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B. Matha Gowder Vs. M.S. Kada Gowder

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Court : Chennai

Decided On : Mar-27-1953

Reported in : AIR1954Mad81; (1953)2MLJ421

Judge : Govinda Menon and ;Basheer Ahmed Sayeed, JJ.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 51

Appeal No. : A.A.O. No. 108 of 1950

Appellant : B. Matha Gowder

Respondent : M.S. Kada Gowder

Advocate for Def. : Pais, ;Lobo and ;Alvares, Advs.

Advocate for Pet/Ap. : K.S. Sankara Ayyar and ;V. Sundaresan, Advs.

Disposition : Appeal allowed

Judgement :

1.This appeal arises out of an application for execution of the decree in O. S. No. 16 of 1947 on the file of the Subordinate Judge of Ootacamund by arrest of the judgment-debtor. The decree was passed in August 1947 and it is stated that the decree-holder has not been able to realise any appreciable sum towards the decree amount. The learned Subordinate Judge finds that the judgment-debtor has the means to pay the decree amount and is therefore liable to be arrested.

2. The question that has been argued relates to the correct interpretation to be put upon clause (b) of the proviso to Section 51, Civil P. C. added by means of Section 2. Civil P. O. (Amendment) Act of 1936 (21 of 1936). As it originally stood before the amendment, Section 51 of the Code which was introduced for the first time in 1908 contained only the following provisions:

"Subject to such conditions and limitations as may be prescribed the Court may, on the application of the decree-holder, order execution of the decree-

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by sale without attachment of any property;

(c) by arrest and detention in prison;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the

relief granted may require."

2a. It is conceded that clause (a) of the proviso to Section 51 cannot in terms apply for it is not shown that the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court with the object or effect of obstructing or delaying the execution of the decree. Nor is it the decree-holder's case that the judgment-debtor has, after the institution of the suit in which the decree was passed dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property. But what is urged on behalf of the decree-holder is that the judgment-debtor has the means to pay the amount of the decree or a substantial part thereof and refuses or neglects to pay the same. Clause (b) of the proviso to Section 51 reads as follows:

"that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same."

Mr. Sankara Aiyar for the appellant judgment-debtor contends that in order to attract the operation of this clause in the proviso the judgment-debtor must have acquired the means after the passing of the decree to pay the decree amount or a substantial portion thereof and must have refused or neglected to pay the same and in the absence of any evidence in the case that subsequent to the passing of the decree the judgment-debtor has acquired any property, he is not liable to be arrested. He analyses Clause (b) of the proviso into its various, component parts in the following manner: (1) The judgment-debtor has, since the date of the decree, the means to pay the amount of the decree or some substantial portion thereof and refuses or neglects to pay the same; (2) the judgment-debtor has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and has refused or neglected to pay the same.

3. According to the first part even at the time the decree is being executed, the judgment-debtor must have in his possession the means acquired by him after the passing of the decree and must neglect or refuse to pay the decree amount. There is no evidence according to the learned counsel of such a state of things. Taking the second part learned counsel contends that the judgment-debtor must have had since the date of the decree the means to pay the amount; in which case, after the passing of the decree the judgment-debtor must have acquired some property which was not in his possession at the time of the execution and therefore he has had the means to pay.

4. The question is whether this clause can be split up or analysed into such component parts. The difficulty arises from the fact that the comma first appears after the word "had" and thereafter there is another comma after the word "decree". Does the expression "since the date of the, decree" govern the earlier "has" or does it govern the latter "has had", or can the clause be understood as "the judgment-debtor has since the date of the decree" or "the judgment-debtor has had since the date of the decree" the means to pay. If it is to be understood in that way, the appellant's argument can be accepted. But it seems to us that since there is no comma after the words "has had" it is rather difficult to accept the appellant's contention. The proper way of interpreting the section in the light of the punctuations contained in it, is that the expression "since the date of the decree"

can govern only "has had". Interpreting it in that way, the section should be understood in the following manner. The judgment-debtor has the means to pay the amount of the decree 'in praesenti' i.e., at the time when the execution application is made. Or the judgment-debtor has had, since the date of the decree, the means to pay, i.e. even though the judgment-debtor acquired some property after the passing of the decree if he does not possess it at the time the decree was sought to be executed, he is liable to be proceeded against. This is made clear by the latter portion of the same clause which says "and refuses or neglects" or "has refused or neglected" to pay the same. The words "refuses or neglects" will have relation to the earlier portion "has the means to pay" and the words "has refused or neglected" will have relation to "has had since the date of the decree the means to pay". Where at the time of the execution application, the judgment-debtor has the means in his possession, then he must either refuse or neglect to pay in which ease he is liable to be arrested. But where he had acquired some property after the passing of the decree, but is not possessed of it on the date of the execution, he must have refused or neglected to pay the decree amount when he was in possession of such, property, in which case he is liable to be arrested. This is the only way of reconciling every part of the clause. If we accept the appellant's, contention, then it would amount to dissecting the section in a manner not warranted by the punctuation marks contained in it. In our opinion the proper way of understanding the import of the words is that at the time the execution petition was filed, the judgment-debtor has the means to pay the amount of the decree and has refused or neglects to pay the same, or the judgment-debtor has, since the date of the decree the means to pay the amount of the decree and has refused or neglected to pay the same. The one !s the antithesis of the other. In the former case it is the existence of means 'in praesenti' and a neglect or refusal to pay the decree amount. In the latter, case it was the existence of means acquired after the passing of the decree, but the non-existence of it at' the time of the execution application, and the past refusal or neglect to pay the decree amount.

