DAVID KANNANGARA
v
CENTRAL FINANCE LTD.

COURT OF APPEAL
AMARATUNGA, J.
C.A. REV. 1266/02
D.C. POLONNARUWA 13/CLAIM
SEPTEMBER 25, 2003

Execution of Decree – Vehicle seized by Fiscal – Claim to vehicle seized by Finance Company to Court – Civil Procedure Code section 241 – Should the claim be made to the Fiscal? – Should the application be made in the same case?

HELD:

i) Section 241 do not prohibit the making of a claim straight to the Court which ordered the seizure of the property.

Per Amaratunga, J.,

"There is nothing in section 241 to prohibit such a course of action an every procedure not prohibited shall be deemed to be permitted."

ii) Assigning a number to an application is a matter for Court. What was necessary was to bring the claim before Court with Notice to the Judgment Creditor. If at all, it is a technical defect which has not caused any prejudice to the Judgment Creditor.

APPLICATION in Revision from the Order of the District Court of Polonnaruwa.

W. Dayaratne with *Ms. R. Jayawardena* for petitioner.

Geoffrey Alagaratnam for the respondent.

Cur. adv. vult.

October 15, 2004

AMARATUNGA, J.

This is an application to revise an order made by the learned District Judge of Polonnaruwa in an inquiry relating to the claim made by the respondent in respect of a vehicle seized by the Fiscal in execution of a decree passed by that Court in favour of the

petitioner in an action filed by the petitioner against one A.D. Wijeratna, who is not a party to this application. The facts which are relevant to this application are as follows.

The petitioner filed action No. 7428/98 against the said Wijeratna claiming Rs. 500000/= due to him in consequence of a money transaction he had with the said Wijeratna. He has also obtained an interim injunction preventing the said Wijeratna from disposing vehicle No. 58/0767 which the said Wijeratna had in his possession. After *ex parte* trial against Wijeratna the Court entered judgment in favour of the present petitioner.

Before Writ of execution was issued, the present respondent finance company made an application to Court claiming that it was the absolute owner of the said vehicle and therefore the said vehicle should be released to the respondent company. By that time the fiscal has not seized the vehicle in execution of the decree entered by Court. The learned Judge having observed that that was not the stage in which such application could be made, refused the application and remarked that the finance company should make its application at the proper stage.

Subsequently, the fiscal in execution of the decree entered in favour of the petitioner seized the vehicle and advertised it for sale by public auction. The finance company then made an application to Court claiming the vehicle as it was not liable to be sold in execution of the decree entered in favour of the petitioner.

At the inquiry, a representative gave evidence on behalf of the finance company. He stated that the finance company was the absolute owner of the vehicle; it was let to one Samarasinghe of Kurunegala on a hire purchase agreement; the said Samarasinghe defaulted to pay the hire purchase instaments; when the company wanted to repossess the vehicle it was not to be found in the possession of Samarasinghe; subsequently they learnt that the Hingurakgoda Police had detained this vehicle in connection with an alleged criminal offence; thereafter the company learnt that the fiscal had advertised this vehicle for sale by public auction and that the judgment creditor (the petitioner) had no right to get this vehicle seized and sold in satisfaction of the decree entered against Wijeratna. He accordingly asked that the vehicle be handed over to

the finance company which was absolute owner of the vehicle. A copy of the registration certificate of the vehicle was produced in Court marked B. The company's representative's evidence was the only evidence led at the inquiry. No evidence was led by the petitioner to show that this judgment debtor Wijeratna had any right to the vehicle. Thereafter the learned Judge made order holding that the finance company was the absolute owner of the vehicle and that it was not liable to be seized and sold in execution of the decree entered in favour of the petitioner. The judge made order to hand over the vehicle to the respondent finance company. This revision application is against that order.

Several points have been urged in support of the revision application. The first point was that since the finance company did not make any claim to the vehicle before the fiscal who seized it and in the absence of any claim made to the fiscal and his report to Court regarding such claim, an inquiry under section 241 could not have been held. The petitioner's position is that an inquiry under section 241 of the Civil Procedure Code must necessarily precede by a claim before the fiscal who shall thereupon report to Court about the claim. It is true that in terms of section 241, the fiscal has to report the claim to the Court and an investigation into the claim is to be held thereafter. This is the usual way of commencing an investigation under section 241. However the terms of section 241 do not prohibit the making of a claim straight to the Court which ordered the seizing of the property. If a person having a valid claim in respect of a property seized by fiscal was unaware of the seizure but later learns about the proposed auction of the property, cannot the claimant make his claim straight to Court by way of a petition, without first making his claim before the fiscal? There is nothing in section 241 to prohibit such a course of action and every procedure not prohibited shall be deemed to be permitted. What is necessary is to place the claim before Court. Fiscal's report is one way of bringing the claim to the notice of Court. But any other method for bringing the claim to the notice of Court is not prohibited. Once the Court is notified of a claim that a property is not liable to be seized and sold, the Court has jurisdiction to investigate such claim.

Therefore I hold that the finance company was properly before Court when it made its claim straight to Court by way of petition

and affidavit and that the Court had jurisdiction to hold an investigation into such claim.

The second point raised was that the claim had been made by way of a separate application with a different number and not as an application in the same case where the writ has been issued. Assigning a number to an application is a matter for the court. What was necessary was to bring the claim before Court with notice to the judgment creditor at whose instance the property had been seized. Thus the point raised, if at all, is a technical defect which has not caused any prejudice to the judgment creditor.

The third point was that the certificate of registration of the vehicle has not been produced to show that the finance company was the absolute owner of the vehicle. However a copy of the Registration Certificate had been produced marked 'B'.

The petitioner has not led any evidence to show that his judgment debtor had any kind of legal right to the vehicle and that it was liable to be seized and sold in satisfaction of the decree entered in his favour. In the absence of any such material, the learned Judge had come to a correct finding on the material before him. I do not see any reason to revise that order. Accordingly the revision application is dismissed with costs in a sum of Rs. 5000/=.

Application dismissed.