Sheshrao Vs. Asaram

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Court : Mumbai Aurangabad

Decided On : Feb-11-2014

Judge : A.I.S. Cheema

Appeal No. : Civil Revision Application No. 307 of 2013

Appellant : Sheshrao

Respondent : Asaram

Judgement :

Oral Judgment:

1. Heard learned counsel for both sides. The revision application is admitted and taken up for hearing finally with the consent of both sides.

2. The present revision application has been filed by the petitioner“Judgment Debtor against order dated 23.10.2013, passed below Exh.14, under Section 47 of the Civil Procedure Code, 1908 (hereinafter referred to as CPC for short) in Special Darkhast No.6/2012 pending before the Civil Judge, Senior Division, Beed, rejecting the application of petitioner“ Judgment Debtor and holding that the execution petition was maintainable.

3. The case of the petitioner is that, between the parties there was Special Civil Suit No.13/2006 for partition and separate possession and in that matter compromise took place on 6.12.2007. As per clause 4 of the compromise,

Judgment Debtor had to pay Rs.6 Lakhs to the respondent“Decree Holder before executing sale deed of the property concerned in favour of third party. It was stated in the clause that decree holder will give consent on sale deed only after receipt of the amount. According to the petitioner- Judgment Debtor, he paid the decree holder Rs.3,50,000/- on 6.11.2008 and got an agreement written, wherein amount was acknowledged. It was assured that, remaining amount of Rs.2,50,000/- would be paid on the date of execution of sale deed. The concerned sale deed came to be executed on 11.11.2008 and before that, the balance of Rs.2,50,000/- was paid to the decree holder in cash, and in view of the same, the decree holder and his family members signed on the sale deed as consenting party. In spite of such satisfaction of the compromise decree, after four years the decree holder filed the execution proceedings. Thus, the decree holder raised objections that the amount has been paid and the decree was satisfied and no more could be executed.

4. The trial Court allowed parties to lead evidence, and after hearing the parties, passed the impugned order rejecting the objections raised by the petitioner Judgment Debtor and directing the execution to proceed further. Thus, this Civil Revision Application has been filed.

5. Learned counsel for the petitioner Judgment Debtor referred to para 4 of the compromise (Exhibit A), which was recorded in the Special Civil Suit to raise the point that the decree holder was to receive the money and only then he would give consent and as the sale deed was executed (Exhibit B), which contains the signature of decree holder and his family members, it shows that the amount was received before the sale deed or else the decree holder would not have given the consent. At the time of arguments, looking to the judgment of the trial Court, it was felt necessary to refer to Exh.36, the agreement, vide which the petitioner Judgment Debtor claimed that on 6.11.2008 he had paid the decree holder Rs.3,50,000/-. Learned counsel for respondents has produced photo copy of the concerned document and the same is taken on record and marked "X" for identification. As per the learned counsel for petitioner- Judgment Debtor, by said agreement, the initial amount of Rs.3,50,000/- was paid on 6.11.2008 and balance amount of Rs.2,50,000/- was paid in cash on 11.11.2008 before the sale deed was

executed. Learned counsel referred to the evidence of Latabai, wife of respondent Decree Holder as recorded in the trial Court (Exhibit F) to point out her cross-examination, where she stated that, it was true that Rs.6 Lakhs were received and so her mother-in-law, husband and she had signed the sale deed. Relying on such evidence, learned counsel for petitioner has criticized the judgment of the trial Court to say that it was not maintainable and that, satisfaction of the payment of decretal amount should be recorded. The learned counsel for petitioner relied on the case of Industrial Credit and Development Syndicate Ltd. (supra) and ors. Vs. Khanderao Ramrao Shivalkar and ors., reported in 1999(2) Mh.L.J. 317 to submit that the Court can look into evidence regarding satisfaction of the decree and in the present matter, evidence to that effect is there by way of admission of the wife of respondent Decree Holder and the agreement Exh. 36.

6. Against this, learned counsel for the respondent Decree Holder submitted that the compromise (Exhibit A) para 6 shows that it was recorded that, in spite of the sale of the house, if the amount is not paid to the respondent Decree Holder, there would be charge of the respondent Decree Holder to the extent of his share on the concerned property and that the decree holder would be entitle to file execution. Thus, according to him, para 4 of compromise cannot be read in isolation and when the same is read along with para 6 of the said compromise, it is clear that the parties contemplated contingency where sale deed may get executed and the amount still remains due. Thus, according to him, only because the respondent Decree-Holder joined on the sale deed to consent the execution of the same, that does not mean that it could be presumed that the amount of Rs.6 Lakhs had already been paid. The learned counsel is pointing out from orders of the trial Court that evidence has been discussed as to how the petitioner- Judgment Debtor persuaded the decree holder that his mother was not feeling well and so, took the consent. Learned counsel has attacked Exh. 36, the agreement vide which it is claimed that Rs.3,50,000/- was paid, by pointing out that the stamp paper was purchased on 7.11.2008 and agreement purports to be of 6.11.2008, and the same was got notarized only on 19.11.2008. Learned counsel pointed out portions regarding witnesses were blank. Learned counsel claims that, the respondent Decree Holder has denied that said document was executed acknowledging receipt. The learned counsel for respondent Decree Holder argued

that the Decree Holder had claimed that his signature had been taken on blank paper. There is no witness of the document other than Judgment Debtor himself. According to the learned counsel for respondent Decree Holder, the present proceeding being a revision, there is limited scope and the evidence as has been brought before the trial Court and which has been discussed by the trial Court, cannot be re-appreciated. According to the learned counsel, the evidence of witness Latabai, on which petitioner- Judgment Debtor is placing so much reliance, cannot be helpful to the petitioner as a sentence cannot be read in isolation, and the preceding and succeeding portions of the evidence show that the witness consistently stuck to the stand that no such amounts had been received.

