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Sarish Chandra Vs. the 17th Additional District Judge, Lucknow and Others

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Court : Allahabad

Decided On : Feb-17-1993

Reported in : AIR1994All117

Judge : J.K. Mathur, J.

Acts : Limitation Act, 1963 - Article 136; Code of Civil Procedure (CPC), 1908 - Sections 47; Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1957

Appeal No. : Writ Pent. No. 398 (MS) of 1993

Appellant : Sarish Chandra

Respondent : The 17th Additional District Judge, Lucknow and Others

Advocate for Def. : Chief Standing Counsel

Advocate for Pet/Ap. : Badre Habib Siddiqui, Adv.

Judgement :
ORDER

1. By this writ petition the petitioner seeks quashing of the orders passed by Munsif North, Lucknow on 16-11-1992 rejecting objection filed by the petitioner and another order passed by the 17th Additional District Judge on 20-1-1993 rejecting the revision filed by the petitioner against the aforesaid order.

2. Harish Chandra father of the petitioner and opposite party No. 4 was a tenant in house No. 18 Khyali Ganj, Lucknow, of which the opposite party No. 3 Smt. Kalawati is the landlady. She obtained permission from the District Magistrate under S. 3 of U.P. (Temporary) Control of Rent and Eviction Act, 1957 and instituted a suit for eviction of Harish Chandra in 1956. This suit was decided by a compromise arrived at between the parties on 22-7-1958 according to which the defendants admitted the need of the plaintiff and agreed to a decree being passed for eviction. It was, however, stipulated that the decree would be executed only when the tenant commits a default in payment of damages for a period of two months. It was in 1978 that opposite party No. 3 applied for execution of the aforesaid decree alleging that a default has been committed. This execution again ended by acompromise which inter alia provided that the possession of the first-floor of the house shall be given to the decree-holder while the tenant was permitted to live in the ground-floor for another period often years after which period the tenant was to vacate the ground-floor. The period of ten years since this -- compromise having elapsed, the decree-holder again put her decree to execution in September, 1990.

3. The original judgment-debtor Harish Chandra having died in the meantime execution was sought against the petitioner and opposite party No. 4 his legal representatives. The judgment debtor filed an objection u/S. 47, CPC against the execution of the decree. That objection was heard and rejected by the learned Munsif by the impugned order as indicated above. A revision filed against this order was dismissed by the learned Additional District Judge.

4. In this petition the executability of the decree by an application moved in September, 1990, has been challenged firstly on the ground that the decree having been passed in 1958 could not be executed in 1990, the execution being beyond time. The second contention raised on behalf of the petitioner was that the decree having been struck of in full satisfaction in 1978, the decree stood satisfied and was no longer executable.

5. It was also argued that the compromise filed in 1978 to the extent it sought to extend the period of limitation for execution of the decree was bad being against

the provisions of law.

6. The last contention of the petitioner may be disposed of first in view of fact that the remaining contentions depend upon the legality of the compromise.

7. The part of the compromise objected to and given above states that the tenant was to vacate the accommodation on expiry of ten years from the date of compromise. This clause could not be intended to extend the period of limitation. It only permitted some time to the judgment-debtor to comply with the terms of decree. No provision of law could be pointed out by the learned counsel for the petitioner to show that the decree-holder could not permit time to be given to the judgment-debtor to comply with the terms ofthe decree. In case by operation ot law period of limitation was extended, that by itself would not be a reason to hold the compromise to be against the terms of law.

8. An agreement cannot be entered into if it is against law. There should be specific provision of law. In absence of such a provision which prohibits extension of the time for satisfaction of a decree to be given to the judgment-debtor by the decree-holder, that agreement cannot be said to be against the specific provision of law and would not be bad on that score.

9. In fact the provision of Art. 136 itself stipulates that the period of limitation fy execution of a decree would not only depend upon the date on which the decree is passed, but is also dependant upon any order passed subsequently as would be seen presently. It necessarily recognises that there can be a subsequent order for compliance with the terms of the decree and if such an order is based upon an agreement between the parties, it cannot be said to be against any provision of law.

10. Coming to the main contention relating to the limitation, the provisions of Art. 136 of the Limitation Act to the extent they stipulate the time from which the period begins to run are reproduced below:--

'Time from which period begins to run --Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of

money of the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.'

This period of limitation has been provided for execution of any decree 'other than adecree granting a mandatory injunction' or order of any civil court.

11. The period of twelve years, therefore,would start running either from the date of decree or the order becomes enforceable or from the date of any subsequent order directing delivery of any property to be made at a certain date, in addition to others which are not relevant for the purposes of this case.

