(2006) 12 MAD CK 0059

Madras High Court

Case No: C.R.P. (NPD) No. 1707 of 2006 and M.P. No. 1 of 2006

The Federal Bank Ltd., Royapettah Branch	APPELLANT
Vs	
Sundari Bhaskaran	RESPONDENT

Date of Decision: Dec. 15, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 60

Citation: (2007) 1 MLJ 431

Hon'ble Judges: R. Banumathi, J

Bench: Single Bench

Advocate: V. Girish Kumar, for the Appellant; S. Vijayakumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R. Banumathi, J.
This Civil Revision Petition is directed against the order dated 27.06.2006 passed by IX Assistant City Civil Judge, Chennai in E.A. No. 2381 of 2006 in E.P. No. 763 of 2005 in O.S. No. 1525 of 2000, raising the order of Attachment. The Decree Holder is the Revision Petitioner.

2. The Petitioner Bank has obtained a money decree in O.S. No. 1525 of 2000. The Decretal amount is more than Rs. 8,00,000/-. For realising the amount, the Petitioner Bank has filed E.P. No. 763 of 2005 and attachment of salary of the Respondent was ordered. The Respondent is working as Lecturer in Queens Mary College. The Manager (Accounts) is the Garnishee.

3. The Respondent has filed E.A. No. 2381 of 2006 to raise the order of Attachment of salary. According to the Respondent, she has already suffered an order of Attachment made by the Recovery Officer, Debts Recovery Tribunal, Chennai in

D.R.C. No. 231 of 2000 wherein Attachment of salary has been effected continuously for a period of 24 months. The order of Attachment passed by the Executing Court in E.P. No. 763 of 2005 is subsequent to the order passed by the Debts Recovery Tribunal in the said D.R.C proceedings dated 24.02.2001.

4. The Executing Court raised the order of Attachment of Salary interalia finding - (i) that in the D.R.T. proceedings, Attachment of Salary has commenced only from February 2005 and the same would be in force for 24 months; (ii) In terms of Section 60 C.P.C, Attachment of Salary is exempted for a further period of 12 months. Observing that there can be further Attachment of Salary of the Judgment Debtor only after 24 months plus 12 months as per Proviso to Section 60(i) C.P.C, the Executing Court raised the order of Attachment, which is challenged in this Revision Petition.

5. Contending that huge public money is involved, learned Counsel for the Petitioner Bank has contended that in terms of Section 60 C.P.C, the duration of 24 months plus 12 months is only for execution of one and the same decree. Reiterating the observations of the Executing Court, learned Counsel for the Respondent/Judgment Debtor has submitted that the Decree Holder Bank could proceed with the Attachment of salary only after the period of 36 months and having regard to the Proviso to Section 60(i) C.P.C, the Executing Court has rightly raised the order of Attachment of Salary.

6. Clause (i) of Section 60 C.P.C has been amended by C.P.C. Amendment Act 1999. For the words "Four Hundred Rupees", the words "One Thousand Rupees" have been substituted. Section 60(i) C.P.C reads thus:

... Salary to the extent of the first one thousand rupees and two thirds of the remainder in execution of any other than a decree for maintenance....

Proviso to Section 60(i) C.P.C stipulates restriction regarding the duration of Attachment of Salary. Proviso reads as under:

...Provided that where any part of such portion of the salary as is liable to Attachment has been under Attachment whether continuously or intermittently for a total period of 24 months, such portion shall be exempted from Attachment until the expiry of a further period of 12 months and where such Attachment has been in execution of one and the same decree, shall if the attachment has continued for a total period of 24 months be finally exempt from Attachment in Execution of that decree....

7. Attachment of salary could only be for a period of 24 months. Where the salary of the Judgment Debtor having been in continuous attachment under a decree for 24 months, the salary is exempted from attachment for a further period of 12 months "only where such Attachment has been in execution of one and the same decree". In the Proviso, two main things are to be noted:

(i) Salary is liable to attachment either continuously or intermittently for a total period of 24 months;

(ii) Salary is exempted from Attachment for a further period of 12 months and where such attachment has been in execution of one and the same decree.

The emphasis is on the words "in execution of one and the same decree.

8. The initial order of Attachment of salary in D.R.C. No. 231 of 2000 commenced in February 2005. Twenty Four months would be completed by January 2007. Thereafter, the order of Attachment of salary for Execution in O.S. No. 1525 of 2000 could start in February 2007. For execution of two different decrees, the Petitioner Bank need not wait for the exemption period of 12 months. In consideration of the same, the Executing Court ought to have passed appropriate orders. The Executing Court has erred in raising the order of Attachment. It is to be noted that Public money is involved because the Decree Holder is a Bank. While so, raising order of Attachment of Salary is improper. The Executing Court was not right in saying that the Petitioner/Decree Holder could proceed only after 24 months plus 12 months. Such observation is not in accordance with Proviso to Section 60(i) C.P.C. Hence, the Impugned Order cannot be sustained.

9. The Impugned Order dated 27.06.2006 made in E.A. No. 2381 of 2006 in E.P. No. 763 of 2005 by the IX Assistant City Civil Judge, Chennai is set aside and this Civil Revision Petition is allowed. No costs. Order of Attachment of salary of the Petitioner is sustained. In Execution of the Decree in O.S. No. 1525 of 2000, the Attachment of Salary of the Respondent/Judgment Debtor shall commence from February 2007. The connected M.P. No. 1 of 2006 is closed.