunity to obey the same for the purpose to decide that portion and the Execution Court shall record evidence.

(c) it is open to both the parties to let in evidence on this question and after evidence which is let in question to decide and placed before the Executing Court.

(d) if the Court come to a conclusion that the petitioner/judgment debtor herein is disobeyed the decree even after the opportunity to obey the same, the Court shall exercise the discretion to decide whether the order of attachment is made or the

order of detention in the petition should be made.

21. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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