

General Manager, Southern Railway Vs D.K. Bakthan, S. Devadoss and P.L. Kandasamy

Court: Madras High Court

Date of Decision: Nov. 18, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 151

Evidence Act, 1872 â€” Section 43

Railway Protection Force Rules, 1987 â€” Rule 115

Tamil Nadu Societies Registration Act, 1975 â€” Section 44(4)

Citation: (2010) 1 LW 12

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: V.G. Suresh Kumar, for the Appellant; M. Balasubramanian, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The petitioner/third party has filed this revision petition as against the order dated 31.10.2008 in E.A. No. 4448 of 2006

in E.P. No. 1593 of 2005 in O.S. No. 6016 of 2001 passed by the learned IX Assistant Judge, City Civil Court, Chennai in allowing the

application filed u/s 151 of CPC by the first respondent/ applicant/decreed holder to direct the revision petitioner/ 3rd respondent to afford

necessary facility and permission in regard to the conduct of election in compliance with the orders in E.P. No. 1593 of 2005 dated 29.08.2005.

2. The Executing Court, while passing orders in E.A. No. 4448 of 2006, has inter alia opined that"... The Decree was not set aside, on that ground

it is executable. The decree is still in force in respect of the other office bearers of the Association. The General Manager is not conducting the

election. He has to afford facility and permission. The D1 to D4 filed appeal before the Principal Judge against the decree and the same was

dismissed. Hence the decree is still in force. Hence in the interest of justice, this petition has to be allowed and resultantly, allowed the application."

3. The learned Counsel for the revision petitioner/third party urges before this Court that the impugned order of the Executing Court dated

31.10.2008 in E.A. No. 4448 of 2006 in E.P. No. 1593 of 2005 in O.S. No. 6016 of 2001 is against law and the same is legally unsustainable

and the said order has been passed without considering any of the contentions raised and further the Executing Court has committed an error in

ignoring an important fact that the relief projected in E.A. No. 4448 of 2006 is beyond the ambit and scope of the decree obtained and added

further, the revision petitioner/third party is not a party to the suit or the decree and therefore, the revision petitioner/third party is not bound by the

tenor of the decree and moreover, the first respondent (applicant in E.A. No. 4448 of 2006) is endeavouring to legitimise the unrecognised

association and its office bearers who have no locus as far as the Railways is concerned and as a matter of fact, the Southern Railway Protection

Force Members Association to which the first respondent/applicant seeks to conduct elections cannot function independently in that name and that

the Association ceased to exist and its registration has lapsed due to its non-functioning on and from 25.9.1985 and the registration has been

cancelled as defunct u/s 44(4) of the Tamil Nadu Cooperative Societies Act, 1975 and only the All India Railway Protection Force Association is

recognised by Railway Board, for all the Zonal Railways and Railway Protection Force and also that as per Order XXVII Rule 2 of the First

Schedule to Civil Procedure Code, the Central Government has authorised the office specified in the schedule to act for and on behalf of the Union

of India in respect of judicial proceedings pertaining to the Railway administration and the revision petitioner/third respondent is the General

Manager, Southern Railway and he is to act only in his capacity as Zonal Head of the Southern Railway and further the Principal Head of the

Department, the Chief Security Commissioner is legally competent to represent the Railway administration and this being the factual position, the

observation of the Executing Court that "the Chief Security Commissioner has not been authorised by the General Manager who has filed the

counter is not a valid one in the eye of law inasmuch as the order of the Railway Board, New Delhi dated 4.6.1992 in RBE No. 92/92 No. E(G)

82 LL2/2(B) speaks of the Central Governments authorisation authorising the Chief Security Commissioner of the Railways to act for and on

behalf of the Union of India in respect of any judicial proceedings relating to Railway administration and this vital fact has not been taken note of by

the Executing Court which has resulted in miscarriage of justice and in short, the Executing Court has not considered the contentions put forward

by the revision petitioner/3rd respondent while dealing with the E.A. No. 4448 of 2006 and therefore, prays for allowing the civil revision petition

to prevent an aberration of justice.

