

Parthasarathi Chetti (Dead) and anr. Vs. Abdul Rahim Sahib

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SooperKanoon Citation : sooperkanoon.com/814378

Court : Chennai

Decided On : Jan-31-1923

Reported in : AIR1923Mad636; 75Ind.Cas.489

Judge : Francis Oldfield, J.

Appellant : Parthasarathi Chetti (Dead) and anr.

Respondent : Abdul Rahim Sahib

Judgement :

Francis Oldfield, J.

1. The question is, whether the execution application is in time; that is, when the last step-in-aid of execution was taken by the petitioner.

2. The facts are, that on 3rd May 1917, a warrant of arrest, issued at his instance, had been returned, the judgment-debtor not having been found. What is relied on by the petitioner as a step-in-aid of execution is that the Court passed an order in the following terms:--'Fresh steps, if any, by 10th May 1917.' This order or the application, which I am asked to presume must have been made in connection with it, is relied on as a step-in-aid of execution. I agree with the lower Court that neither can be relied on in that way. The order itself is clearly not a step taken by the petitioner (decree-holder). It is impossible to say whether it was based on any application made or what the nature of that application was. On the assumption

that there was an application for further time, that would not be a step-in-aid.

3. The petition is then argued on the ground that time really ran from 10th May 1917, on which date the execution petition then pending was dismissed. This is not in accordance with the wording of Article 182 of Schedule I of the Limitation Act; and the only authority shown me for it is Chalavadi Kotiah v. Poloori Alimelammah 31 M. 71 : 18 M.L.J. 46 : 3 M.L.T. 309 and Kedamath Dutt v. Harrachand Dutt 3 C. 420 : 4 Ind. Dec. 263 followed therein. In Chalavadi Kotiah v. Poloori Alimelammah 31 M. 71 : 18 M.L.J. 46 : 3 M.L.T. 309 the question was of an execution, which had been suspended owing to a bar to its proceeding and in which a strike off order of the well-known type was passed. The reasoning of the learned Judges is not fully Stated. In fact, they give two alternative grounds for their conclusion and it is not clear to me that they meant to lay down a general principle which would involve a wide departure from the language of the Act. Kedarnath Dutt v. Harrachand Dutt 3 C. 420 : 4 Ind. Dec. 263 is a decision of a Single Judge. His reason for holding that the right to apply was still subsisting apparently was that the application was one in a pending suit. If so, that reason is not available to the petitioner in the present case, for the present application is not made in any pending suit or other pending proceedings.

4. The result is that the revision petition fails and is dismissed.