S. Brahmasuriah Vs. Amba Bai Alias Sundara Bai

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Court : Karnataka

Decided On : Jun-15-1962

Reported in : AIR1964Kant4; AIR1964Mys4; (1963)1MysLJ238

Judge : A.R. Somnath Iyer, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 95

Appeal No. : Civil Revn. Petn. No. 904 of 1961

Appellant : S. Brahmasuriah

Respondent : Amba Bai Alias Sundara Bai

Advocate for Def. : S. Nabhirajaiah, Adv.

Advocate for Pet/Ap. : H. Srinivasa Rao, Adv.

Judgement :

ORDER

1. The Petitioner is the defendant. He made an application for compensation under Section 95 of the Code of Civil Procedure which was dismissed by both the Courts below on the ground that it was not maintainable. The suit was brought by the respondent on a promissory note executed by the defendant on May 15, 1960 and in the suit which was instituted by the plaintiff on August 24, 1960, the plaintiff applied for the attachment of a house belonging to the defendant. That attachment was effected. The defendant thereupon made an application for the payment to him of a sum of Rs. 1,000/- as compensation on the ground that the attachment was applied for on insufficient grounds. The defendant however deposited the entire amount due to the plaintiff including costs and current interest soon after the institution of the suit with the result that it was recorded by the Court that the suit was disposedof by settlement out of Court. But it made afurther order that the application presented by thedefendant under Section 95 of the Code of CivilProcedure was not sustainable since the suit itselfwas amicably settled. From that order dismissingthe defendant's application under Section 95 of theCode of Civil Procedure the defendant appealedand the appellate Court taking the view that anapplication under Section 95 of C. P. C. mustalways be preceded by an application for the cancellation of the order of attachment which thedefendant had not made in this case, considered theapplication presented by the defendant to be notmaintainable and accordingly dismissed the appeal.The position therefore was that, while the firstCourt dismissed the defendant's application on theground that that application could not be pursuedafter the suit had been settled out of Court, theappellate Court rested its

conclusion on anotherground, viz., that the omission on the part of thedefendant to make an application for getting theattachment set aside was an impediment to theclaim for compensation.

2. The question to be considered therefore is whether any one of these two grounds on which the decisions of the two Courts below respectively rested is substantial or correct.

3. Section 95 of the Code of Civil Procedure leads;

'(1) Where, in any suit in which an arrest or attachment has been effected or a ' temporary injunction granted under the last preceding section,--

(a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same, the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expenses or injury caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction. (2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.'

4. It will be seen from the provisions of this section which is a complete and exhaustive code on the subject of the award of compensation in respect of an attachment or injunction applied for on insufficient grounds, that the section itself does not direct that the application for the payment of compensation should be preceded by another for the cancellation of the injunction or attachment. The section on the contrary makes it clear that the defendant should establish that the arrest or attachment or injunction was applied for on insufficient grounds and that if the suit of the plaintiff fails and the Court is of Opinion that there was no reasonable or probable ground for instituting a suit, compensation may be awarded for the injury caused by the arrest, attachment or injunction.

5. The only ingredients therefore necessary to be established are these and on the establishing of any one of these ingredients, it is obvious, that the claim for the recovery of compensation at once comes into existence. To suppose that the claim cannot be made unless the claim was preceded by an application for the cancellation of the order of arrest, injunction or attachment would be to add Jo Section 95 words which are not contained therein, which it is clearly not permissible for any Court to do. Section 95 of Code of Civil Procedure containing as it does an exhaustive statutory provision providing for the payment of compensation in certain cases, an application made under it has to be disposed of without resort to any extraneous principles which might have been followed in other cases or by Courts of other countries. It would therefore not be right to think that the condition precedent for sustaining such application is the presentation of an application fort getting the order complained against, set aside.

6. This view which in my opinion is what is irresistible on the plain language of the section, was what was also followed by Cornish, J. of the High Court of Madras in Palaniandi Moopan v. Panchi Palaniyandi Moopan, 1931 Mad WN 956 in which he expressed the view that the right under Section 95 of the Code of Civil Procedure to the award of compensation was independent of the passing of a prior order of attachment and that the passing of an order making the attachment absolute was not a bar to the entertainment of an application for compensation under its provisions. Referring to the two cases which were cited in support of the contrary proposition, the learned Judge pointed out that the first case, viz., Dhuru Narain Sahoo v. Sreemutty Dassee, 18 Suth WR 440 did not lay down more than that a strong presumption that the attachment was made by the Court on sufficient grounds would arise in cases in which an application for the cancellation of the attachment was not made. He also pointed out that the decision of Ramesam, J. in the second case, viz., Venkatappayya v. Venkatappayya AIR 1923 Mad 352 rested on the peculiar facts of the case which he decided.

