

Kishan Bhadur Vs. iind Additional District Judge, Dehradun and Others

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Court : Allahabad

Decided On : Sep-13-1998

Reported in : 1999(4)AWC3473

Judge : A.K. Yog, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 47; Provincial Small Causes Court Act - Sections 25; Limitation Act - Sections 5; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 38888 of 1999

Appellant : Kishan Bhadur

Respondent : iind Additional District Judge, Dehradun and Others

Advocate for Def. : S.C., R.R. Shivhare, Adv.

Advocate for Pet/Ap. : Rajesh Tandon, Adv.

Judgement :

A. K. Yog, J.

1. Kishan Bahadur has filed this petition to challenge judgment and order dated 4th August 1999 passed by the Court below under Section 25, Provincial Small Causes Court Act in S.C.C. Revision No. 53 of 1996, Kishan Bahadur v. Narendra

Rai Gupta (Annexure-6 to the writ petition) and judgment and order dated 12th December, 1996 passed by Judge Small Causes Court, Dehradun rejecting application/ objection filed by the petitioner under Section 47, Code of Civil Procedure against J. C. C. Miscellaneous Case No. 21 of 1993 (Annexure-5) to the writ petition) arising from Suit No. 28 of 1990, which was decreed by the Judge Small Causes Court. Dehradun vide judgment and order dated 2nd February 1993 whereby Small Causes Court Suit No. 28 of 1990, Narendra Rai Gupta v. Kishan Bahadur, was allowed and decreed requiring the tenant-petitioner to vacate the accommodation and pay arrears of rent, costs of notice etc.

2. Briefly stated, the facts of the case are that Suit No. 28 of 1990 was filed by Narendra Rai Gupta and another (plaintiffs-respondent Nos. 3 and 4). Petitioner filed written statement, but thereafter he did not appear before the Court. Consequent whereupon an ex parte judgment and order dated 2nd February 1993 was passed. Against the said order Revision No.. 53 of 1996 along with application under Section 5, Limitation Act was filed. Application under Section 5, Limitation Act was rejected. Revision was also dismissed as not maintainable. Petitioner-tenant challenged the said order of the revisional court by filing civil Mise. Writ Petition in this Court and the same was dismissed. Thereafter he filed Special Leave Petition, which was also dismissed. These facts have been averred in Paragraph Nos. 9 and 10 of writ petition copy of the order dated 20th December. 1995 passed on petition for Special Leave Petition (Civil No. 351 of 1996) passed against the aforesaid order of High Court in Writ Petition No. 37306 of 1995 had been produced by Sri R. R. Shivhare. Advocate and the same have been perused as learned counsel for the petitioner has not disputed the same.

Copies of the judgment and Writ Petition No. 37306 of 1996 have not been annexed.

3. It is stated at the Bar that on behalf of Kishan Bahadur a request was made to the learned single Judge who heard the aforesaid writ petition to grant three months' time to vacate the premises in question. And the learned single Judge, proceeding on that basis, granted three months time to vacate the premises in question provided an undertaking was filed before respondent No. 2.

4. In view of the fact that Revisional order dismissing application under Section 5. Limitation Act as well as Revision under Section 25 Provincial Small Causes Court Act against the judgment and order of trial court directing eviction of Kishan Bahadur before the executing court and in Execution Case. No. 10 of 1993, Narendra Raj Gupta v. Kishan Bahadur he filed an application dated 18th October 1993 along with an affidavit sworn by Kishan Bahadur himself. Relevant contents of the application dated 18th October 1993 reads as follows :

'For the reason disclosed in the annexed affidavit 18th October, 1993 it is prayed that the J. D. be allowed 60 days time to vacate the disputed premises. Dated : 18.10.1993 Sd/-Dehradun J. D./DefendantThrough counsel'

5. For convenient perusal of Paragraphs 1 to 6 of the affidavit dated 18th October, 1993 of Kishan Bahadur (Petitioner) filed in S. C. C. Execution Case No. 10 of 1993 are reproduced :

'1. That the deponent is the J. D./Defendant and the original S.C.C. Suit was decided against the J.D./Defendant and as such he is fully acquainted with the facts deposed below.

2. That the D. H. filed above said execution for the eviction of the J. D. from disputed property which was allowed by the learned court but J. D. did not handover the possession.

3. That thereafter the D. H. was allowed to take possession through court Amin with the help of Police.

4. That J.D./Defendant is a poor man and he is prepared to vacate the disputed property and wants 60 days time so that some alternative accommodation be found out.

5. That J.D./Defendant hereby assures that he will vacate the disputed premises by 60 days time and he admits all the order and Judgment of the Court lawful.

6. That time be allowed on humanitarian grounds.'

6. It will be noted that sixty days time had expired long back. It will be also noted that the time asked by Klshan Bhadur before the High Court in Civil Misc. Writ Petition No. 37306 of 1995 has also expired a couple of years back.

7. Learned counsel for the petitioner has referred to the following decisions :

1. 1981 ARC 201 (Paragraph 10), Uma Shanker v. Narbada Devi) ;and
2. 1984 (1) ARC 70, Somiullah v. 1st Addl. District Judge, Ballia and others.

Said decisions do not deal with the extent of interference by executing court while entertaining objection under Section 47, Code of Civil Procedure and also does not deal with Section 47, Code of Civil Procedure.

8. Learned counsel for the petitioner referred to AIR 1972 SC 1371 (Paragraph 19), B. B. and Solanki Bhunjl and another. Supreme Court in this case has cautioned that this power that It is duty bound to find out the true effect of the decree. The ratio laid down in the case is that for proper and effective adjudication of the decree. Court may look into the record of the case and the pleadings. The said decision, however, did not permit executing court to go into the merits and propriety of the decree. Similar view is being taken by the Supreme Court in the case reported in 1993 SCFBRC 250 (Hiralal Moolchand Doshi v. Barot Roman Lal Ranchhoddas) (Paragraph 17) of which is reproduced :

'17. The Court also considered the extent to which the executing court could go into the matter. It was observed that if the decree on the face of it discloses some material, on the basis of which the Controller could be satisfied with regard to the existence of a statutory ground for eviction, it was not open to the Court to go further and it must accept it and execute the decree as it stands. If on the face of it, the decree does not show the existence of such material or jurisdictional fact, the executing court may look to the original record of the trial court to ascertain whether there was any material furnishing a foundation for the trial court's jurisdiction to pass the decree it did. The moment it finds that prima facie such material existed, its task is complete. It is not necessary for it to go further and question the presumed or expressed finding of the trial court on the basis of that

material. All that It has to see is whether there was some material on the basis of which the rent court could have as distinguished from must have been satisfied as to the statutory ground for eviction. To allow the executing court to go beyond that limit, would be to exalt it to the status of a super Court sitting in appeal over the decision of the rent court.'

The above passage clearly shows that tenant-petitioner in the instant case is not entitled to challenge the decree as being nullity.

9. However, in view of the facts already noted above, the petitioner is not entitled to re-again the issue once it sought time from executing court and thereafter gave an undertaking before the High Court. One should not lose sight of the fact that the order of the Court below by filing a petition under Article 226. [Constitution of India](#). In view of the attending circumstances of the present case as well as conduct of the tenant-petitioner I do not find the present case to be a fit one warranting exercise of jurisdiction under Article 226, [Constitution of India](#).

10. The Writ Petition, accordingly, fails and is dismissed. The Petitioner is directed to hand over vacant possession forthwith and for this purpose contesting respondent may approach the Court below for seeking possession in accordance with law. The Court below shall pass necessary orders and ensure that possession is handed over to the decree-holder forthwith.