Narappa Naicken Vs Rangasami Naichen and Another

Court: Madras High Court

Date of Decision: Nov. 23, 1932

Citation: AIR 1933 Mad 393 : (1933) 37 LW 410

Hon'ble Judges: Curgenven, J

Bench: Division Bench

Judgement

Curgenven, J.
The appellant holds a money decree passed ex parte against the respondent by the Court of the District Munsif of Quilon. It

was transferred to the Court of the District Munsif of Tirupur for execution and the judgment-debtor was arrested. An application by him for his

release on security for the purpose of getting the decree set aside was granted and he thereupon applied to the Quilon Court to set aside the ex

parte decree. In that application the Quilon Court ordered an interim, stay, but eventually dismissed it for default and intimated to the Tirupur Court

that it might proceed with the execution. Thereupon the judgment-debtor filed an application to set aside the order of arrest and dismiss the

execution petition on the grounds that the foreign Court had no jurisdiction to pass the decree against him and that he had not submitted to it. The

District Munsif dismissed the application on the ground that although the decree, being passed without jurisdiction, was a nullity, yet the judgment-

debtor by applying to have it set aside has made a voluntary submission to the Court. The learned District Judge has differed from the District

Munsif on this latter point, holding that in the circumstances of the case the judgment-debtor must be held to have acted under compulsion.

2. The first point that arises for consideration in my view is whether a decree passed without jurisdiction can be validated by submission, not in the

suit itself and before the decree was passed, but after the decree had come into existence. It is contended that if the decree at the time when it was

passed was a nullity, no subsequent action on the part of the judgment-debtor can have validated it. This point has been considered by the learned

District Judge, who has followed a ruling in Hari Singh v. Muhamad Said AIR 1927 Lah 200. That too was a case where, after the decree had

been passed ex parte, the defendants applied to have it set aside. The passage in the judgment relating to this point is to be found at p. 92. The

learned Judges recognize that proceedings to set aside an ex parte decree cannot be said to be proceedings in the suit, the argument having been

addressed to them that the submission to jurisdiction must be in the suit, but they think that when the defendants applied to have the ex parte

decree set aside they must be held to have been ready to accept the decisions of the Courts of that foreign territory, provided always that they

were not opposed to natural justice, etc. They themselves think that this is a curious result, but that it seems to follow from the decisions upon the

point. The only decision actually cited is Guiard v. De Clermont and Donner (1914) 3 KB 145 and I have not been able to discover that it affords

any authority for this view.

3. The case related to an action brought in the Tribunal of Commerce of the Seine, in Prance. The defendants, who were in England, declined to

appear or to take any part in the proceedings and in the ordinary course judgment by default was passed by that Court. The plaintiff upon this

obtained what was equivalent to an attachment order of money at the credit of the defendants in a French Bank, whereupon the defendants applied

to the Tribunal of Commerce to have the default judgment set aside, and the Court actually did set it aside. The plaintiffs however appealed and

obtained judgment in their favour. That appeal judgment was what was sued upon in England, and, as Lawrence, J., points out on p. 155, it is clear

that it was a judgment to which the defendants were parties and in which they took the chance of obtaining a decision in their favour. This case

does not seem therefore to afford support to the proposition that a judgment passed without jurisdiction can by subsequent submission to the

Court become executable in British India. The learned Judges who decided Sheo Tahal Ram Vs. Binaek Shukul , seem to have been inclined to

take the same view. They extract from Dicey''s Conflict of Laws rules regarding jurisdiction in actions in personam. So far as it relates to this topic

the rule is as follows:

Where the party objecting to the jurisdiction of the Courts of such country has, by his own conduct, submitted to such jurisdiction, i.e., has

precluded himself from objecting thereto: (a) by appearing as plaintiff in the action, or (b) by voluntarily appearing as defendant in such action

without protest; or (c) by having expressly or implicitly contracted to submit to the jurisdiction of such Court.

4. As Sulaiman, Ag. C.J., remarks, it would seam that the submission to the jurisdiction must be to the foreign Court itself and probably before the

judgment is pronounced; for if there was no such submission the judgment is a nullity. In the present case the alleged submission took place not

only after the judgment was pronounced, but after the execution petition had been filed and to some extent acted upon. If the decree was, at the

time when it was passed, an absolute nullity, I do not think it can seriously be contended that it can have been subsequently and retrospectively

clothed with jurisdiction by any such action as the judgment-debtor took in this case. Mr. T.M. Krishnaswami Ayyar has attempted to argue that it

was not an absolute nullity in the sense that it nowhere had any validity; for it was a good enough decree within the Travancore State. I do not think

that circumstance makes any difference to the view which should be taken of it in British India. I may quote Lord Selborne who, delivering the

judgment of the Privy Council in Gurdyal Singh v. Raja of Faridkot (1895) 22 Cal 222 said:

In a personal action... a decree pronounced in absented by a Foreign Court, to the jurisdiction of which the defendant has not in any way

submitted himself, is by international law an absolute nullity. He is under no obligation of any kind to obey it, and it must be regarded as a mere

nullity by the Courts of every nation, except (when authorized by special local legislation) in the country of the forum by which it was pronounced.

5. I would accordingly hold that the decree in this case continues to be a nullity and therefore in executable in British India. On the further point,

whether, if the judgment-debtor''s action amounted to a submission, that submission was voluntary, I am inclined to agree with the conclusion of the

learned District Judge. I do not find much of assistance in the case-law upon this point. It has been held that submission is not voluntary if the

appearance is made only to save property which is in the hands of a foreign tribunal: see Veeraraghava Ayyar v. Muga Sait (1916) 39 Mad 24

which follows the English case of Voinet v. Barrett (1885) 55 LJ QB 39. It does not necessarily follow perhaps that where in pursuance of such a

decree execution is taken in British India and some constraint imposed upon the judgment-debtor there the submission cannot be voluntary. But if

to a voluntary act"" is attached the ordinary meaning of an act done of a man''s own free will and without constraint, it is difficult to bring the

respondent''s action in resorting to the Quilon Court into this category. It may be true that he could have taken the alternative course of pleading

that the decree was without jurisdiction, but if, as we must suppose, he was ignorant that this course was open to him, such ignorance does not, in

my view, make his recourse to the Quilon Court any the more Voluntary. He must have supposed that the only alternative to undergoing a term of

imprisonment was to challenge the decree as he did, and since he acted under pressure of this prospect I cannot hold that his appearance before

the Quilon Court was in the nature of voluntary submission. I accordingly agree with the lower appellate Court and dismiss this second appeal with

costs.