

MERCANTILE CREDIT LTD.,
v.
JAYATILAKE AND TWO OTHERS

COURT OF APPEAL.

S. N. SILVA, J. AND

D. P. S. GUNASEKERA, J.

C.A. NO. 794/91.

D.C. COLOMBO NO. 28/D.R.

JUNE 9 AND 29, 1993.

Revision – Difference in Sinhala and English versions of Debt Recovery (Special Provisions) Act No. 2 of 1990 Sections 6(3) – Decree nisi and decree absolute – 'Ut res magis valeat quam pereat' – Sections 19, 6(2) of the Debt Recovery (Special Provisions) Act No. 2 of 1990.

There is no provision in the Sinhala version of section 6(3) of the Debt Recovery (Special Provisions) Act No. 2 of 1990 which empowers the Court to make the decree nisi absolute where the cause shown by the defendant is found to be unsatisfactory. But in the English version of section 6(3) clearly provides for a decree absolute to be entered in such circumstances.

Held :

The provisions of Section 4(2) and the form of decree nisi as appearing in the First Schedule to the Debt Recovery (Special Provisions) Act No. 2 of 1990 and the provisions in s. 19 of this Act which provides for application of the provisions of the Civil Procedure Code in respect of a matter which is not specifically provided for in the Act empower the Court to enter decree absolute. Where there is a right there should be a remedy. Therefore where the defendant fails to satisfy Court that there is an issue on a question in dispute which ought to be tried, the decree nisi should be made absolute. The principle of interpretation " ut res magis valeat quam pereat " requires that where the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislature, a construction which would reduce the legislation to futility should be avoided and the broader construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result should rather be accepted.

The decree nisi should be made absolute in every situation where the defendant fails to appear upon service of decree nisi or having appeared fails to obtain leave of Court to show cause against the decree as provided in s. 6(2) of the Act.

APPEAL from order of the District Court of Colombo.

Chula de Silva, P.C. with *Shiva de Silva* and *M. Hussain* for petitioner.

W. Dayaratne with *Sarathchandra Liyanage* for 1st respondent.

Cur. adv. vult.

June 29, 1993

S. N. SILVA, J.

This is an application in revision from the order dated 13.8.91 of the District Judge, Colombo. By that order learned District Judge refused to enter decree absolute in this case on the basis that there is no provision in the Sinhala version of section 6(3) of the Debt Recovery (Special Provisions) Act No. 2 of 1990 which empowers the Court to make the decree nisi absolute where the cause shown by the defendant is found to be unsatisfactory. The learned District Judge proceeded on the basis that decree absolute could be entered only where the defendant fails to appear and show cause against the decree nisi. The resulting position is that where the defendant appears but fails to satisfy Court that there is an issue on a question in dispute which ought to be tried, the decree nisi which has been entered will remain but no decree absolute will be entered in the case, at any stage. The provision of section 6(3) as appearing in English clearly provide for a decree absolute to be entered in every situation, where the defendant defaults on obtaining leave to appear and to show cause against the decree nisi.

The same question came up for consideration by a bench of two judges of this Court in case No. C.A.L.A. 142/91 D.C. Colombo Case No. 5/DR, decided on 18.12.92. Anandacoomaraswamy, J with Edussuirya, J. agreeing, set aside the order of the learned District Judge in that case and directed that decree absolute be entered in a situation where the defendant fails to satisfy Court that there is an issue on a question in dispute which ought to be tried. In arriving at that decision Their Lordships took the view that the provisions of the Civil Procedure Code relating to summary procedure will apply and that the decree nisi should therefore be made absolute. Further more it was held that where there is a right there should be a remedy.

Learned President's counsel submits that in addition to the reasons stated by Anandacoomaraswamy, J. there is further support for the same conclusion that may be derived from the provisions of section 4(2) and the form of the decree nisi as appearing in the first schedule to Act No. 2 of 1990. He also relies on section 19 of the Act which provides for the application of the provisions of the Civil Procedure Code in respect of a matter which is not specifically provided for in the Act.

We have considered the submissions of learned counsel. The grounds urged by learned President's counsel further support the conclusion already arrived by this Court. Section 4(2) provides for

a decree nisi to be entered in the form as appearing in the first schedule to the Act. The form specifically states that the defendant should show cause " as to why the decree nisi should not be made absolute. " Hence it necessarily follows that if the defendant fails to satisfy Court that there is an issue on a question in dispute which ought to be tried as provided in section 6(2) (c), the decree nisi should be made absolute. We are of the view that the provisions of section 6(3) (in Sinhala) relied on by learned District Judge should be read together with the provisions of section 4(2) and the form of the decree nisi as appearing in the first schedule. The only conclusion that one could arrive at then, is that where the defendant fails to satisfy Court that there is an issue on a question in dispute which ought to be tried, the decree nisi should be made absolute. The principle of interpretation, " ut res magis valeat quam pereat " requires that where the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislature, we should avoid a construction which would reduce the legislation to futility and should rather accept the broader construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result (Maxwell on Interpretation of Statutes 12th Edition page 45).

As noted above the construction given by learned District Judge based only upon the words of section 6(3) (in Sinhala) would result in the decree nisi obtained by the plaintiff not being made absolute where the defendant has failed to satisfy the Court that there is an issue on a question which ought to be tried. The plaintiff is thus left without a remedy although the defendant has failed to satisfy Court in showing cause against the decree nisi. Thus, legislation intended to afford an expeditious remedy is rendered futile, defeating its purpose. Therefore, we hold that learned District Judge was in error when he decided that a decree nisi cannot be made absolute where the defendant fails to satisfy Court that there is an issue or a question in dispute which ought to be tried. The decree nisi should be made absolute in every situation where the defendant fails to appear upon service of decree nisi or having appeared fails to obtain leave of Court to show cause against the decree as provided in 6(2) of the Act.

The application is allowed and the order dated 13.8.91 is set aside. The District Court will now make the decree nisi absolute. No Costs.

D. P. S. GUNASEKARA, J. – I agree.

Application allowed.

Order of District Judge set aside.