

BANDARA
v.
THE PEOPLE'S BANK

COURT OF APPEAL
UDALAGAMA, J. AND
NANAYAKKARA, J.
CALA NO. 1356/98.
DC POLONNARUWA NO. DR 14/96.
FEBRUARY 22, 2002

Debt Recovery (Special Provisions) Act, No. 2 of 1990 as amended by Act, No. 9 of 1994, sections 13, 16 and 18 – Special jurisdiction – Execution of writ – Should the defendant be served with notice? – Is it imperative? – Decree nisi made absolute – Is there a right of appeal?

After institution of the action, the trial Judge acting under the provisions of the Debt Recovery Act, having entered decree *nisi*, subsequently made it absolute. Thereafter, the fiscal executed the writ.

The petitioner contends that he was not served with notice of execution of decree, although he has preferred an appeal against the decree absolute.

Held:

- (1) The Debt Recovery (Special Provisions) Act is an Act which has created special jurisdiction and it is a procedure whereby no right of appeal has been bestowed on a party aggrieved by a decree absolute.
- (2) There is no obligation on the part of the respondent to give notice of execution of decree to the defendant. In terms of s. 13, where a decree *nisi* entered is made absolute it shall be deemed to be a writ of execution duly issued to the fiscal in terms of section 225 (3) of the Civil Procedure Code and it shall be the duty of the fiscal to execute same.

APPLICATION in revision from the order of the District Court of Polonnaruwa.

Cases referred to:

1. *Bakmeewewa v. Kanagarajah* – (1989) Sri LR 231.
2. *Vanderporten v. The Settlement Officer*.
3. *Martin v. Wijewardena* – (1989) 2 Sri LR 409.

K. S. Tilakaratne with Vindya Weerasekera for petitioner.

Ikram Mohamed, PC with Mahesh Katulanda for respondent.

Cur. adv. vult.

May 16, 2002

NANAYAKKARA, J.

The plaintiff-respondent-respondent Bank (respondent-Bank) instituted⁰¹ action against the defendant-appellant-petitioner (petitioner) under the Debt Recovery (Special Provisions) Act, No. 2 of 1990 as amended by Act, No. 9 of 1994 for the recovery of debt due to it from the petitioner.

After the institution of action, the learned District Judge acting under the provisions of the Debt Recovery Act having entered decree *nisi*, subsequently on 13. 11. 1996 made it absolute.

Thereafter, in pursuance of a direction given by Court on 06. 11. 1998, the fiscal executed the writ and it is against this order¹⁰ of execution of writ carried out on 06. 11. 1998 that the petitioner has sought relief by way of revision by this application.

The petitioner impugns the order made by the learned District Judge on 06. 09. 1990 solely on the ground that he was not served with notice of execution of decree, although he has preferred an appeal against the decree absolute entered in the case.

The Debt Recovery (Special Provisions) Act, under which the respondent bank has sought to recover its debt due to it from the

petitioner, is an Act which has created special jurisdiction, and it is a procedure whereby no right of appeal has been bestowed on a party aggrieved by decree absolute made by Court. 20

According to section 13 of the Debt Recovery Act which has created this special jurisdiction, a decree absolute is deemed to be a writ of execution duly issued in accordance with the provisions of the Civil Procedure Code relating to execution of decrees. Section 13 of the Debt Recovery (Special Provisions) Act, No. 2 of 1990 provides thus:

“Subject to orders of Court, where a decree *nisi* entered in an action instituted under this Act is made absolute it shall be deemed to be a writ of execution duly issued to the fiscal in terms of section 225 (3) of the Civil Procedure Code (chapter 101) and it shall be the duty of the fiscal to execute the same in the manner prescribed in the Civil Procedure Code for the execution of writs.” 30

Therefore, a careful reading of the relevant section of the Debt Recovery Law, makes it evident that there is no obligation on the part of the respondent to give notice of execution of decree to the petitioner as claimed by him although he preferred an appeal against the decree absolute. In regard to the appeal which the petitioner has preferred against the decree absolute, it should be observed that the right of appeal is a statutory right conferred on a party and unless it is expressly reserved in the legislation creating that special jurisdiction, a party cannot avail himself of that procedure against any order made under that special legislation. This is evident from the following authorities: 40

Bakmeewewa v. Kanagarajah⁽¹⁾

Vanderputin v. The Settlement Officer⁽²⁾

Martin v. Wijewardena⁽³⁾

The Debt Recovery Act under which the respondent has sought relief against the petitioner being a special legislation has not conferred on him the right to appeal against a decree absolute. Therefore, the petitioner cannot complain that as he has preferred an appeal against the decree absolute issued against him he should have been given due notice of execution of decree before the execution of writ was carried out. ⁵⁰

The only remedy which was available to the defendant-petitioner in terms of section 16 of the Debt Recovery (Special Provisions) Act was to have sought relief by way of leave to appeal against the order dated 13. 11. 1996 making the decree *nisi* absolute which the defendant failed to make avail himself.

In the circumstances, I would hold that the execution of writ in this case was duly carried out. ⁶⁰

For the foregoing reasons I dismiss the application of the defendant and cast him in cost in a sum of Rs. 5,000.

UDALAGAMA, J. – I agree.

Application dismissed.