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Court : Delhi

Decided On : Apr-19-1967

Reported in : AIR1968Delhi101

Judge : M.M. Ismail, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 51 - Order 21, Rules 40 and 57

Appeal No. : Ex. Second Appeal No. 155-D/1961, from order of Addl. Dist. J., Delhi, D/- 17-7-1961

Appellant : Gopichand

Respondent : Brahmo Devi

Advocate for Pet/Ap. : P.C. Khanna, Adv

Judgement :

(1) Smt. Brahmo Devi on 21-4-1955 obtained a decree of Rs. 3800 on account of arrears of monthly allowance against her adopted son, Shri Gopi Nath, the appellant herein. In the same year, she applied for execution of the decree. On 21-1-1956, an order for the arrest and detention of the judgment-debtor was passed and the appeal preferred by the judgment-debtor against the said order was rejected on 20-12-1956.

(2) Thereafter, the judgment-debtor (the appellant herein) applied under section 34 of Act Vii of 1934 (Punjab Relief of Indebtedness Act) as extended to Delhi, praying that the decree-holder's application for arrest of the judgment-debtor might be dismissed. This application of the judgment-debtor was dismissed by a learned Subordinate Judge, I Class, Delhi, by an order dated 8-2-1958. Against this order, the judgment-debtor preferred an appeal to the Additional District Judge, Delhi, and that appeal was disposed of by an order dated 2-6-1958, based on a compromise between the decree-holder and the judgment-debtor was to pay half the amount of the balance of the decree within six months, and one-fourth in antoher six months and in case the judgment-debtor failed to pay as indicated above, the decree-holder would be entitled to realise the decretal amount amongst toher courses by arrest of the judgment-debtor as well and the order of the executing Court regarding the arrest of the judgment-debtor stood modified to that extent.

Ntowithstanding this compromise order, the judgment-debtor did nto pay the amount in terms of that order. On 15-8-1959 the execution proceedings were transferred before antoher Sub Judge and on the application of the decree-holder a warrant of arrest for 5-9-1959 was issued. Since the judgment-debtor could nto be found, antoher warrant of arrest for 6-2-1960 was issued. Then also the judgment-debtor could nto be found. By an order dated 2-4-1960, the execution application was stayed and sent to the record room. On 4-5-1960 the decree-holder filed an application for revival of the proceedings. On that basis, warrants of arrest were issued.. The judgment-debtor applied for the recall of the same for several reasons. The Sub-Judge Delhi, by an order dated 17-8-1960 overruled the objections and directed the issue of warrant of arrest of the judgment-debtor preferred Misc. Civil Appeal District Judge Delhi. The learned Additional District Judge, by an order dated 17-7-1961 dismissed the appeal. It is against that the present second appeal has been filed before this Court.

(3) The learned counsel for the appellant urged two points before me, which are as follows:

(1) On 2-4-1960, the case was consigned to the record room on account of the default of the decree-holder to pay the process fee and consequently, it amounted to dismissal of the application of the decree-holder and no further proceedings could be taken without there being a fresh application in terms of Order 21, Rule 11 of the Civil Procedure Code.

(2)No arrest or detention having been made pursuant to the order made on 21-1-1956 the subsequent order for arrest and detention could nto have been made without giving an opportunity to show cause to the judgment-debtor.

(4) The above two points were also raised before the Courts below. But they were rejected. As far as the first point is concerned, the learned Subordinate Judge pointed out that the order passed by him on 2-4-1960 consigning the execution application to the record room was very clear and by that order, the proceedings were only adjourned sine die and the previous proceedings taken were expressly reserved in the order and the application was never finally disposed of. The learned Additional Sessions Judge agreed with this conclusion. I do nto find adequate reasons to differ from the conclusion of the Courts below on this point.

The learned counsel for the appellant contended that the order consigning the proceedings to record room may mean either postponement or dismissal depending upon the circumstances in which the order was passed and in this case since the order was passed on account of default on the part of the decree-holder to pay the process fee, it must be inferred that the order consigning the proceedings to the record room amounted to the dismissal of the application. In this context, the learned counsel invited my attention to the provisions contained in Order 17, Rule 1 and Order 21, Rule 57, Civil Procedure Code and the decisions in V. K. Murugappa Mudaliar v. P. M. Desappa Nayanim Varu, : AIR1950 Mad314 and in H. Kunjan Marakkaru Metharu v. Jeseph Achamma Air 1956 TC 122, I am of the view that none of these provisions of law and the decisions support the learned counsel's contention. Order 17, Rule 17, Rule 1 deals with the power of the Court to adjourn a case and the fact that the application in the present case has nto been adjourned to a specific date cannto and does nto mean that the application was dismissed.

Equally, Order 21, Rule 57 merely states that where any property has been attached in execution of a decree but by reason of the decree-holder's default the court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Apart from nto helping the appellant's contention this provision on the toher hand, shows that even when there is default on the part of the decree-holder, the court has discretion to adjourn the proceedings to a future date. Similarly the two decisions relied upon by the learned counsel also do nto help him. In the Madras case, it was held that there was no dismissal of the execution petition for the default of the decree-holder, the attachment would continue especially when the Judge himself directed that it should continue till the decree is fully satisfied. Similarly in the Travancore Cochin case, it was pointed out that the effect of orders such as 'dismissed', 'rejected' and 'struck off' passed for purposes of statistics, and nto by reason for the decree-holder's default or of the judicial disposal of the execution petition is merely to adjourn the execution petition 'sine die' and an execution petition so dismissed, rejected or struck off has to be deemed as pending even after the order and capable of being revived or continued by the decree-holder at a later state. thereforee, I am of the view that the two decisions relied upon by the learned counsel for the appellant do nto support his contention.

