



CRP (NPD) No.1863 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.02.2022

Pronounced on : 03.03.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE S.KANNAMMAL

C.R.P.(NPD) No.1863 of 2017

1.Gomathy

2.Chandramouleeswaran (Minor)

3.Minor Sofia

represented by mother and next friend .. Petitioners

-VS-

Oriental Insurance Company Limited .. Respondent

Prayer: Civil Revision Petition is filed against the order, dated 07.11.2016, passed in R.E.P.No.12 of 2016 in M.C.O.P.No.47 of 2012 on the file of Additional District Court, Namakkal.

For Petitioners .. Mr.D.Shivakumaran

For Respondent .. Mr.M.J.Vijaya Raghavan



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ORDER

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This Civil Revision Petition is filed against the order, dated 07.11.2016, passed in R.E.P.No.12 of 2016 in M.C.O.P.No.47 of 2012 on the file of Additional District Court, Namakkal, whereby, the prayer of the legal heirs of the deceased claimant for execution of the award was rejected.

2. Petitioners are the legal heirs of one V.Seenivasan, who sustained injuries and multiple fractures on both of his legs in an accident, as a result of which, he suffered total permanent disability. He filed M.C.O.P.No.47 of 2012 before the Court below / Tribunal, claiming a compensation of Rs.35.00 lakhs, but the claim was restricted to Rs.25.00 lakhs. The Tribunal, after full-fledged trial, passed an award on 16.04.2015 for a sum of Rs.17,18,300/- and the said award has become final, as the respondent insurer has not filed any appeal or review against the same. Unfortunately, before passing of the award, the claimant died and the same was not brought to the notice of the Tribunal. Hence, the award stood in the name of the deceased claimant. Thereafter, the legal heirs of the deceased claimant filed R.E.P.No.12 of 2016 before the Tribunal for execution of the award, but the same was dismissed on the



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ground that the claimant died before passing of the award. Hence, the petitioners are before this Court by way of this revision.

3. Heard the learned counsel for the parties and also gone through the records.

4. The only point that arises for consideration in this case is, whether the decree passed in favour of a dead person is null and void and not executable ?

5. On perusal of the records, it is noticed that in M.C.O.P.No.47 of 2012, the evidence on the side of claimant was closed on 04.01.2013 and from 18.12.2013 till 27.03.2015, the respondent insurer dragged on the matter on the pretext of examination of witnesses on its side, but it never examined any witnesses or filed any documents in support of its case, and the evidence on its side was closed. After full-fledged trial, the Tribunal passed the award, as stated above. The death of the claimant cannot also be ruled out because of the dilatory tactics adopted by the respondent insurer. Were the respondent prompt in prosecuting the matter, the matter



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would not have been dragged on for years together. Because of the laches on the part of the respondent, the claimant could not reap the benefits of the award. Now, when a petition for execution of the award is filed by the legal heirs of the deceased claimant, the respondent is taking an evasive stand that the decree passed after the death of the claimant cannot be executed. In fact, there was a lacuna in giving intimation to the Tribunal about the death of the claimant. However, the said lacuna, according to the petitioners, was not intentional, but, it was due to beyond one's knowledge. The stand of the learned counsel for the petitioners is that since the evidence on the side of claimant was closed and it was pending only for the side of respondent, there was no need for him to contact the claimant and only after passing of the award, when he tried to contact the claimant, only then, he came to know about the death of the claimant. This Court finds substance in the said stand.

6. Where the Court proceeds with the case in ignorance of the fact of death of a person and passes a decree, that decree cannot be treated as a nullity. It may, no doubt, be a wrong decree, but it will have to be set



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aside by taking appropriate proceedings, such as, appeal, revision or review.

7. While a decree passed against a dead person is *ab initio* void, a decree passed in favour of a dead person is not a nullity and such a decree is only an irregularity. A decree passed without the knowledge of the death of the claimant can be executed by his legal representatives. It is not open to the executing Court to refuse execution of the decree on the ground that the decree has been passed in favour of a dead person. As the decree passed in ignorance of the death of the claimant is a mere irregularity, it cannot have the effect of making the decree as one without jurisdiction.

