

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2019

PRONOUNCED ON : 24.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(NPD).No.697 of 2014

and

M.P.No.1 of 2014

Gautam U.Nambisan

... Petitioner

Vs

A.K.Sathyamoorthy

.. Respondent

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C. to set aside the order passed in E.P.No.197 of 2013 dated 01.02.2014 by the Labour Court, Coimbatore and consequently permit the petitioner to contest C.P.No.,.864 of 2003 on the file of the Labour Court, Coimbatore, by way of filing appropriate applications required under law.

For Petitioner

: Mr.S.V.Pravin Rathinam

For Respondent

: No Appearance

ORDER

This civil revision petition has been filed by the petitioner to set aside the impugned order passed in E.P.No.197 of 2013 dated 01.02.2014 on the file of the Labour Court, Coimbatore and permit the petitioner to contest C.P.No.,864 of 2003 on the file of the Labour Court, Coimbatore.

2. This revision has a chequered history. The petitioner is the son of late Mr.M.r.Unnikrishnan Nambisan, who was the employer of one late Mr.A.K.Kumar, who now represented by his legal heir Mr.A.K.Sathyamoorthy.

3. The legal battle arises out of an industrial dispute between the father's of the respective litigant's herein and is now being fought for the third time before this Court.

4. The respondent's father was an employee (hereinafter referred to the employee) of the petitioner's father (hereinafter referred to as the employer).

5. An employee passed away on 12.3.2005. The employer also passed away on 19.A.2011. During the course of time slew of proceedings came to be initiated.

6. The employee had earlier filed C.P.No 864 of 2003 before the Labour Court under Section 33C(2) of the Industrial Disputes Act, 1947 claiming arrears of salary, bonus, house rent allowance etc., from the employer .

7. As the employer failed to appear before the Labour Court, an ex parte order was passed on 18.12.2003 by the Labour Court in C.P.No 864 of 2003. The employer during his lifetime, therefore filed I.A.No.324 of 2004 in C.P.No.864 of 2003 before the Labour Court to condone the delay of 72 days in filing application to set aside ex parte order dated 18.12.2003. The said I.A. Was dismissed on 01.11.2004.

8. The petitioner herein filed CRP (NPD)No.1744 of 2005 to set aside order and decree dated 01.11.2004 in I.A.No.324 of 2004 in C.P.No. 864 of 2003 of the Labour Court, Coimbatore.

9. The petitioner herein however remained absent when the said CRP (NPD) No.1744 of 2005 was taken up for final hearing on 18.4.2006. Therefore, this Court dismissed the above CRP(NPD) No.1744 of 2005 with the observation that there was no merits in the Petition.

10. During the interregnum, the employee filed proceedings before the Secretary to the Labour Department to recover the amount ordered to be paid by the employer. After enquiry, the Secretary also issued a certificate to be Collector, Coimbatore to recover the amount under the provisions of the Revenue Recovery Act.

11 Pending revenue recovery proceedings, the employee died on 12.03.2005. The proceeding was thereafter continued by the respondent as the legal representative of the deceased employee A.K.Kumar.

12. Employer therefore, filed C.R.P.Nos.1492 of 2007 and C.R.P.Nos.1443 of 2007 to set aside ex parte order and decree dated 1.11.2004 in I.A.No.324 of 2003 in C.P.No.18.12.2003 passed by the Labour Court, Coimbatore and the order dismissing the application to condone the delay in setting aside exparte order in C.P.No 864 of 2003.

13. The petitioner herein however remained absent when the said CRP (NPD)No.1744 of 2005 was taken up for final hearing on 18.4.2006. Therefore, this Court dismissed the above CRP (NPD) No.1744 of 2005 on 18.04.2006 with the observation that there was no merits in the Petition.

14. Curiously, the employer thereafter filed C.R.P.Nos.1492 of 2007 and C.R.P.Nos.1443 of 2007 to set aside ex parte order dated 18.12.2003 passed by the Labour Court Coimbatore and once again an attempt was made to set aside the order of the Labour Court dated 01.11.2004 dismissing the application to condone the delay in setting aside exparte order dated 18.12.2003 in C.P.No 864 of 2003.

15. Pending disposal of the above CRP the employer also passed away on 19.A.2011. Therefore, M.P.No 26094 of 2013 in C.R.P.No. 1493 of 2007 were filed to set aside abatement caused due to the death of the deceased employer on 19.8.2011 and to bring in the legal as on record in C.R.P.No. 1493 of 2007.

16. C.R. P No. 1492 of 2007 was dismissed while CRP No. 1493 of 2007 was allowed on 02.03.2012 subject to the condition that the legal heir deposits a sum of Rs.1,00,000/- within a period of four weeks from the date of the order. However, no payment was made.

