

**Subbiah Vs. Muthukrishnan**

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**Court :** Chennai

**Decided On :** Jan-23-1987

**Reported in :** (1987)2MLJ159

**Appellant :** Subbiah

**Respondent :** Muthukrishnan

**Judgement :**

ORDER

M.N. Chandurkar, C.J.

1. This Civil Revision Petition is a good illustration of how a simple claim for a money decree on the basis of a promissory note can be kept pending for more than 12 years at one stage or another by taking recourse to what now appears to be a normal technique of allowing ex parte orders to be passed and then moving the court for setting aside all ex parte decrees or orders.

2. The suit in the instant case which is based on a promissory note was filed as far back as in 1974 being O.S. No. 618 of 1974. The record of C.R.P 3340 of 1983, which was filed by one of the judgment-debtors shows that in the suit an ex parte decree was passed and on a petition filed by the judgment-debtors, the ex parte decree was set aside.

3. The decree which is sought to be executed was passed on 8.11.1978, i.e., 7 years earlier and yet the decree-holder has not been able to get the fruits of the

decree. When the execution petition was filed and it was taken up after notice to the present judgment-debtor on 5.3.1980, the counsel for the judgment-debtor appeared and wanted time to file a counter. At his request, it was adjourned to 28th March, 1980. On 28th march, 1980, neither the judgment-debtor nor the counsel appeared and the court, therefore, placed the judgment-debtor ex parte. It was only on 16.12.1980, i.e., nine months after the order in the execution petition that an application making a vague allegation that the judgment-debtor was laid up with typhoid fever came to be filed.

4. The principal District Munsif took the view that though sufficient opportunity was granted, the petitioner has not filed counter and he, therefore, saw no reason to allow the petition. The, petition which was purported to be one for setting aside the ex parte order thus came to be dismissed. It is this which is challenged by the present petitioner.

5. In this revision petition it is contended by the learned Counsel that he had been given only one opportunity to file a counter and the learned Principal District Munsif dismissed the application purported to be made under Order 9, Rule 7 read with Section 151 C.P.C.

6. It is difficult to find fault with the order of the Principal District Munsif when he observed that though sufficient opportunity was granted, the judgment-debtor had not filed a counter. It is difficult to understand the grievance that only one adjournment was granted. This argument presupposes that there was no obligation on a party to do anything on the first date of hearing and that the courts are to go on adjourning matters at the request of parties or counsel. It must be remembered that this execution matter in which after a full trial a decree was passed and f execution of that decree is sought, even today the judgment-debtor is not in a position to state as to what defence the judgment-debtor has as to the execution of the decree. As a part of an effort to delay execution, one of the judgment debtors has already come to this Court earlier when his claim for protection and benefits under Tamil Nadu Act 13 of 1980 was overruled and rejected. That order has been upheld by this Court in C.R.P. No. 3340 of 1983, decided on 12.9.1984. On the vague allegations made for setting aside the ex

parte order it has to be held that the learned District Munsif was right when he rejected the application for setting aside the ex parte order.

7. This, however, does not mean that the judgment-debtor is prevented from taking part in the execution proceedings hereafter. The refusal to set aside the ex parte order only means that the proceedings will proceed further from the stage at which they were on 5.3.1980, i.e., the judgment-debtor will not now be entitled to file the counter, but if there are submissions of law which he is entitled to canvass, he will be at liberty to do so.

8. The effect of an ex parte order in the case of a regular suit made under Order 9, Rule 7, C.P.C., was considered by this Court in Venkatasubbiah v. Lakshminarasimba : AIR1925 Mad1274 , in which the learned Judge while dealing with the case of a defendant who then filed a written statement being absent on the date of hearing and being placed ex parte on the date on which the plaintiff's evidence was taken but further hearing was adjourned to a later date and on the adjourned date the defendant wanted to prevent his defence, observed that the ex parte order only covered the period during which the party was absent and did not preclude him from proceeding with suit after that stage. It was pointed out by the learned Judge that Or.9, Rule 7, C.P.C., does not prevent this but it applies to the case where the party being declared ex parte wishes to be relegated back to the position which he would have been in if he had appeared at the previous hearing and had opportunities of cross-examination, etc.

9. In Sangaram Singh v. Election Tribunal : [1955]2SCR1 , the Supreme Court referring to the provisions of Order 9, Rule 7, C.P.C., pointed out that if a party does appear on the day to which the hearing of the suit is adjourned after he has been placed ex parte he cannot be stopped from participating in the proceedings simply because he did not appear on the first or some other hearing. It is observed in paragraph 31 as follows:..But though he has the right to appear at an adjourned hearing, he has no right to set back the hands of the clock. Or.9, R.7 makes that clear. Therefore, unless he can show good cause, he must accept all that has gone before and be content to proceed from the stage at which he comes in.

Accordingly on the same principle in the instant case, the judgment-debtor cannot now be permitted to file his counter but he may take part in the proceedings hereafter. In this view of the matter, it is not possible to set aside the order of the District Munsif. The execution petition has been pending now for more than six years which itself should be a matter of concern.

10. Before parting with the case, it is necessary to observe that it is time the lower courts take care to see that the matters are not adjourned on flimsy grounds. Even applications for setting aside ex parte orders have to be considered seriously and the impression which has recently gained ground that ex parte orders are set aside in a casual manner for the mere asking has to be dispelled as early as possible.

11. Accordingly, this revision petition is dismissed with costs. Costs Rs. 250.

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