8. Section 146 of the Code of Civil Procedure enables the legal representatives of the deceased decree holder to come on record and apply for execution of the decree and the decree may be executed in the same



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manner and subject to the same conditions as if the application were made by such decree holder.

9. A decree passed against a dead person is generally treated as a nullity. But, the position is different in a case where a decree is passed in favour of a dead person. Decisions are consistent in holding that in the latter case the passing of such a decree is only an irregularity and not an illegality. A collateral attack on the basis of such a decree has no sanction of law. It binds the parties and continues to exist in law unless got rid of as per law. Such a decree cannot be ignored as if it is void or is a nullity.

10. Therefore, the contention that the decree passed in M.C.O.P.No.47 of 2012 is null and void cannot be accepted. It is, at best, only voidable, in which case, the decree had to be got rid of by the process known to law. In this case, no attempt is made by the respondent to get the decree set aside. The respondent ought to have challenged the decree in appropriate proceedings, as stated supra. Apparently, he chose not to do so. Thus, it could be seen that a decree passed in favour of a dead person is a nullity is not legally acceptable.



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11. The Hon'ble Supreme Court, in *Saila Bala Dassi v. Nirmala Sundari Dassi*, AIR 1958 SC 394, held that Section 146 of the Code of Civil Procedure was introduced with the object of facilitating the exercise of rights by persons in whom they come to be vested and being a beneficent provision, it should be construed liberally so as to advance justice and not in a restricted or technical sense.

12. Also, the Apex Court, in *Darshan Singh v. State of Punjab*, 2007 (14) SCC 262, on the aspect of execution of a decree, has held as follows:

"15. In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors., 1970 (1) SCC 670, this Court, in para 6, held the following:-

"6. A court executing a decree cannot go behind the decree : between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision,



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a decree even if it be erroneous is still binding between the parties."

16. This Court held in Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors., 1970 (1) SCC 670, that the executing court cannot go behind the decree unless it is shown that it was passed by a Court inherently lacking jurisdiction and thus was a nullity. The aforesaid decision of this Court squarely applies to the facts of the present case. This is not a case in which the decree on the face of it was shown to be without jurisdiction. It is not the case of the respondent that the court which passed the decree was lacking inherent jurisdiction to pass such a decree.

17. This Court in Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises, 1999 (1) SCC 558, and in C. Gangacharan v. C. Narayanan, 2000 (1) SCC 459, has also taken the same view that the executing court cannot go behind the decree of a Court of competent jurisdiction except in the decrees void ab initio without jurisdiction."

13. Keeping the above well settled legal propositions, if we look at



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order impugned in this petition, what comes to be known is that the executing Court, on a petition filed by the legal representatives of the deceased claimant for execution of the decree passed in M.C.O.P.No.47 of 2012, has gone beyond the decree between the parties or their representatives, without taking the decree in its tenor, by simply accepting the mere *ipse dixit* of the respondent that it initiated proceedings to set aside the decree in question, without there being any proof thereto. Until the decree is set aside by an appropriate proceeding in appeal or revision, even if it be erroneous, it is still binding between the parties. This is not a case in which the decree on the face of it is shown to be without jurisdiction. It is also not the case of the respondent that the Court, which passed the decree, was lacking inherent jurisdiction to pass such a decree. That being so, it is not the business of the executing Court to interpret the decree differently or dilute the same in execution proceedings. Instead, its only duty is to execute the decree in letter and spirit and nothing more or less than that.



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14. Therefore, in the considered opinion of this Court, the impugned order, dated 07.11.2016, passed in R.E.P.No.12 of 2016 in M.C.O.P.No.47 of 2012 by the Additional District Court, Namakkal, is totally erroneous and not sustainable in law. It is, accordingly, set aside.

15. Civil Revision Petition is allowed. No costs.

03.03.2022

Index : Yes
Internet : Yes
Speaking Order

dixit

To

Additional District Court,
Namakkal.



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S.KANNAMMAL, J.

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