

Madras High Court

Mir Mahomed Noorulla Sahib vs Hasarath Kibulai Sayyad Ghulam ... on 13 August, 1926

Equivalent citations: (1926) 51 MLJ 554

Author: Ramesam

JUDGMENT Ramesam, J.

1. This is a second appeal arising in execution. The decree was obtained in the Sub-Court of Tanjore. The decree-holder applied to have it transferred to the District Court on 25th February, 1926 and it was so transferred. After waiting for six months the District Court returned the decree with a certificate that the decree-holder did not apply for execution, on 11th September, 1918. Apparently, in ignorance of this fact, the decree-holder applied to the District Court on 8th January, 1919, when he was informed that the decree had already been returned under Rule 161(a) of the Rules of Practice. The next petition filed was in the Subi-Court on 12th April, 1921. He was asked how it was in time, but he did not represent it with the information. The present application was filed on 8th February, 1923. The Courts held that it was, barred. The decree-holder appeals.

2. If the application of January, 1919 was in time, then the application of April 1921 was also in time; then the present application also would be in time. The question therefore reduced itself to this, whether the application of January, 1919 was in time. This again depends upon whether it was presented to the proper Court. The decree-holder applied to the District Court after the decree had been returned by that Court. The case *Velliappa v. Siibrahmanyam* (1915) I.L.R. 39 M 485 : 29 M L J 172 does not help the appellant. All that was held there was that where a Court to which a decree was transferred did not return the decree though six months have elapsed without an application for execution, then an application would still lie in that Court. But in this case the decree had been returned. Mr. Vaidya-natha Aiyar for the appellant argues that such a return is not a return within the meaning of Section 41 of the Code of Civil Procedure. I think it is. It seems to me that Rule 161(a) of the Civil Rules of Practice is only a rule of detail giving further guidance to Court in the carrying out of the provisions of Section 41, Civil Procedure Code. I do not think they are inconsistent with each other. I cannot therefore hold, as the appellant argues, that Rule 161(a) of the Rules of Practice is ultra vires. He relies on a remark, in the above decision of Seshagiri Aiyar, [., that the rule was not an adjunct to the Civil Procedure Code. I do not agree with this remark. I think all the rules of the Rules of Practice are supplemental to the Civil Procedure Code. It is a rule within the power of the High Court, the object being to compel decree-holders to be prompt in filing execution petitions in Courts to which the decrees are transferred; and once a decree is returned by the Court to which it was transferred, it cannot be said that that Court is the proper Court. Mr. Vaidyanatha Aiyar argues that there is no failure to execute the decree within the meaning of Section 41. Nothing having been done for seven months, it seems to me it is a failure. He relies on the explanation of the word " failure " in *Abda Begam v. Muzafar Husein Khan* (1897) I.L.R. 20 A 129 and *Vithu v. Ganesh* (1923) 25 Bom. L R 453. I do not understand that the definition in these cases is quite an exhaustive definition of the word " failure ". It does not appear that there was any Rule of Practice like Rule 161(a) at the time these cases were decided. Therefore any of these decisions cannot help us. The definition is only confined to the particular facts of those cases. I think the District Judge is " right in the latter part of his judgment (which to some extent is inconsistent with the earlier part), where he holds that the District Court of Tanjore was not the proper Court after the decree was returned.

3. The decree is for a large amount and the result is no doubt hard on the appellant. But he must thank himself for the result and the law ought not to be made responsible for the result of gross laches on the part of the parties.
4. The appeal is dismissed with costs.