On the toher hand, in Vijendra Nath v. Jagdish Rai aggarwal, : [1967]2SCR138 the Supreme Court had occasion to consider an order like the present one where an application was consigned to the record room. Subsequently, antoher application was filed for execution of the decree. The Supreme Court held that the object of the subsequent application was to revive the previous substantive application for execution which was still pending and the subsequent application must be regarded as a continuation of the execution proceedings originally commenced. Under these circumstances, I am of the opinion that there is no substance in this contention of the learned counsel for the appellant.

(5) As far as the second point is concerned, the learned counsel for the appellant invited by attention to the provisions contained in section 51, Civil Procedure Code and Order 21, Rules 37-40, Civil Procedure Code. It has to be ntoed in this context

that the original order for the arrest and detention of the appellant was passed on 21-1-1956. The application for resumption or revival of those proceedings was made on 4-5-1960. The original order dated 21-1-1956 was appealed against and the appeal was disposed of on 20-12-1956. As pointed out already, subsequently there was an order based upon a compromise between the parties on 2-6-1958. Only when the appellant failed to carry out the terms of this compromise order the decree-holder took fresh steps for arrest and detention in the Civil prison of the appellant.

The contention of the learned counsel for the appellant is that an order for arrest and detention in Civil prison of the judgment-debtor in a money decree, can be passed by a Court, only in strict compliance with the provisions contained in S. 51, Civil Procedure Code and the requirements as to the opportunity contemplated to be given to the judgment-debtor as to why he should nto be detained in Civil prison and the reasons to be recorder in writing by the court as to its satisfaction with regard to the several matters mentioned in the proviso to section 51 have to be fulfillled every time an order for arrest and detention in Civil prison is made. In support of his contention, the learned counsel for the appellant relied upon four decisions of the Madras High Court, namely, K. venkatasubba Rao v. M. Sreeramul, Air 1949 Mad 470; M. V. Paramanandaswami v. A. K.Shanmugham Pillai and K. V. Muthu Pathar v. R. S. Mani Rao, Air 1956 Mad 580. The last three decisions deal generally with the necessity for compliance with the requirement of section 51, Civil Procedure Code, before a Court can pass an order for arrest and detention in Civil prison of a judgment-debtor in money decrees and only the first of the four decisions referred to above has some bearing on the question that falls for decision in this case. In the first of the cases referred to, it was observed as follows:

'It was urged by the learned counsel for the respondent that this judgment-debtor was on a former occasion, ordered to be arrested and that full reasons were then given for his arrest and that the lower Court had omitted to give the reasons now because of that. That order for arrest was nto taken advantage of or carried out. This is a fresh application made months later. My view is that reasons must be given every time a man is ordered to be arrested and in every proceeding where

he is ordered to be arrested, even if it is on the same day; for, cases differ. And much depends on lapse of time also.'

The learned counsel for the appellant naturally placed very strong reliance on this observation of the Madras High Court. Taking into consideration that what is involved in such proceedings is the liberty of an individual and it is in view of this alone the Legislature has sought to make sufficient safeguards in the provisions of section 51 of the Code. I am inclined to agree, if I may say so with respect, with the principles underlying the view taken by the Madras High Court in the decision mentioned above. One of the reasons given by the Courts below for nto following this decision is that there has been no fresh execution application and necessarily there has to be some interval between enquiry and execution of the warrant and if enquiry has to be held every time, it will mean that no judgment-debtor can ever be arrested. While taking this view the Courts below failed to take into consideration the lapse of time involved in the particular case to which also a reference has been made in the observation qutoed above by me from the decision of the Madras High Court referred to above. If the order for arrest and detention once passed in accordance with the law is given effect to or taken advantage of by the decree-holder within a reasonable time, the difficulty pointed out by the Courts below will nto arise.

(6) The object of detaining a judgment-debtor in a Civil prison is nto to punish him for any crime committed by him, but for enabling the decree-holder to realise the money decreed in her favor and for the purpose of achieving this object, alone, the conditions in the proviso to section 51 have been formulated. The statute contemplates sending to prison the judgment-debtor who refuses or neglects to pay towards decree something which the Court has found after hearing him to be within his means to pay. It is some contumacious conduct on the part of the judgment-debtor and nto mere inability to pay that renders him liable to be arrested and committed to Civil prison. Though at a particular point of time the conditions mentioned in the proviso to section 51 of the Code might have been satisfied, but if that order was nto taken advantage of or nto given effect to within a reasonable time, the position of the judgment-debtor may so change that the conditions mentioned in the proviso to section 51 of the Code are no longer

satisfied. Consequently, though I do nto share the view that every time an order for arrest and detention in Civil prison of a judgment-debtor is made by a Court whether the interval between one order and a subsequent order is long or short, the Court must give an opportunity to the judgment-debtor and give reasons in writing as to the satisfaction about the fulfilllment of the conditions contained in the proviso to section 51 of the Code, if there had been a sufficiently long interval between the original order which has nto been given effect to and a subsequent application for passing a fresh order, the Court must give an opportunity to the judgment-debtor to show cause and must be satisfied that the conditions mentioned in the proviso to Section 51 of the Code are fulfillled at the time when the Court is called upon to make the subsequent order. In this particular case, undeniably; there has been a sufficiently long interval between the original order and the subsequent order, warranting a fresh examination of the position of the judgment-debtor with reference to the conditions mentioned in the proviso to Section 51 of the Code. thereforee, I allow this second appeal and remand the matter to the learned Sub Judge with a direction to dispose of the matter afresh in the light of this judgment. I may also point out here that the respondent remained ex parte before this Court. There will be no order as to cost.

(7) Order accordingly.

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