7. Order 21 Rule 1 and 2 of the Civil Procedure Code read as under:

"1. Modes of paying money under decree:-

(1) All money, payable under a decree shall be paid as follows, namely :-

(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank, or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court, which made the decree, directs.

(2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree holder either through the Court or directly to him by registered post, acknowledgement due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely :-

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment.

Provided that, where the decree holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.

2. Payment out of Court to decree-holder :--

(1) Where any money payable under a decree of any kind is paid out of Court, or a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree holder, the decree holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment debtor or any person who has become surety for the judgment debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree holder to show cause, on a day to be fixed by

the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(2-A) No payment or adjustment shall be recorded at the instance of the judgment debtor unless --

(a) the payment is made in the manner, provided in rule 1; or

(b) the payment or adjustment is proved by documentary evidence; or (c) the payment or adjustment is admitted by, on or behalf of, the decree holder in his reply to the notice given under sub-rule (2) of rule 1, or before the Court.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree." (Emphasis supplied)

8. Order 21 Rule 1 deals with payments made in Court, or by money order or through bank in the manner provided. Perusal of the above Rule 2 makes it clear that, where money is payable under the decree, or decree of any kind is otherwise adjusted in whole or part to the satisfaction of the decree holder, the decree holder is required to certify the payment or adjustment to the Court and the Court shall record the same. Option is given also the judgment debtor, who can inform the Court about such payment and adjustment. Sub-rule (2) provides even for application to the Court by judgment debtor, where-after the Court is required to issue notice to the judgment debtor to show cause why the payment or adjustment should not be recorded. Thus, a procedure has been prescribed for recording satisfaction of such decree where payment has been made out of Court. Sub-rule (2)(A) clearly provides that no payment or adjustment shall be recorded at the instance of judgment debtor unless, inter-alia, the payment or adjustment is proved by documentary evidence. Sub-rule (3) provides that a payment or adjustment which has not been certified or recorded as provided in the rule, shall not be recognized by any Court executing the decree. Order 21 Rule 1 and 2 have a clear scheme to ensure that in matters of payment, it should be as provided.

Purpose is clear. Legislature wanted to avoid controversies like the present one where disputed documents are brought after long period or cash payments are claimed.

9. In the present matter, as regards payment of Rs.3,50,000/-, the document relied on is Exh. 36. It is quite apparent that the document does not inspire confidence looking to the fact that the stamp paper is purchased on 7.11.2008 and the document purports to be on 6.11.2008, which is date prior to the purchasing of stamp. The trial Court has discussed evidence brought with regard to this document and has not found the same to be reliable.

10. Learned counsel for petitioner- Judgment Debtor tried to say that his objection to execution can be treated as under Order 21 Rule 2(2). Looking to Rule 2, it is apparent that, law expects Judgment Debtor to move Executing Court by application to get the payment or adjustment recorded. A person who has paid would be anxious to get the same recorded. Objection raised in execution after four years on basis of doubtful document can hardly inspire confidence.

11. Coming to the balance amount of Rs.2,50,000/-, Sub-rule 2(A) of Rule (2) of Order 21 itself creates a bar for recording adjustment of payment which is not evidenced by documentary evidence. Thus, although much is stated regarding the evidence, the satisfaction cannot be recorded in the manner claimed. Learned counsel for petitioner Judgment Debtor has relied on the case of "Industrial Credit and Development Syndicate Ltd." (supra). Even in that matter the Court had weighed the evidence and relied on evidence in the form of letter dated 3.2.1982 where the concerned attorney had clearly stated that the defendant has paid two installments. In that contingency, the oral evidence was weighed and satisfaction recorded. In the present matter, admittedly for Rs.2,50,000/- there is no document in support and for Rs.3,50,000/- the document relied on is not inspiring confidence.

12. As regards the claim that Latabai admitted in cross-examination that, after receipt of Rs.6 Lakhs, her mother-in-law, husband and she had signed the sale deed, it is rightly argued by learned counsel for respondent Decree Holder that, the portions of evidence preceding and succeeding portions show at various places that the illiterate witness kept on insisting that no such amount had been

paid. The evidence has to be read as a whole and the trial Court recorded that no important factor had come on record in the cross-examination of Latabai, the witness of Decree Holder. The present proceeding is a revision application, re-appreciation of evidence is not permissible. In view of provisions of Order 21 Rule 1 and 2 of CPC, for reasons stated also, such oral evidence cannot be resorted to. It is not a case that decree holder has admitted satisfaction in reply to notice under sub-rule (2) of Rule 1 of the CPC. If order 21 Rule 1 and 2 of CPC are not strictly enforced, there can be endless protracting of execution proceedings of alleged cash payments before witnesses, which is not in public interest.

13. For such reasons, I do not find that the judgment and order of the trial Court is illegal or that there is any material irregularity.

14. There is no substance in the revision application. Civil Revision Application is rejected with costs.