4. In response, the learned Counsel for the first respondent/applicant supports the order of the Executing Court passed in E.A. No. 4448 of 2006

and vehemently contends that even though the revision petitioner/3rd respondent has not a party to the decree, he has been added subsequently as

a party to the execution proceedings and the revision petitioner/third party after all is to afford facility and permission in regard to the conduct of

election in compliance with the orders passed in E.P. No. 1593 of 2005 dated 29.08.2005 and since the revision petitioner/third party is not

conducting the election and when the decree passed in the main suit is very much alive and in force. The Executing Court has taken note of the

entire gamut of the matter in a proper perspective and has allowed the Execution Application E.A. No. 4448 of 2006 on merits and as such, this

Court at this stage sitting in revision may not interfere with the orders passed by the Executing Court in E.A. No. 4448 of 2006 and ultimately

prays for dismissal of the civil revision petition.

5. This Court has heard the learned Counsel appearing for the parties and noticed their contentions.

6. It is to be pointed out that in the judgment and decree made in O.S. No. 6016 of 2001 on the file of the learned IV Assistant Judge, City Civil

Court, Chennai, the revision petitioner/third party is not a party to the proceedings therein. A perusal of the judgment in O.S. No. 6016 of 2001

dated 30.01.2004 shows that the defendants 1 to 5 therein have remained absent and they have been set exparte and the suit for declaration and

permanent injunction has been decreed exparte. In the said judgment, it is inter alia mentioned that "the Election"s to the Association should be

conducted as per the Registered Old By Law of the Association etc." Pursuant to the decree passed in O.S. No. 6016 of 2001, the first

respondent/decreed holder has filed E.P. No. 1593 of 2005 praying for the assistance of the Court in regard to the conduct of the election as per

the Old By Laws of the Association by way of direction under Order 21 Rule 32 (5) of Civil Procedure Code.

7. It is useful to refer to the averment in E.A. No. 4448 of 2006 filed by the first respondent/applicant/decreed holder wherein it is among other

things averred that "this Hon"ble Court was pleased to issue direction by order dated 23.02.2006 by extending time to conduct the election by

another 6 months in accordance with the old bye-laws of the Zonal Southern Railway Protection Force Members Association and that in the

execution proceedings, General Manager, Southern Railway is not a party and unless the General Manager, Southern Railway grants permission

and facility to him to proceed with the election is not in a position to comply with the direction of the Court and therefore, seeks for an order in

directing the revision petitioner/third party viz., General Manager, Southern Railway, Chennai-600 003 to afford necessary facility and permission

to him to conduct the election in compliance with the orders of this Court in E.P. No. 1593 of 2005 dated 29.08.2005.

8. In the detailed counter filed by the revision petitioner/3rd respondent, it is among other things mentioned that "Respondents 2 and 3 are not

recognised office bearers in so far as the Railways is concerned and as such, a Railway administration is not liable to render any assistance for the

conduct of elections more so when the Railway administration is not a party to any of the proceedings and is not bound by the decree and only the

All India Railway Protection Force Association is recognised by the Railway Administration and the letter of the General Manager, Southern

Railway dated 17.11.2005 does not recognise the said Association but only states that the Chief Security Commissioner on representation will

take a decision within the frame work, being the rules and the guidelines issued by the Railway Board etc. and since the Railway administration is

not a party to the original suit O.S. No. 6016 of 2001, it is not bound by the decree passed and as a matter of fact, the relief prayed for in the

execution proceedings is beyond the purview of the suit itself and the Executing Court cannot go behind the tenor and spirit of the decree and

therefore, the Execution Application E.A. No. 4448 of 2006 filed by the first respondent/applicant/decreed holder is not maintainable and deserves

to be dismissed.

