

Lehri Bai Vs. Bherulal

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Court : Rajasthan Jodhpur

Decided On : Jul-29-2013

Appellant : Lehri Bai

Respondent : Bherulal

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
ORDER S.B. CIVIL REVISION PETITION NO.342/2003 Lehri Bai Vs. Bherulal
Date of Order :

29. 07.2013 PRESENT HON'BLE MR. JUSTICE ARUN BHANSALI Mr. K.C. Samdariya, for the petitioner. Mr. Alkesh Agarwal, for the respondent. BY THE COURT : REPORTABLE This revision petition under Section 115 CPC is directed against the order dated 20.2.2003 passed by the executing court, whereby objections filed by the petitioner under Section 47 read with Section 151 CPC have been dismissed. Brief facts of the case may be noticed thus : the respondent-decree-holder filed Civil Original Suit No.164/1980 on 16.10.1980 seeking eviction of the petitioner-tenant from the suit premises and for arrears of rent. The suit was filed on the ground of default in payment of rent, denial of title and reasonable and bonafide necessity under the provisions of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 ('the Act of 1950'). The suit was set ex-parte against the petitioner- defendant on 27.7.1983 and the same was decreed ex-parte on 27.8.1983. While passing the judgment, the learned trial court 2 noticed the fact of the suit being proceeded ex-parte against the defendant and thereafter held as

under:- " : !! % & ' ' (& !+ , & / % ' , % ' : % / % :- (1)- , , !! ' (2)- , !! (3)- , ! It appears that thereafter an application under Section 152 CPC was filed by the decree-holder on 9.11.1984, which was accepted and decree was amended on 1.12.1984. An application for execution of the decree dated 27.8.1983 (as amended on 1.12.1984) was filed by the respondent-decree-holder on 15.5.1996 and the same was numbered as Execution Case No.16/1997. On 1.2.1999, the objection was filed by the petitioner to the executability of the decree dated 27.8.1983, inter-alia, on the ground that mandatory provisions of Section 13 of the Act of 1950 have not been followed, inasmuch as, the satisfaction of the Court on any of the grounds enumerated in the said section have not been recorded. Besides raising other objections it was claimed that the Execution Application filed on 15.5.1996 was barred by limitation. The objections raised by the petitioner were replied to by the respondent and it was inter-alia submitted that the decree 3 was executable and as the suit filed by the petitioner for setting aside the decree dated 27.8.1983 has been rejected on 28.9.1996, the decree was executable. No appeal has been filed from the judgment and decree dated 27.8.1983 and, therefore, now it is not open for the petitioner to question the validity of the judgment and decree passed by the court in execution proceedings. It was claimed that as the decree was amended, the limitation will be reckoned from the date of amendment and not from the date of original decree, therefore, the execution application was within limitation. The learned trial court after hearing the parties by the impugned order dated 20.2.2003 came to the conclusion that the petitioner has failed to point out as to which provision of law has not been complied with while passing the judgment and decree dated 27.7.1983 and the execution of decree cannot be stopped. Further the learned executing court was also of the opinion that if the decree was a nullity or against the law, the petitioner had right to file appeal and the suit filed against the said decree already stands rejected. Consequently, the objections filed by the petitioner were rejected. It is submitted by learned counsel for the petitioner that the order impugned passed by the learned executing court is ex- facie against the settled position of law and as such, the same deserves to be set-aside. It was submitted that the judgment and decree dated 27.7.1983 passed by the trial court was against the mandatory provisions of Section 13 of the Act of 1950, inasmuch as, no satisfaction whatsoever was recorded by 4 the trial court