17. Therefore, the respondent filed E.P.No. 21 of 2012 in C.P.No. 864 of 2003 to recover the amount awarded by the Labour Court in its order dated 18.12.2003.

18. Meanwhile, C.R.P.No. 1493 of 2007 was also dismissed for non appearance. Therefore, C.M.P.No 1 of 2013 in M.P.No. 1493 of 2007 was filed to condone the delay of 373 days in filing the application for restoration of the C.R.P.No. 1493 of 2007.

19. By an order dated 26.6.2013, this court was pleased to dismiss the above Miscellaneous Application as well.

20. For the third time the respondent filed E.P.No. 197 of 2013 before the Labour Court in a bid to realise the amount awarded by the Labour Court on 18.12.2003 together with interest in C.P.No 864 of 2003. The petitioner herein also filed his reply before the Labour Court.

21. The Labour Court by the impugned order dated 1.2.2014 allowed the execution petition and ordered attachment of the assets of the deceased employer by 25.2.2014. Challenging the same, the present civil revision petition has been filed.

22. The only ground on which the present civil revision petition has been filed is that in the execution proceeding, the respondent had failed to bring in

the other legal heirs of the deceased employer and therefore the impugned order passed by the Labour Court was liable to be set aside.

23. Heard the learned counsel for the petitioner and the respondent. I have also perused the records and the case laws submitted by the Learned Counsel for the Petitioner.

24. The learned Counsel for the petitioner relied upon the following decisions of the Court:-

- i) Suryaprakasa Rao (A.) vs. Labour court, Andhra Pradesh and Two Ors
Manu/AP/ 0098/1958
- ii) The Bombay Union of Journalists and Ors. vs. The Hindu, Bombay and Ors., Manu/SC/0242/1961
- iii) Hiralal patni vs. kali Nath, Manu/Sc/0041/1961
- iv) Dhirendra nath Gorai and Ors. Vs. Sudhir Chandra Ghosh and Ors. ,
AIR 1964 SC 1300
- v) Shanti Devi vs. Khandubala Dasi and Ors., Manu/WB/0071/1961
- vi) Subramania Pillai vs. Mosterly

25. The 1st two decisions have been cited to state that there was not industrial disputes within the meaning of the Act and therefore the order passed by the Labour Court was not enforceable. It was therefore submitted

that as per the decision of the Supreme Court in ***Hira Lal Patni versus Kali Nath***, the validity of the decree in order of Labour Court can be challenged even in the execution proceeding on the ground that the court which passed a decree was lacking inherent jurisdiction in the sense that it could not have taken cognizance of the case which is alien to its jurisdiction or that the defendant was date at the time of the institution of the suit. The decision of the Supreme Court in Dhirendra nath Gorai and Ors. Vs. Sudhir Chandra Ghosh and Ors. , AIR 1964 SC 1300 were cited to state that it was sometimes difficult to distinguish between an irregularity and nullity but the safest rule is to determine what is an irregularity and what is the nullity and whether a party can waive and confer jurisdiction.

26. The court therefore held that if the court acts without inherent jurisdiction, a party affected cannot wave to confer jurisdiction to it. The decision in the case of ***Shanti Devi versus Khandubala Dasi and others***, was relied upon to state that after the death of the judgement debtor after the issue a proclamation of sale whether sale can be made without including the legal heirs of the judgement debtor.

27. The court their held that the sale was not valid operative against the legal heirs of the deceased judgement debtor if they have not been impleaded.

In paragraph 48 and 51 the court held as follows:-

48. At the outset, I would refer broadly to certain general principles of fundamental character, which, even if they are not sufficient to clinch the issue or issues before us, will, at least, help in narrowing down the same and thus restrict the scope of useful and necessary discussion. These principles are:

(a) generally speaking, no man can be affected and no man's estate or property also can be touched by any order, passed in a proceeding, to which he is not a party, or, in which the said estate or property is not represented. This has been stated by the Privy Council (per Lord Davcy) to be an elementary proposition in *Khia Rajmal v. Daim*, 32 Ind App 23 at p. 33, citing, Sir Barnes Peacock, in *Kishen Chunder Ghose v. Mt. Ashoorun, Marsh* 647.

(b) that, on the death of a person, his estate immediately devolves on and vests in his legal representatives and does not remain in the air or in vacuo even for a single moment; and

(c) that no man should be prejudiced and no man's property should be taken away except under authority of law and without offering him opportunity to show cause against the proposed action.

