

Abdul Karim Vs. Receiver, T.M. Muhammad Shaffee and anr.

Abdul Karim Vs. Receiver, T.M. Muhammad Shaffee and anr.

SooperKanoon Citation : sooperkanoon.com/718086

Court : Kerala

Decided On : Jun-10-1971

Reported in : AIR1972Ker95

Judge : V.R. Krishna Iyer, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 1 - Order 43, Rule 2

Appeal No. : C.M.P. No. 6136 of 1971 in C.M.A. No. 71 of 1971

Appellant : Abdul Karim

Respondent : Receiver, T.M. Muhammad Shaffee and anr.

Advocate for Pet/Ap. : K. George Varghese,; Kannanthanam Thomas,; V. Jacob

Judgement :

ORDER

V.R. Krishna Iyer, J.

1. Counsel prays for time for producing a certified copy of the order appealed against. Section 2(14) of the Civil Procedure Code defines 'order' as the formal expression of any decision of a civil court which is not a decree. The reasoning in support of such an order (sometimes loosely described as decretal order) is a 'judgment' which Section 2(9) defines to mean 'the statement given by the Judge of the grounds of a decree or order.' Thus, there is a judgment and a decree when

a suit is disposed of and there is a judgment and an order when any decision is rendered by a civil court except when finally determining the rights of parties in a suit. Order 41, Rule 1, Civil Procedure Code, requires the production of the judgment and the decree along with the memorandum of appeal, but while a copy of the decree is mandatory, a copy of the judgment may be dispensed with in the discretion of the court. In short, the court has no power to exempt the production of a copy of the decree.

The relative provision when an appeal is filed under Section 104 is contained in Order 43, Rule 2 which reads:

'The rules of Order XLI and of Order XLI-A shall apply so far as may be, to appeals from the orders specified in Rule 1 and other orders of any civil Court from which an appeal to the High Court is allowed under any provision of law.'

Reading Order 41, Rule 1 and Order 43, Rule 2 together, the conclusion is irresistible that the Court has no power to dispense with the production of the order, otherwise called decretal order. It would, therefore, have been beyond my jurisdiction to grant the exemption sought by counsel, but for certain circumstances which I will mention presently.

2. The petitioner's advocate, a senior member of the bar, states that in the Travancore area with which he is thoroughly familiar, no order as defined in Section 2(14) is at all prepared. All that is done is to add a memorandum of costs at the foot of the judgment. This I conceive to be violative of the implied obligation of a court (vide Sections 33 and 36) to prepare a decree or order when a decision in the shape of a judgment is pronounced. When courts decline to prepare orders, parties are unable to avail themselves of their right of appeal and sometimes of their right to execute the order. In such extraordinary situations where there is failure on the part of the tribunal to do that without which the right of a party would be imperilled, the appellate court is justified in invoking its inherent power under Section 151 to prevent the injury to a party on account of the default of the court. In exercise of this power and in the circumstances set out above, I grant two weeks' time for production of the order, expressing the expectation that the trial court will not rest content with pronouncing a judgment but will follow it up with

preparing an order.

I may also state that while a decree or order is very helpful in precisely stating the ultimate determination of the rights of parties by the court and facilitates execution, it is a matter for consideration by the legislature as to whether the present Travancore practice of merely adding a memorandum of costs with a further direction that a judgment will wind up with a succinct statement of the final determination by the court will not suffice. I am inclined to think that there is much to be said in favour of the 'illegal' practice prevalent in the Travancore area, but the solution is to legalise it by legislation and not to permit its continuance putting the parties to considerable trouble when the appellate court insists upon the legal pound of flesh.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com