regarding existence of any of the grounds enumerated in the said section and, therefore, the decree on its face was a nullity and an objection in this regard could very well be taken in execution proceedings and there was no necessity of filing appeal against the decree, which was a nullity. Reliance was placed on judgment of the Hon'ble Supreme Court in Smt. Kaushalya Devi & Ors. v. K.L. Bansal : AIR 197.SC 838. It was further submitted that the suit filed by the petitioner was 'dismissed in default' and, therefore, the same cannot operate as res judicata. It was contended that the limitation for filing Execution Application is governed by Article 136 of the Limitation Act, 1963 ('the Act of 1963'), which is 12 years and admittedly as the decree was passed on 27.8.1983 and execution was filed on 15.5.1996, the same was ex-facie barred by limitation. It was submitted that merely because the decree was amended on 1.12.1984, it cannot be said that the limitation would start from 1.12.1984 as the limitation start from the date of decree and not from the date of amendment. Reliance was placed on Ouseph v. Lona : AIR 197.Kerala 14. Ultimately, it was prayed that the revision petition be allowed and the execution application filed by the respondent be ordered to be rejected. Learned counsel for the respondent vehemently opposed the submissions made by learned counsel for the petitioner. It was submitted that the petitioner having failed to file any appeal against the judgment and decree dated 27.8.1983 and his suit seeking cancellation of the said decree having been 5 dismissed, it is not open for him to question the said decree as a nullity. Reliance was placed on the judgment of this Court in Shyam Sunder v. Moda Ram :

1981. RLW 178. On the question of limitation, it was submitted that the decree passed by the trial court having been amended, whereby the boundaries of the suit premises and exact arrears of rent having been indicated in the said decree and the same having been amended on 1.12.1984, the limitation would start from the date of amendment and not from the date of original decree and the execution having been filed within 12 years from the date of amended decree, the same was within limitation. Reliance was placed on Akkayanaicker v. A.A.A. Kotchadainaidu & Anr. : (2004) 12 SCC 469. It was prayed that the revision petition be dismissed with costs. I have considered the rival submissions made at the Bar. To appreciate the contentions raised by the parties, it would be appropriate to quote relevant part of Section 13 of the Act of 1950 :- Section 13. Eviction of tenants:-(1)

Notwithstanding anything contained in any law or contract, no Court shall pass any decree or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant [xxx] so long as he is ready and willing to pay rent therefor to the full extent allowable by this Act, unless it is satisfied- [(a) that the tenant has neither paid nor tendered the amount of rent due from him for six month;] or (b) (c)
..... (d)
..... (e)
..... (f)
..... (g)
..... (h)
..... (i)
..... (j)
..... (k)
..... (l)

..... 6 (emphasis supplied) A bare reading of the said provision would reveal that the said provision starts with a non-obstante clause and inter-alia provides that no Court shall make any order in favour of the landlord whether in execution of the decree or otherwise evicting the tenant unless it is satisfied that any of the grounds enumerated under the said section from (a) to (l) exist. The said section cast an obligation even on a Executing Court to examine the judgment and decree passed by the trial court, which is sought to be executed and the tenant is to be evicted only if the satisfaction of the trial court while passing the decree for eviction on availability of ground of eviction, is recorded. The Hon'ble Supreme Court in the case of Smt. Kaushalya Devi (supra) while considering the provisions of Delhi and Ajmer Rent Control Act, 1952, wherein also provisions of Section 13 of the said Act provided for satisfaction about existence of ground of eviction before passing the decree was involved reiterated the law laid down by the said Court in Bahadur Singh v. Muni Subrat Dass : (1969) 1 SCWR 5 that a decree which did not record such a satisfaction was a nullity. A bare look at the relevant portion of the judgment passed by the trial court, as quoted here-in-before, would reveal that the trial court has merely recorded that the plaintiff has supported the facts indicated in the plaint in his statement; the

