

Dr. M. Pasupathi Vs M.N. Chinnusamy

Court: Madras High Court

Date of Decision: June 25, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 20 Rule 11, Order 20 Rule 11(2), Order 21 Rule 37, 115, 151

Citation: (2012) 4 CTC 504

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: P. Valliappan, for the Appellant; N. Manokaran, for the Respondent

Final Decision: Dismissed

Judgement

G. Rajasuria, J.

Heard both sides. Animadverting upon the order dated 9.6.2011 passed by the learned I Additional District Judge, Erode

in E.A. No. 17 of 2011 in E.P. No. 16 of 2009, this Civil Revision Petition has been focussed.

2. A summation and summarisation of the germane facts, in a few broad strokes can be encapsulated thus:

The Revision Petitioner herein happened to be the judgment-debtor in E.P. No. 16 of 2009, which was filed for recovery of a sum of Rs.

10,87,666/- with subsequent interest and cost on Rs. 10,00,000/-. It so happened that on an earlier occasion when this Court was approached in

C.R.P. No. 314 of 2010, this Court vide order dated 13.9.2010 passed an order to the effect that the executing Court was expected to conduct a

Means Enquiry before ordering arrest. Wherefore, the judgment-debtor filed E.A. No. 17 of 2011 seeking direction of the Court to permit him to

discharge the decretal amount in monthly installments at Rs. 50,000/- each. The Lower Court after hearing both sides held that such an Application

was barred by limitation in view of Article 126 of the Limitation Act.

3. Being aggrieved by and dissatisfied with the same, this Revision has been filed on various grounds.

4. The Learned Counsel for the Revision Petitioner, by placing reliance on the grounds of Revision, would submit that the Lower Court was not

justified in placing reliance on Article 126 of the Limitation Act for the purpose of dismissing the E.A. No. 17 of 2011. He would pilot his argument

on the main ground that the Executing Court is different from the Court, which passed the decree and accordingly, the Executing Court cannot be

held to be one having no power to grant permission to the judgment-debtor to discharge the decretal amount in installments. The power of the

Court cannot be presumed or assumed to have been ousted because there are provisions in law for getting such installment payment order before

the Court, which passed the decree. He would also hasten to add that his client is eager to deposit the decretal amount, however, if further time is

granted.

5. Per contra, in a bid to torpedo and pulverise the argument as put forth and set forth on the side of the Revision Petitioner/judgment-debtor, the

Learned Counsel for the Respondent/decreed holder would pilot his argument, which could pithily and precisely be set out thus:

Order 20, Rule 11 of CPC r/w Article 126 of the Limitation Act would amply make the point clear that the judgment-debtor who is willing to

discharge the decretal amount in installments should approach the Court with all earnestness, so to say, within 30 days from the date of passing of

the decree. But in this case, the judgment-debtor allowed grass to grow under his feet, slept at the switch or slept at the wheel and as such the

Lower Court appropriately and appositely, correctly and legally passed the order, warranting no interference in this Revision.

6. The point for consideration is as to whether the judgment-debtor can be given one more opportunity to discharge the remaining dues under the

decree in installments ?

7. I would like to fumigate my mind with the following decisions cited on the side of the Respondent/decreed holder:

1. Majeti Siva Vara Koti Prasad Vs. Chalapathi Chit Fund, Private Limited, Guntur, Certain excerpts from it would run thus:

6. In the instant case, admittedly, the decree was passed on 26.6.2000. If the Petitioner desired seeking installments as provided under Order 20,

Rule 11(2), CPC, he should have moved the Court below by an appropriate Petition before the expiry of thirty days period, which would expire in

this case by 25.7.2000. However, the Petitioner has moved the Petition I.A. No. 1041 of 2000 only on 31.7.2000 and thus, there is delay of

more than five days in preferring such Petition. The Lower Court was justified in rejecting such Application in view of the specific provision

provided under Article 126 of the Limitation Act. In my considered view, the order passed by the Court below rejecting the Application, requires

no interference from this Court u/s 115, C.P.C.

2. State Bank of India v. Plasticchem and others, AIR 1992 MP 230. Certain excerpts from it would run thus:

4. ...It is no doubt true that the amount of installments and the period for their payment is a matter of the discretion of the Court. It is, however,

equally true that such discretion must be exercised within bounds. Care should be taken to see that the equities are so settled that neither party is

denied justice. In the present case, if the installments are permitted as directed by the Executing Court, it is manifest that it will mean a denial of

Plaintiff-decree holder's right to realise the fruits of the decree. Such an order cannot be allowed to stand and must be set aside.