7. A somewhat contrary view was however taken by Beasley, C. J. of the same Court in Rama Mudali v. Marappa Goundan : AIR1934Mad638 . That was a case in which the defendant made an application for compensation for wrongful attachment and in which the defendant made an unsuccessful application for getting the attachment set aside. When he however claimed compensation under Section 95 of the Code of Civil Procedure, the learned Chief Justice thought that the order in the suit making the attachment absolute constituted an insurmountable difficulty in the way of the defendant obtaining compensation. To reach this conclusion he depended upon the English case Lees v. Patterson, (1878) 7 Ch D 866 in which the principle which was enunciated was that a claim by a defendant who complained against an order made for arrest could not succeed unless the defendant moved to have the writ for his arrest discharged. Fry, J. observed on page 870 of the report as follows:

'I cannot accede to the defendant Patterson's application. The writs of ne ex eat were granted upon affidavits which satisfied the Court of the propriety of granting them, and Patterson has submitted to them instead of moving to discharge them. I must, therefore, take it now that the writs were properly issued.'

Fry, J. however proceeded to consider on merits whether the writs were properly issued and came to the conclusion that they were. However that may be, it is clear that the principle which Fry, J. enunciated in that case can have no application to a case arising under Section 95 of the Code of Civil Procedure which itself does not provide that any endeavour should be made in the first instance by the person claiming compensation to have the impugned order removed. It is remarkable that the earlier decision of the High Court of Madras in 1931 Mad WN 956 was not brought to the notice of Beasley, C. J. and it is difficult to predicate what view he would have taken if that had been done.

8. Then again, when the question arose before the High Court of Madras in Palanisami Goundar v. Kaliappa Goundar AIR 1940 Mad 77, Wadsworth, J. was of the view that an application under Section 95 of the Code of Civil Procedure! for compensation did not depend to any extent whatsoever oh the removal of the attachment against which a complaint had been made.

9. It seems to me that the view taken by Cornish, J. in 1931 Mad WN 956 and Wadsworth, J. in AIR 1940 Mad 77 is the correct view. If I may say so with respect, I

must dissent from the view taken by Beasley, C. J. in : AIR1934Mad638 .

10. Before concluding this order I must however point out that a view similar to that taken by Beasley, C. J. was also taken by their Lordships of the High Court of Calcutta in Satishchandra Banerji v. Munilal : AIR1932Cal821 in which it was held that a suit for damages for wrongful attachment of goods does not lie unless the attachment is first set aside. Rankin, C. J. in support of this conclusion depended upon two English cases and one of his own Court, and this is what he said on page 1077 of the report (ILR Cal): (at pp. 822-23 of AIR):

'In Parton v. Hill, (1864) 12 WR (Eng.) 753 at p. 755 it was argued that the attachment there complained of had been removed by money being paid into Court and Mr. Justice Blackburn in that case said 'payment of the money rather shows a determination in favour of the defendant than of the plaintiff.' There can be no doubt that if, for example, a bankruptcy petition results in adjudication, the Court will not entertain a claim for damages for malicious prosecution on the part of the person adjudicated so long as the adjudication order stands: Metropolitan Bank v. Pooley, (1885) 10 AC 210, at p. 216. In the case of Arjun Biswas v. Abdul Biswas, 35 Cal LI 480 at p. 481 : (AIR 1921 Cal 774 at p. 774), which came before Mr. Justice Chatterjea and Mr. Justice Pearson, this principle was re-affirmed.....'

Nothwithstanding the high authority of this decision, it seems to me incorrect to import into the interpretation of Section 95 of the Code of Civil Procedure which is a complete Code on the subject with which it deals, principles of English Law which if done would only lead to an unduly narrow construction of the provisions of that section. That in my opinion, is how I should interpret the pro-visions of a codified statute.

11. In my opinion, the Court below was therefore not right in thinking that the application presented by the defendant was not maintainable.

12. But, Mr. Nabhirajaiah has contended that even so there should be no direction by me that the application should be disposed of on its merits. He urged that when the application was disposed of on December 9, 1960, the defendant was absent and that therefore there was a default on the part of the defendant in the production of evidence supporting the allegation in his application. I am unable to uphold this contention, since the Court of first instance did not dismiss the application of the defendant on the ground that there had been any default in prosecuting it, but on the ground that it was not maintainable. The proper course for that Court to have adopted was to post that application for evidence after the suit was disposed of in the manner referred to above and to afford an opportunity to the defendant to substantiate the allegation made by him.

13. It was next urged by Mr. Nabhirajaiah that once the suit was disposed of by the Court of first instance it became functus officio and incompetent to deal with the application under S. 95 of the Code of Civil Procedure.

14. In my opinion, this argument is clearly unacceptable. It would be seen from Clause (b) of that Section that an application for compensation under that Section can be made even after the disposal of the suit, and it is also obvious that the disposal of a suit in which an application for compensation under Section 95 has been made cannot divest the Court of its power to deal with that application which is, it is clear,

the duty of that Court.

15. I do not also find any substance in the argument that there is anything in the conduct of the defendant which leads to the inference that he did not press his application under Section 95. What the defendant did was to deposit the entire amount due to the plaintiff under the suit promissory note and if before he did that, he had made an application for compensation for injury caused to him by what he described to be a wrongful attachment, no one can reasonably suggest that the deposit made by him in that way amounted to withdrawal of his application for compensation.

16. This revision Petition therefore succeeds and it is allowed. The orders of the Courts below are set aside and I direct the Court of first instance to deal with the application presented by the defendant under Section 95 of the Code of Civil Procedure on its merits and in accordance with law.

17. In the circumstances I make no order as to costs.

18. Revision allowed.