51. It is, however, for the decree-holder to proceed further with it and the law entitles him so to do by taking appropriate steps under [Section 50](#), of the Code. That section requires that, if the decree-holder chooses to proceed against the legal representatives of the deceased judgment-debtor, he will have to make the necessary

application and, upon such application, the Court will pass necessary orders, which means, in effect, so far as the pending execution case is concerned, the substitution or bringing in on the record, of the said legal representatives in place of the deceased judgment-debtor and, as, in law, the estate of the deceased has already vested in those legal representatives, if they are brought on the record, as aforesaid, that estate will, as a matter of course, be represented and no legitimate grievance can, therefore, be made in that behalf. The statute, then that is Section 50 of the Code, far from engrafting any exception on the relative general principle, seeks to supplement it. A point has been raised that Section 50 is purely procedural and non-compliance with it or non-taking of steps under it would not vitiate the execution proceeding so as to reduce the eventual sale to a nullity. I do not think that this argument, so far as it is relevant here, can be accepted. Apart from the fact that the relevant part of Section 50, which prescribes the application or the making of the same, is not purely procedural, it is, at least, clear that the statute does not intend to affect the general principle, set out in item (a) above, and, accordingly, the property or the estate of the deceased judgment-debtor, which has admittedly vested in the legal representatives and which, therefore, at the relevant moment, is the property or estate of the said legal representatives, cannot be sold and cannot pass except in a proceeding, to which they are parties .

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28. The fifth decision of the Honourable Supreme Court in Subramanya Pillai Vs Mosterly cited by the learned counsel for the petitioner in fact answers the issue against petitioner. The court therefore held that it is always not a legal requisite that all the legal heirs should be present. The procedural requirement will stand satisfied if there is substantial representation in the

sense that all that could be done in defence was done by someone interested in the issue in the suit. All that is required to be seen was whether in the execution proceedings there was proper representation on behalf of the judgement debtor on legal representatives. In this case the petitioner has not only represented the deceased employer during his lifetime but also represented the interest of the legal representatives in the earlier round of litigation before this High Court in CRP No. 1492 and 1493 of 2007 but also in the execution proceedings.

29. As such I do not find any merits in the present civil revision petition. The petitioner was aware of the proceedings which culminated in the two rounds of Civil Revision Petitions. It is not open to re-open the exparte order of the Labour Court after suffering three adverse orders from this Court.

30. Civil Revision Petition (NPD) No. 1744 of 2005 was allowed to be dismissed on merits and order came to be passed on 18.4.2006. Despite the same, CRP.No.1492 and 1493 of 2007 were filed by the deceased employer. On 02.03.2012, C.R.P.No 1492 of 2007 was dismissed.

31. In C.R.P.No.1493 of 2007, a conditional order was passed asking the employer to deposit a sum of Rs.1 lakh. However,even that was not complied.

32. The Labour Court has noted on that the order of this Court has not been complied by the Petitioner. The Labour Court has referred to Section 50 of the Civil Procedure Code. As per sub clause (2), the legal representative is liable only to the extent to which property of the deceased has come to his hand and for the purpose of ascertaining such liability, the court executing may on its own motion or on application of the decree holder compel such legal representative to produce such accounts as it thinks fit.

33.. As in the course of the proceeding, the petitioner herein had not only represented deceased employer during his life time but also the other legal representatives after the death of the deceased employer and therefore it is not open to the Petitioner to plead irregularity in the proceeding before the Labour Court in the impugned order.

34. In any event, to the extent the petitioner has inherited the estate of the deceased employer, the execution proceedings can be proceeded. The petitioner has not filed any details to enable the labour court to apportion the liability. Further, the liability crystallized way back in 1993 during the life time of the deceased employer. Therefore, after his death, any distribution and alienation of the assets of the deceased devolving on the legal representatives will be subject to the rights of the respondent.

35. Therefore, the present Civil Revision Petition is liable to be dismissed. Only reason why I am refraining from imposing the cost is because the dispute was primarily between the employer and the employee who have both since deceased and the parties herein are their legal representatives.

36. The deceased employer was ill advised to file CRP No.1492 and CRP No.1493 of 2007 even though the earlier CRP (NPD) No.1744 of 2005 was dismissed upholding the exparte order dated 18.1.2.2003.

37. The Petitioner is therefore directed to pay the amounts together with the interest accrued thereon within a period of 6 weeks of this Order failing which the respondent is entitled to initiate appropriate proceedings to bring the estate of the deceased employer to sale through Court before jurisdictional Court.

38. In case, there have been alienation, the respondent may proceed against the petitioner and the other legal representatives of the employer to satisfy the order of the Labour Court in the manner of known to law.

C.SARAVANAN,J.

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39. The present civil revision petition is thus dismissed with the above observation. Consequently, connected miscellaneous petition is closed. No cost.

24.04.2019

Index: Yes/ No
Internet : Yes/No
arb/kkd

To

The Additional Munsif Court,
Vellore, Vellore District.

Pre-delivery order in

C.R.P(NPD).No.697 of 2014

and

M.P.No.1 of 2014

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