5. This apart, the non-applicant's conduct during the pendency of the litigation is also not such as may indicate any promptness or sincere desire to

pay the decretal amount. During the pendency of the Application before the Executing Court for about two years, the non-applicants deposited

only Rs. 25,000/-. I am, therefore, of the opinion that the impugned order passed by the Executing Court is not even based on facts found by the

Court itself. The non-applicant's conduct throughout the litigation has not been taken into account at all. The installments fixed virtually deny the

Applicant the fruits of the decree. The equities have not been balanced. I am, therefore, of the opinion that the non-applicants have not made out a

case for granting them the facility of payment of decretal amount by installments.

A mere poring over and perusal of those precedents would leave no doubt in the mind of the Court that if the judgment-debtor after passing of the

decree wants any positive order in his favour for discharging the decretal dues from Court which passed the decree, he has to file an Application

within 30 days as per Article 126 of the Limitation Act. But here, the position is different. E.P. was filed by the decree holder for enforcing the

recovery of the dues under the decree and at that time, the judgment-debtor filed the E.A. No. 17 of 2011 seeking the indulgence of the Court to

permit him to discharge his decretal dues in installments. As such, I am of the view that the factual scenario in this matter is different from the one

contemplated under Order 20, Rule 11 of CPC r/w Article 126 of the Limitation Act.

8. The Executing Court in the event of decree holder seeking arrest has got ample power under Order 21, Rule 37 of CPC r/w Section 151 of

CPC to grant sufficient, time to the judgment-debtor to discharge the decretal dues. No doubt Means Enquiry also should be conducted by the

Executing Court. Conducting Means Enquiry is not an empty formality. However, when the judgment-debtor himself is not so particular about the

conduct of the Means Enquiry, but he prays the Executing Court to enable him to discharge the amount in installments, then, in that cast, a different

approach is required.

9. Indubitably and indisputably, the judgment-debtor is having a clinic of his own and presumably he is earning sufficiently, but not that much to

deposit the decretal dues in one lumpsum. In the Affidavit accompanying the E.A. No. 17 of 2011, the judgment-debtor would aver to the effect

that he is having a family to be maintained; that his children are studying in colleges; and that he has to look after his aged parents also. It is not his

case that he is suffering from penury or in cash-strapped situation. It is one thing to say that a person is insolvent and it is another thing to say that

he has got means but not that much enough to discharge the decretal dues to the extent of Rs. 10 lakhs and odd by paying it in one lump sum. Here

the case of the judgment-debtor, comes under the second category and he only implores and entreats that he be permitted to discharge the dues in

monthly installments of Rs. 50,000/- each. In such a case, I am of the firm opinion that conducting of a Means Enquiry would be an empty

formality.

10. The core question arises as to whether the amount of Rs. 50,000/- per installment can be enhanced to some extent so as to do justice to the

decree holder also, who would put forth his cri de coeur to the effect that he is also having lot of commitments and in such a case, his convenience

also should be looked into.

11. The Learned Counsel for the decree holder would state that the E.A. No. 17 of 2011 was filed as early as on 2.2.2011. Even as per the

calculation of the judgment-debtor, had he been allowed to pay at Rs. 50,000/- per installment, by this time, he should have paid upto Rs. 8 lakhs

and by virtue of the intervention of this Court, so far he has paid only Rs. 4 lakhs.

12. I could see considerable force in his submission also.

13. Whereas the Learned Counsel for the judgment-debtor would submit that all of a sudden if Rs. 4 lakhs are ordered to be paid, it would be

onerous for him.

14. Hence, by way of striking a balance between the two and taking into account the pro et contra, I order as under:

The judgment-debtor shall pay a sum of Rs. 4 lakhs (Rupees four lakhs only) in one lump sum within eight weeks from this date, i.e. on or before

25.8.2012 and thereafter, the remaining decretal amount shall be paid at the rate of Rs. 1 lakh every month and the first installment of Rs. 1 lakh

shall be payable on or before the end of September 2012 and accordingly, the remaining decretal dues should be discharged at the same rate of

Rs. 1 lakh per month by the end of every succeeding month and even if there is one default in the aforesaid schedule, the entire remaining dues shall

be payable by the Revision Petitioner immediately and straightaway the Lower Court is empowered to issue arrest warrant and detain the Revision

Petitioner in Civil prison.

Accordingly, this Revision is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.