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Court : Allahabad

Decided On : Sep-25-2012

Judge : Saeed-Uz-Zaman Siddiqi

Appeal No. : Rent Control No. 106 of 2011

Appellant : Ram Khilawan

Respondent : Additional District Judge

Judgement :

Saeed-Uz-Zaman Siddiqi:

1. THESE two writ petitions relate to the similar matter regarding similar premises, the owner is common and have been filed by two tenants, hence, I proceed on to decide these writ petitions together.

2. BRIEFLY stated, the relevant facts for the purposes of deciding these writ petitions are that the petitioners are the tenants of part of premises, of which respondent no.3 is trustee and remaining respondent nos. 4 to 7 are trustees. The respondent nos. 2 to 7 filed S.C.C. Suit for eviction and recovery of arrears of rent and damages of use and occupation and ejection. During the pendency of the suit, the proceedings were adjourned on the application of the petitioner, subject to payment of costs on different dates. The petitioners were defendants before the learned Trial Court, did not pay the cost and continue to participate in the proceedings. When the costs of so many dates was accumulated, the plaintiffs

who are respondents before this Court, moved applications before the learned Trial Court for striking of the defence, against with the petitioners filed objections. The learned Trial Court heard both the parties and reached to the conclusion that the petitioners have willfully voided to comply with the orders of the Court and did not pay the costs. It was also argued before the learned Trial Court by the defendants, who are petitioners before this Court that they have paid the costs and the plaintiffs, who are respondents before this Court are suppressing the factum of payment of costs. After perusal of the file the learned Trial Court found that the pleas taken by the petitioners are wrong and cost has not been paid. At this juncture, it may be mentioned, that the prevailing practice in the subordinate courts is that whenever a cost is paid, the signatures or receiving is obtained on the margin of the order sheets. It was also pleaded before the learned Trial Court by the petitioners that they are ready to pay the costs, subject to condition that the excess amount which has been paid by them may be refunded. The learned Trial Court found that neither the cost has been paid, nor the excess amount has been paid. The petitioners were required to deposit cost through tender which has not been done by them and, the cost, if any, has been paid at a belated stage, which cannot be taken into account, nor the time to deposit can be enlarged under Section 148 of Code of Civil Procedure.

Both the petitioners filed revision before the leaned District Judge under Section 25 of Provincial Small Cause Court Act. The said revisions were numbered as S.C.C. Revision No.31 of 2011 and S.C.C. Revision No.16 of 2011, which were decided by the learned Additional District Judge, Court No.1 and Additional District Judge, Court No.13, Lucknow. Both the revisional courts have dismissed the revisions and confirmed the order passed by the learned Trial Court. Hence, the petitioners have preferred these writ petitioners.

I have heard learned counsel for both the parties and have gone through the records.

It is nobody's case that excessive amount of cost was imposed by the learned Trial Court. However, I have perused the orders which show that Rs.50/- or Rs.100/- has been imposed as cost for causing delay. The said amount of cost does not

appear to be penal in nature. Under Section 35-B of the Code of Civil Procedure it is provided that, if on any date fixed for hearing of a suit or for taking any step therein, a party to the suit obtains an adjournment for taking such step or for producing evidence or any other ground, the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the next date following the date of such order, shall be a condition precedent to the further prosecution of the defence by the defendant, where the defendant was ordered to pay such costs. The relevant extracts has been italicized. In view of this provision the learned Trial Court as well as the learned Revisional Court have not committed any error, either on the point of facts or on point of law in restraining the petitioners to participate in the proceedings of the suit.

The Hon'ble Apex Court has dealt with the matter in *Manohar Singh v. D.S. Sharma and another*, 2010 (28) LCD 175, in which it has been held:-

"This would mean that if the costs levied were not paid by the party on whom it is levied, such defaulting party is prohibited from any further participation in the suit. In other words, he ceases to have any further right to participate in the suit and he will not be permitted to let in any further evidence or address arguments.' 'We may also refer to an incidental issue. When section 35B states that payment of such costs on the date next following the date of the order shall be a condition precedent for further prosecution, it clearly indicates that when the costs are levied, it should be paid on the next date of hearing and if it is not paid, the consequences mentioned therein shall follow. But the said provision will not come in the way of the court, in its discretion extending the time for such payment, in exercise of its general power to extend time under section 148 of CPC. Having regard to the scheme and object of section 35B, it is needless to say that such extension can be only in exceptional circumstances and by subjecting the defaulting party to further terms. No party can routinely be given extension of time for payment of costs, having regard to the fact that such costs under section 35B were itself levied for causing delay."

Further it has been held:

"A conspectus of the above provisions clearly demonstrates that under the scheme of CPC, a suit cannot be dismissed for non-payment of costs. Non-payment of costs results in forfeiture of the right to further prosecute the suit or defence as the case may be. Award of costs, is an alternative available to the court, instead of dispensing with the cross-examination and closing the evidence of the witness. If the costs levied for seeking an adjournment to cross-examine a witness are not paid, the appropriate course is to close the cross-examination of the witness and prohibit the further prosecution of the suit or the defence, as the case may be by the defaulting party."

3. IN view of the facts of the case and the law as discussed above, the two courts below have rightly prohibited the petitioners to prosecute their defence. The arguments made to me in this case clearly show that the petitioners have not come to this Court to put their genuine grievances but has come with an intention to delay the proceedings and to indulge the respondents, who are landlords in complex litigation so that the petitioners may continue to occupy the premises. These writ petitions, I am constant to observe that how a determined and dishonest litigant can interminably drag on litigation to frustrate the result of a judicial determination. The history of this litigation shows nothing but cussedness and lack of bona fides on the part of the petitioners. The respondents committed perhaps the gravest blunder of life of letting out the suit property to the petitioners, who are occupying the tenanted premises at a monthly rent of Rs.200/- per month.

In *Ravinder Kaur v. Ashok Kumar and Anr.*, 2003 AIR SCW 7153, the Hon'ble Apex Court has held:-

"Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system."

In *T. Arivandandam v. T.V. Satyapal and another*, reported in AIR 1977 SC 2421, the Hon'ble Supreme Court has held:

"The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive."

4. LATER on in *Rajappa Hanamantha Ranoji v. Mahadev Channabasappa and ors*, reported in 2000 SCFBRC 321, the Hon'ble Supreme Court has held as under:

"It is distressing to note that many unscrupulous litigants, in order to circumvent orders of the courts adopt dubious ways and take recourse to ingenious methods including filing of fraudulent litigation to defeat the orders of the courts. Such tendency deserves to be taken serious note of and curbed by passing appropriate orders and issuing necessary directions including imposing or exemplary costs."

In view of the circumstances of the case and laid laid down by the Hon'ble Apex Court, I find that these writ petitions are next chapter in the litigative acrobatics of the petitioners. Such practices must not only be deprecated but an attempt deserves to be made to curb the growing tendency of the tenants to dilly delaying their eviction and, thereby, causing an impression that civil law remedies are time consuming and do not bother to protect the interest of the landlords. The petitions are accordingly dismissed with cost of Rs.10,000/- each, which shall be deposited by the petitioners before the learned Trial Court within 30 days from today, failing which it shall be recoverable as arrears of land revenue, through the learned Trial Court.

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