12. In this case the decree was admittedly passed initially in the year 1958. An adjustment was entered into in 1978 by which a period often years was provided for eviction from a part of the house, the other part having been vacated as a result of that execution.

13. This compromise was recorded by the court and was made part of the order. As a consequence the order which rested on the compromise between the parties directed the judgment-debtors to deliver property at the expiry often years from the date on which the compromise was entered into and in terms of the aforesaid provision contained in the Limitation Act, the starting point of the period of twelve years stipulated in Art. 136 would start running from September, 1988 when the period of ten years expired. The execution is thus not time barred.

14. On behalf of the petitioner it was urged that by the aforesaid compromise and the order passed by the court directing execution to be dismissed in full satisfaction, the decree stood finally satisfied and the stipulation that the judgment-debtor was to hold the property for a period of ten years would be regarded only as a fresh agreement.

15. The nature of the rights created under the aforesaid agreement would entirely depend upon the intention of the parties as made out by the terms of the

agreement itself. The judgment-debtor vacated half of the house and wanted ten years period to vacate the other part of the house. The amount was to be paid by him periodically which was described as damages and not rent. This merely provided for the mode in which the decree was to be discharged. This could not be taken to be creating a.fresh lease in respect of part of house which remained in the possession of the judgment-debtor.

16. In an identical situation which arose in Smt. Kalloo v. Dhakadevi, AIR 1982 SC813, a decree for eviction of the judgment-debtor from a shop was passed in 1960. He filed an application for execution for third time in 1966. During the proceedings of execution the parties entered into a compromise in 1968 according to which the judgment-debtor vacated half the shop and was to vacate the remaining half on 31-12-1972. He also agreed to pay damages at a specified rate. The execution application was made in 1975 for obtaining the possession of the part of shop. This was objected to by the judgment-debtor.

The Supreme Court construing-the compromise held that it had lawfully been ei^ered into and that it did not amount to creating any fresh lease but only granted time to the judgment-debtor to vacate the premises in pursuance of the same decree.

17. The compromise having been validly recorded and having been given effect to by the court, the court did provide for a date on which the property was to be delivered and in accordance with Art. 136 of the Limitation Act referred to above, the limitation would start running only from the date on which the possession of property was to be delivered in terms of the aforesaid order and the execution application moved in 1990 was, therefore, not barred by time.

18. Lastly it was urged that the execution application having been struck off to its full satisfaction, it had been satisfied and as long as that order subsists, any fresh execution cannot be maintained.

19. The order passed by the Munsiff North, Lucknow on 22-8-1980 reads as follows:--

^^nksuksa i{kdkjksa us vkt laf/k&i;= x 31izLrqr fd;k gS A mldk lR;kiu fd;k x;k A

fu'iknu okn laf/k&i;= dsvuqlkj fuLrkfjr fd;k tkrk gS A laf/k&i;= vkns'k dk vax gksxk A vkKfIr iw.kZlaLrqfr ds lkFk lekIr dh tkrh gS A

It specifically says that the execution proceedings are being decided in terms of the compromise and that the compromise would be a part of the order. It, however, goes on tosay that the execution was being struck off in full satisfaction.

20. Only because the word 'full satisfaction has been used would not render the earlier part of the order non-existing. An order has to be read as a whole to find what it means, when its meanings are to be ascertained. When the court specifically stated that the execution was being determined in terms of the order, that was speaking of term in which the application for execution was being decided. The decree did remain executable. It is not contended at all by the parties that before this order was passed the decree had been fully satisfied. Merely using the words, therefore, that the execution was being stuck off in full satisfaction did not either describe the correct state of things which existed at that time nor would they negate the effect of the speaking order preceding it. The entire reading of the aforesaid order would show that it was neither intended to nor could have the effect of striking off the execution in full satisfaction.

21. In the case of Mitthan Lal v. Smt. Parwati, AIR 1977 Alld 236 relying on the case of Pentapati China Venkanna v. PentapatiBangararaju, AIR 1964 SC 1454, it was held that the expressions used by the execution court like 'closed for1 statistical purposes', 'struck off, 'recovered'etc. do not necessarily mean that the execution has been finally disposed of.

22. In view of above merely because the learned Munsif has appended the words 'struck off in full satisfaction' it would not necessarily mean that a decree has been satisfied and no further execution can be taken.

23. Considering the contention raised on behalf of parties, there is no reason at all to interfere with the orders passed by the courts below. This petition is, therefore, hereby dismissed.

24. Petition dismissed.

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