9. Continuing further, the revision petitioner/3rd respondent has also filed additional counter before the Executing Court, it is among other things

mentioned that in terms of the letter issued by the Railway Board dated 11.8.1999 there shall be only one All India Railway Board Protection

Force Association, consisting of all the Zonal Railways and the Railway Protection Special Force for the purpose of granting sanction by the

authority concerned as per the Rule 115 of the Railway Protection Force Rules, 1987 etc. and at any rate the directions sought for in the Execution

Application E.A. No. 4448 of 2006 are very general in nature and the same cannot be maintained in respect of the Southern Railway Protection

Force Members Association, which is not recognised by the Railway Board and the first respondent/decreed holder by seeking directions for

assistance to conduct the elections, he seeks to make the railways recognise the Association and himself as the office bearer, which cannot be

done and therefore, prays for dismissal of the Execution Application.

10. Earlier, the civil revision petitioner/third party has filed C.R.P. NPD. No. 538 of 2007 before this Court and by means of an order dated

21.6.2007, this Court in para 6 has observed the following:

Admittedly, the revision petitioner who was the third party, was shown as the third respondent in E.A. No. 4448/2006. He was neither a party in

the E.P. pending nor a party in the suit. He was shown as third party even in the said application. It is also true that the petitioner herein was set ex-

parte; but, there was a direction given to afford necessary facility and permission to the petitioner therein, who is the first respondent herein, to

conduct the election in compliance of the orders of that Court in the E.P. referred to above. Once it is brought to the notice of the Court that the

revision petitioner was neither a party to the suit nor a party to the execution proceedings, an opportunity should be given to them to put forth their

plea. In such circumstances, without going to the merits or otherwise of the rival contentions put forth, this Court is of the considered opinion that

the order of the lower Court issuing a direction to the petitioner, has got to be set aside. Accordingly, it is set aside. An opportunity should be

given to the petitioner herein to file their counter. Thereafter, the lower Court will consider the same and pass suitable orders on merits and in

accordance with law on that application and consequently, allowed the civil revision petition without costs.

11. The learned Counsel for the revision petitioner/3rd respondent submits that in E.A. No. 4448 of 2006 the revision petitioner herein has

submitted his written submissions and the same has not been adverted to or even considered by the Executing Court while passing orders in E.A.

No. 4448 of 2006 which has caused grave injustice to the revision petitioner.

12. However, the learned Counsel for the first respondent submits that the General Manager of the Southern Railway, Chennai, by its letter dated

10/15.2.99, has informed the General Secretary of the Ad Hoc Body RPF Members Association, Southern Railway, Chennai that consequent to

the Railway Board's decision through conveys Railway Board's letter No. 92/Section (Spl.)/6/3/Pt. dated 15.12.1998 treating paras 13,15(a),

15(b), and 15(c) of D.O. Letter No. 84/DG/RPF/AF/Conf. dated 20.8.85 as withdrawn, this office letter of even No. dated 25.9.1985 directing

the RPF Association to cease to exist is hereby withdrawn and therefore, has requested him to form regular bodies of the Association before

2.5.99 under the provisions of the constitution of the RPF Members Association, Southern Railway in consonance with the conditions for

recognition issued by the General Manager and further that by means of letter dated 12.05.2000 from the IG/Head Quarters, New Delhi

addressed to the General Manager, All Indian Railways, the Facilities like Office accommodation where available, Railway Telephone in office etc.

have been now decided to allow the same to All India RPF Association and the Zonal RPF/RPSF Associations etc. and therefore, it cannot be

said that the RPF Zonal Southern Railway Protection Force Members Association is not recognised by the Railways and more so, the Chief

Security Commissioner, Railway Protection Force, Southern Railway cannot take a different stand than that of the higher authorities of the

Railways and therefore, one cannot attach much importance to the stand taken by the Chief Security Commissioner, Railway Protection Force of

Southern Railway in the counter and additional counter filed before the Executing Court in E.A. No. 4448 of 2006.

13. It is to be pointed out that as per Order 27 Rule 2 of CPC enjoins that "persons being ex-officio or otherwise authorised to act for the

Government in respect of any judicial proceeding shall be deemed to be the recognised agents by whom appearances, acts and applications under

this code may be made or done on behalf of the Government.