defendant has not contradicted the averments made by the plaintiff and has not produced any evidence in defence and, therefore, the suit of the plaintiff was proved and went on to 7 order eviction of the petitioner from the suit premises without thereafter recording his satisfaction as to existence of ground of eviction. As the learned trial court in its judgment and decree dated 27.8.1983 failed to record the satisfaction about existence of any of the ground enumerated in Section 13(1) of the Act of 1950, in view of the law laid down by the Hon'ble Supreme Court. The said decree dated 27.8.1983 was a nullity and cannot be executed. So far as the judgment of this Court in the case of Shyam Sunder (supra) is concerned, besides the fact that in the said case, the decree was passed by way of compromise before the appellate court and there was already a valid decree passed by the trial court finding the tenant in default in payment of rent, this court was of the opinion that the very fact that the tenant by way of compromise suffered eviction and availed the benefit of two years to stay in the disputed premises it cannot be said that the decree was passed in disregard of the provisions of Section 13(1). The factual position of the said case clearly distinguishes the present case, inasmuch as, while in the case of Shyam Sunder (supra), there was a satisfaction of ground of eviction recorded by the trial court and a compromise was entered before the First Appellate Court, in the present case there is no satisfaction at all recorded by the trial court and, therefore, the said judgment cannot be come to the aid of decree-holder- respondent. So far as the second issue raised by the petitioner 8 regarding the execution application being barred by Limitation under Article 136 of the Limitation Act. It is an admitted fact that the decree dated 27.8.1983 was amended on 1.12.1984 and the execution application was filed on 15.10.1996. The judgment reported at AIR 197.Kerala 14 relied on by the learned counsel for the petitioner was dissented in Fatimunnisa Begum v. Mohd. Zainulabuddin Saheb : AIR 198.Andhra Pradesh 355, wherein it was held that in view of the expression in Article 136 of the Limitation Act when the decree becomes enforceable which is not there in Section 48 CPC, the decree which was subjected to an amendment can be enforced only as amended and a period of limitation would start only from the date of amendment of the decree. The said judgment of Andhra Pradesh High Court has been approved by the Hon'ble Supreme Court in the case of Akkayanaicker (supra) and the Hon'ble Supreme

Court held as under:- 16. In our opinion, learned Single Judge in the above case has correctly interpreted the scope of Article 136. We agree with the view expressed that in case of amendment the original decree no longer retains its form and what is sought to be executed is the amended decree. The word enforceable has to be construed with reference to the decree that is sought to be enforced. In the present case, as stated above, the decree-holder filed an application for execution in the year 1973 itself but its proceedings were closed and adjourned sine die because of the legislative intervention which continued till the legislature enacted Act 40 of 1978 and provided for the scaling down of the debts obtained by the agriculturists including decrees already passed. In pursuance of this legislative enactment the decree passed in favour of the decree-holder was substantially scaled down and the decree was amended on 18-10- 1979 in terms of Act 40 of 1978. It is this decree which became enforceable. Prior to this date the decree-holder could not enforce his decree because of the legislative intervention. The original decree could not be enforced. It is only the amended decree which could be enforced. When there was a legislative bar for the execution of a decree and later due to legislative intervention the 9 decree had to be scaled down and amended then enforceability of decree shall commence when the bar ceases or from the date the decree is amended and scaled down. If the period of 12 years is counted from the date of the amendment of the decree then the execution petition filed by the decree-holder on 18-9- 1989 is within the period of limitation. In that view of the matter, law laid down by Kerala High Court in AIR 197.Kerala 14 is no longer good law and in view of the pronouncement of Hon'ble Supreme Court. The period of limitation has to be counted from the date of amended decree as it is the amended decree which is enforceable and not the original decree. In that view of the matter, it cannot be said that the execution application filed by the decree-holder -respondent was barred by limitation. In view of the above discussion, it is held that the judgment and decree dated 27.8.1983 as amended on 1.12.1984 passed in Civil Original Suit No.164/1980 (Bheru Lal v. Mst. Lehri Bai) is a nullity and, therefore, unexecutable. Consequently, this revision petition is allowed. The judgment dated 20.2.2003 passed by the Executing Court is set- aside. The objection petition filed by the petitioner under Section 47 CPC is allowed and the Execution Application No.16/1997 (Bheru Lal v. Mst. Lehri Bai) pending before the

Court of Civil Judge (Jr.Div.), Pali is rejected. No costs. (ARUN BHANSALI)J.

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