

Somnath Vs. Pradeen

Somnath Vs. Pradeen

SooperKanoon Citation : sooperkanoon.com/1047779

Court : Madhya Pradesh

Decided On : Jul-31-2012

Appellant : Somnath

Respondent : Pradeen

Advocate for Pet/Ap. : Shri. Tiwari

Judgement :

Civil Revision No.500 of 2010 31.07.2012: Shri Ashok Tiwari, Advocate for the applicants.

Shri Jaideep Sirpurkar, Advocate for the respondent.

Challenging the order dated 31.07.2009, passed in Execution Case No.85A/1991, by Civil Judge Class I, Pandhurna and also order dated 24.09.2010, passed in Misc. Appeal No.4/2009, by F.I.Rs. Additional District Judge, Chhindwara rejecting the objection to dismiss the execution proceeding on the ground of limitation, this revision has been preferred. 2.

On perusal of the record it reveals that in a civil suit filed by the applicant a compromise decree was passed between the parties. The terms of the compromise decree are reproduced as under: 1 & oknhx.k iz f roknh ds fdjk;s n kj gS A 2.oknhx.k ds vkf/kiR; dh nq d ku dk fdjk;k iz k lrdj jlhn iz f roknh oknhx.k dks ns x k ml ij fdjk;k ugha ck;s x k A 3.nq d ku ds iq u % fuekZ .

k fd;s tkus dh n'kk es s oknhx.k la ; q D r lgefr ls vuq e fr ns a x s vkS j ubZ nq d ku ikus dk vxz d z ; vf/kdkjh gks a x s A iz f roknh oknhx.k ds vkf/kiR; dh nq d ku es a n[kyva n kth dj rks M z Q ks M ugha djs x s a A 4.bl okn dk O;; mHk; i{k viuk viuk Lor% ogu djs a x s A 3.

The landlord after seeking permission for reconstruction on 11.04.2008 from the Municipal Council, Saunsar filed an execution proceeding, seeking eviction of the suit premises on 08.08.2008 as per compromise decree. On receiving the notice of the said execution applicant submitted an objection that the execution proceeding is barred by limitation as per Articles 135 and 136 of the Limitation Act, 1963, which was rejected by the trial Court as well as the Appellate Court, however, this revision has been preferred. 4.

Shri Tiwari, learned counsel for the applicant contends that in a case where the decree for mandatory injunction has been granted as per Article 135 of the Limitation Act for enforcement of such decree the period of limitation would be three years and the period begins from the date of the decree or where a date is fixed for performance from such date. In the present case looking to the nature of the decree Article 135 of the Limitation Act is applicable, therefore, the execution filed after about 14 years from the date of judgment and decree i.e. 01.07.1994 is No. maintainable and such execution is liable to be dismissed. In addition there to it is contended that as per Article 136 of the Limitation Act the execution of any decree other than the decree granting a mandatory injunction or for any order of Civil Court the limitation is 12 years, therefore, also the period of limitation has already been expired, thus, the execution canNo. be proceeded with. 5.

Per contra Shri Jaideep Sirpurkar learned counsel representing nonapplicant contends that the learned trial Court as well as the Appellate Court has rightly rejected the objection filed by the applicant, which was on the issue of limitation. It is urged by him that looking to the contents of the decree it is clear that the limitation would start when the landlord wants to reconstruct the suit shop. As the permission for construction of new shop by reconstructing old shop has been granted on 11.04.2008 and the execution has been filed on 08.08.2008, however, in terms of such decree the execution has been filed within the period of limitation

so prescribed, therefore, neither Article 135 nor Article 136 of the Limitation Act is having the application in the facts of the present case.

6. After hearing learned counsel for the parties and on perusal of the Clause3 of the judgment and decree which has been enforced by filing the execution on 08.08.2008 it is clear that in case respondent decodes for reconstruction then only the execution was permissible.

In the present case the respondent has applied for permission, to reconstruct the shop wherein the applicant is a tenant on 11.04.2008.

The execution was filed on 08.08.2008, thus, in my opinion in terms of Clause3 of the compromise decree passed on 01.07.1994 the execution has been filed within a period of limitation.

The argument of Shri Tiwari with respect to application of Article 135 of the Limitation Act is concerned, it is applicable to the decree of mandatory injunction.

The Article 136 of Limitation Act is applicable where the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court the period of limitation begins when the decree or order becomes enforceable. In the present case respondent was taken decision on 11.04.2008 for reconstruction of shop wherein the tenants is in possession, by taking permission. Thus, on reading of wordings of Clause3 of the judgment and decree it is clear that it has become executable on taking decision for reconstruction.

The execution has been filed on 08.08.2008, however, it has been filed within the period of limitation and the argument so advanced by Shri Tiwari is devoid of any substance, hence, liable to be repelled. 7.

In view of the foregoing, the revision filed by the applicant is devoid of any substance, hence, it is dismissed. The order passed by the Executing Court as well as the Appellate Court is hereby upheld.

In the facts of the case applicant shall bear the cost of nonapplicant which is quantified to Rs.2,500/.

(J.K. Maheshwari) Judge taj.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com