14. In the instant case on hand, the Government of India /Bharat Sarkar Ministry of Railways/Rail Mantralaya (Railway Board) in proceedings No.

E(G)82 LL2/2(B) RBE No. 92/92 dated 4.6.92 has issued an order stating that the Central Government has authorised the Chief Security

Commissioner of the Railways in Serial No. 20 to act for and on behalf of the Union of India in respect of any judicial proceedings relating to a

Railway administration and therefore, the observation of the Executing Court in E.A. No. 4448 of 2006, in its order dated 31.10.2008 to the

effect that the Chief Security Commissioner, RPF, Southern Railway who has filed the counter, has not filed any authorisation from the General

Manager, is clearly unsustainable, in the considered opinion of this Court. Furthermore, in the decision in Gupta v. Union AIR 1970 A & N 35

wherein it is observed that "Notification by the Government authorising Executing Engineers can bring them within Order 27 Rule 2 of CPC as

recognised agents."

15. Admittedly, the revision petitioner/3rd respondent is not a party to the suit, decree or execution proceedings and only in the Execution

Application the revision petitioner has been shown as a third respondent/third party. Furthermore, in C.R.P. No. 303 of 2001 this Court, by its

order dated 21.03.2001, has passed orders dismissing the Civil Revision Petition but has given the liberty to the petitioner therein viz., K.S.V.

Devanathan to implead the persons who have been appointed as ad-hoc members to conduct the election and initiate such proceedings that are

available to them in law. In the said civil revision petition, the present civil revision petitioner viz., General Manager, Southern Railways, Chennai-3

and Chief Security Commissioner, Railway Protection Force, Southern Railway, Chennai are shown as respondents.

16. As per Section 43 of the Indian Evidence Act, a Judgment delivered by a Court of Law in respect of judicial proceedings is binding between

the inter se parties. Admittedly, the revision petitioner/3rd respondent is not a party to the suit in main O.S. No. 6016 of 2001. However, in law, a

judgment not inter parties is admissible in evidence in certain circumstances and in certain cases, if the existence of such judgment is a relevant fact

or fact in issue, in the considered opinion of this Court. In short, Section 43 of the Indian Evidence Act expressly contemplates cases in which

judgments could be admissible under other Sections of the Act, which are not admissible under Sections 40, 41 and 42.

17. Be that as it may, on a careful consideration of respective contentions and taking note of the divergent stand taken by the parties and on going

through the order passed by the Executing Court in E.A. No. 4448 of 2006, this Court is of the considered view that the said order has not dealt

with the contentions put forward by the revision petitioner/3rd respondent in E.A. in the form of counter and additional counter in a qualitative and

quantitative manner and in short, the order of the Executing Court in E.A. No. 4448 of 2006 is bereft and devoid of material particulars in regard

to the stand taken by the revision petitioner and therefore, the said order is not a reasoned one and in short, the said order does not have the

"appearance of justice", in the considered opinion of this Court and furthermore, it is a less speaking order and the same is not a just order to the

revision petitioner/3rd respondent who has been affected by the said order and viewed in that perspective, without dwelling deep into the merits of

the matter, this Court set aside the order passed in E.A. No. 4448 of 2006 by the Executing Court and allows the civil revision petition in

furtherance of substantial cause of justice.

18. In the result, the Civil Revision Petition is allowed. The order passed by the Executing Court in E.A. No. 4448 of 2006 is set aside. The

Executing Court is directed to deal with the E.A. afresh after considering the stand taken by both parties especially meeting out the counter

averments and the additional counter to E.A. No. 4448 of 2006 filed by the revision petitioner and to pass a reasoned speaking order on merits in

a quantitative and qualitative term in dispassionate manner specifying the process of reasoning in threadbare, uninfluenced with any of the

observations made by this Court in this revision and to dispose of the same in any event within a period of three weeks from the date of receipt of

copy of this order and to report compliance to this Court without fail. Consequently, connected miscellaneous petition is closed.