

E. Krishna Reddy Vs. R. Prithvinathan

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Court : Andhra Pradesh

Decided On : Jul-14-1978

Reported in : AIR1979AP6

Judge : Narasinga Rao, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 42 and 150 - Order 9, Rule 13

Appellant : E. Krishna Reddy

Respondent : R. Prithvinathan

Advocate for Def. : V. Madhava Reddy, Adv.

Advocate for Pet/Ap. : Kondapalli Raghavendra Rao, Adv.

Judgement :

ORDER

1. This Civil revision petition is directed against the order of the District Munsif, Bhongir whereby he dismissed the petition to set aside the exparte decree Passed by the, the VII th Asst., Judge, City Civil Court, Madras.

2. The respondent herein obtained a money decree in O. S, 3536/74 on the file of the VII th Asst. Judge, City Civil Court, Madras. That was an ex parte decree against the petitioner herein. This decree dated 29-4-1975 was not transferred by

the decree-holder to the Court of the District Munsif, Bhongir for execution. In E. P. filed before the District Munsif the decree-holder obtained an order for the arrest of the petitioner. at that stage the petitioner moved the District Munsif, Bhongir for setting aside the ex parte decree passed by the VII th Asst. Judge City Civil Court, Madras. That Petition was opposed by the decree holder contending that the executing Court has no Jurisdiction set aside the ex parte decree passed by the VII th Asst. Judge City Civil Court, Madras. This contention found favour with the District Munsif who dismissed the petition for setting aside the ex parte decree. Hence this revision petition.

3. The learned Counsel for the revision petitioner urged that as the decree is transferred for execution to the Court of Munsif, Bhongir, which can be said to be transferee Court an application to set aside an ex parte decree even lies before the Transferee Court. The contention in the same strain is that it is not necessary that the application under O.IX R.13 of the Code of Civil Procedure be made to the Court that passes the decree is competent to set is aside. The contention is that even a Transferee Court is competent to set aside an ex parte decree.

4. It is necessary to bear in mind that the decree in the instant case has been transferred for execution under S. 40 of the Code of Civil Procedure. S. 42, C.P.C to the extent it is relevant reads as follows:

"The court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself.

Reading the section it was contended that even an Executing Court has the same powers the decree. It can however, be noted that this very section expressly lays down that the Executing Court shall have the same powers of the original Court in executing such decree and not that the executing Court has all the powers of the original Court which passed the decree. Thus the Executing Court would exercise only such of the powers for the purpose of execution which the original court had or has. This section therefore would not enable the petitioner to file an application for setting aside the ex parte decree.

5. It was next contended that an Executing Court is also Transferee court within the meaning of Sec. 150 of the Code of Civil procedure to which the business of the Court is transferred. It is necessary to read Sec. 150 in order to appreciate this contention, Sec. 150 C.P.C, reads as follows:

'Save as otherwise provided where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall Perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.'

At the out set it can be noted that the transmission of a decree for execution to another Court does not amount to transfer of business from one court to another. The transfer of business contemplated by Sec. 150, C. P. C. would arise where cases are transferred under Sec 24 C. P. C. or where on account of reorganisation of the Courts or by creation of new Courts, certain areas are taken on to new court account of which the business pertaining to that area pending on the file of one court is transferred to the file of any newly constituted Court. But Sec, 150 C. P. C. does not take into, its ambit decrees which are transmitted or transferred from one court to another. There is a specific provision in this with regard to transfer and execution of decree passed by one Court by the other. All the provisions of the Code have to read together. At any rate a transfer of decree for execution is certainly not a transfer of the business of one Court the other. The learned Counsel strenuously contended that a Division Bench of this Court in G. M. Narayana Swamy v. Union of India (1977)¹ APLJ 445 held that a Transferee Court can equally set aside an ex parte decree. it can be Seen that that was also a case where on account of creation of a new court the business relating to particular area stood transferred to the new court Reading S. 150 C, P. C. and O. IX R. 13 C. P. C. it was held that the Transferee Court which was seized of the matter had always Powers of the original court and that it had also the Power to set aside an ex parte decree. That ruling is certainly of not any help to the Petitioner to contend that an executing Court has the same powers as a Transferee Court to which the business stood transferred. As noted above S. 42 of the Code of Civil Procedure vests in the execution Court powers of the Original Court only to the limited extent

and purpose of executing the decree. The Executing Court cannot certainly be said to be a Transferee Court in the sense that the business is not transferred to it. The Division Bench ruling of this Court referred to above is only an authority for the proposition that an application under O. IX R. 13 read with S. 150 C. P. C. for setting aside an ex parte decree is maintainable before the Transferee Court to which the business has been transferred and not that the Executing Court can also entertain such an application

6. It was also contended by the learned counsel for use revision petitioner that O. IX R. 13 would not vest with the power of setting aside the ex parte decree only in the court that passed the decree and that any court to which that decree has been set would be equally competent to set it aside. It is true that O. IX R. 13 while laying down that the Court which passed the decree has power to it aside, does not specifically say that court can alone set aside that ex parte decree. It is true that the provisions relating to the review as contained in the Code of Civil Procedure lay down that the power of review can be exercised only by the Court which passed the judgment but from the absence of such a clause or expression in O. IX R. 13 it cannot be read as conferring a power to set aside an ex parte decree on the executing Court also. This is Particularly so when S. 42 of the Code of Civil Procedure specifically restricts the powers of executing Court for the purpose of executing the decree only. As discussed above already an execution Court cannot be equated to a Transferee Court within the meaning of S. 150 of the Code of Civil Procedure to which the business stands transferred.

7. For the above reasons I hold that the learned District Munsif rightly rejected the application as not maintainable. There are no merits in this revision petition. It is accordingly dismissed but without costs.

8. Revision dismissed