5. There is dearth of judicial authority on this subject and our attention has not been invited to any decided case on the point. The few cases which are reported since the proviso was introduced in Section 51 of the Code contemplate the existence of means at the date of the filing of the execution application. In -- 'Jugal

Kishore v. Prahlad Rai', AIR 1939 Pat 22 (A), the Court considered the question from the point of view of the judgment-debtor having sufficient means to pay within the meaning of Clause (b) of the proviso at the time of the filing of the, execution petition. In -- 'Abdul Hamid v. Amritlal, AIR. 1939 Lab 299 (B), it is held that in determining the capacity of an agriculturist debtor, his agricultural lands and residential house cannot be taken into consideration. Here also the judge was contemplating the existence of means at the time of the filing of the execution application.

6. Our attention was invited to the objects and reasons of the Bill which later on became the Act, l.e. Bill No. 9 of 1935. The statement of objects and reasons of this Bill js contained at page 18 of Part III of the Fort St. George Gazette dated 26-2-1935. The Bill was originally intended to project industrial workers on receipt of wages less than, Rs. 100 a month from arrest and imprisonment for a debt as a result of the recommendations of the Royal Commission on Labour in India. But the Legislature thought that the protection should be applied to all persons and hence the statement is to the following effect:

"The Bill is the outcome of the recommendations of the Royal Commission on Labour in India to the effect that in the case of industrial workers in receipt of wages less than Rs. 100 a month arrest and imprisonment for debt should be abolished except where the debtor has been proved to be both able and unwilling to pay. The Bill seeks to amend the Civil Procedure Code of 1908 so as to protect honest debtors of all classes, and not of the industrial worker class only, from detention in a civil prison and to confine such detention to debtors proved to be recalcitrant or fraudulent. It provides inter alia that no order for execution by detention in prison shall be issued unless the debtor has been given opportunity of showing cause why he should not be committed to prison, and the Court is satisfied for the 'reasons recorded in writing that (1) the debtor is likely to leave the local limits of the jurisdiction of the Court, or has after the institution of the suit fraudulently disposed of his property and (ii) that he is able to pay the amount of the decree otherwise than from protected assets. (2) The Bill applies to all judgment-debtors. After consultation with local Government the Government of India decided that in this matter there was no sufficient reason for restricting the

protection to small debtors."

7. Clause (b) of the proviso crystallises the intention in the last part of the statement (ii) that the debtor is able to pay the amount of the decree otherwise than from protected assets. This also contemplates the existence of assets at the time of the execution petition.

8. In the light of the above discussion, we have to see whether the learned Judge was right to holding that the judgment-debtor has the means to pay the decree amount. In our opinion the lower Court was carried away by the fact that the judgment-debtor's son and brother filed a suit and stopped the attachment and sale of properties. We do not think that the discussion contained in paras. 3 and 4 of the judgment would necessarily lead to the conclusion that the judgment-debtor has the means to pay. All his properties have been attached and there is nothing to show that he has refused or neglected to pay the amount When other persons, who apparently have a right to the property obstruct the attachment, it cannot be said that the judgment-debtor is responsible for their action. Every individual is entitled to safeguard his or, his joint family interests in the property and the learned Judge should not have been carried away by the fact that the judgment-debtor's son and brother had the sale stayed by an injunction from Court. Tha fact that the court issued an in junction cannot be said to be an obstruction caused by the judgment-debtor.

The evidence of P. W. 2 which was very much relied upon by the learned Judge only shows what would have been the income from particular kinds of crops grown on similar lands in the neighbourhood. From these considerations, it is impossible to decide whether the judgment-debtor has the means to pay. The learned Judge should have directed and reveted his attention to the simple question as to whether in addition to the attached property the judgment-debtor has any other means to pay the decree amount. So far as the attached properties are concerned, whatever rights the judgment-debtor may have can be brought into Court for the realisation of the decree amount by the appointment of a Receiver or by some other means. It seems to us therefore that the learned Judge has not correctly appreciated the situation. The appeal is therefore allowed and the

execution petition is remanded to the lower Court for disposal after allowing both the parties to adduce evidence regarding the means of the judgment-debtor and his refusal or neglect to pay the decree amount at the time of the filing of the execution petition. The lower Court is also at liberty to appoint a Receiver so far as the immoveable properties which are under attachment are concerned and realise the judgment-debtor's share in those properties for satisfaction of the decree amount. The costs of this appeal will abide and follow the result of the rehearing of the execution petition.

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