

Bherulal Vs. Ramautar

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Court : Madhya Pradesh

Decided On : Feb-27-1980

Reported in : AIR1981MP181; 1981MPLJ333

Judge : G.L. Oza and ;P.D. Muley, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47 - Order 21, Rule 2 and 2(3)

Appeal No. : Civil Revn. No. 238 of 1977

Appellant : Bherulal

Respondent : Ramautar

Advocate for Def. : Nawab Bahadur, Adv.

Advocate for Pet/Ap. : K.S. Vaidya, Adv.

Judgement :

Oza, J.

1. This revision petition was heard by a learned Single Judge of this Court and after hearing the case the learned Judge felt that the question referred to us needs the decision of a larger Bench. Consequently the matter has been placed before us.

2. The question referred is: --

'Whether on the facts and in the circumstances of this case the judgment-debtor can resist the execution of the decree without any application being made by him under Order. 21 Rule 2 CPC and the adjustment and/or satisfaction of the decree being recorded by the court, which passed the decree?'

8. The facts necessary to dispose of this matter are that the petitioner obtained a decree for ejectment against the non-applicant in Civil Suit No. 7/66-A. This decree was passed on 6-5-1986. The decree was for ejectment and arrears of rent. On 7th July, 1976, this decree was put into execution with prayer for eviction of the non-applicant. The non-applicant raised certain objections to the execution by saying that the decree-holder had obtained possession of the decretal premises and after having obtained possession thereof the decree-holder entered into a fresh agreement with the non-applicant and let out these premises to him on enhanced monthly rent of Rs. 12/-. It was therefore contended by the judgment-debtor non-applicant that the non-applicant has been paying rent at the rate of Rs. 12/- per month but no receipts were passed and as the decree-holder wanted to further enhance the rent to which the non-applicant did not agree, the present execution petition has been filed. It was therefore contended that the decree has been satisfied and a fresh contract of tenancy has been entered into and the non-applicant judgment-debtor is in possession under a new contract. It was therefore contended that the decree for eviction could not be executed against him.

4. The executing Court rejected this objection without any inquiry by holding that as the objection pertains to adjustment of the decree and the adjustment has not been certified under Order 21, Rule 2 of the Code of Civil Procedure within the prescribed period of limitation therefore, it could not be considered. Against this, an appeal was preferred and in this appeal the Additional District Judge, Indore set aside the order passed by the executing Court and directed that the objection be enquired into. Aggrieved by this order the present revision petition was filed. In the revision petition it was contended that as the objections of the judgment-debtor fall within the ambit of Order 21, Rule 2 and as admittedly they have not been certified in accordance with the procedure prescribed under Order 21, Rule 2 within the

period of limitation no inquiry could be conducted.

5. It is apparent from the objections raised by the judgment-debtor non-applicant that they are mainly two: (i) that the decree has been satisfied as the possession was restored to the decree-holder of the premises: and (ii) that the non-applicant has been put into the premises under a fresh agreement on enhanced rent of Rs. 12/- per month. It is in this context that the learned Single Judge -who heard the revision petition wanted an answer from a larger Bench to the question noted above.

6. Learned counsel for the petitioner contended that the language of Order 21, Rule 2 CPC clearly indicates that any adjustment of the decree wholly or in part has to be certified as contemplated under Order 21, Rule 2 within the period of limitation prescribed under Article 125 of the Limitation Act. And that not having been done, it cannot be now gone into. In support of this contention, learned counsel placed reliance on the decision in Civil Revision No. 997/73 (Prataprai v. Hemandas) decided on 16-9-1974 at Jabalpur and short-noted in 1975 MPLJ (Notes) 14. He frankly conceded that a contrary view has been taken in the case reported in Mahammad Ali v. Bahadur Singh, 1977 Jab LJ 29 and in that decision reliance has been placed on a Division Bench decision of this Court in S. S. Nirmalchand v. Smt. Parmeshwari Devi, AIR 1958 Madh Pra 333.

7. Learned counsel for the non-applicant, on the other hand, contended that the Division Bench decision clearly lays down that the right of a party to enter into a fresh agreement could not be fettered by the provisions of Order 21, Rule 2 which are only Divisions about procedure. Under Section 47 of the Code of Civil Procedure, the executing court is bound to consider any objections pertaining to execution, discharge or satisfaction of the decree. For satisfaction, the procedure is prescribed under Order 21 Rule 2. But whether a decree could or could not be executed, can always be gone into under Section 47 C. P. C. independently of Order 21, Rule 2. He contended that their Lordships of the Supreme Court in M. P. Shreevastava v. Mrs. Veena, AIR 1967 SC 1193 considered these two provisions. He also contended that in view of the Division Bench decision of this Court reported in AIR 1958 Madh Pra 333 (supra), which is also the view in the decision

reported in *Chitra Talkies v. Durga Dass Mehta*, AIR 1973 All 40, the judgment-debtor can raise the objections that he has raised.

8. Section 47 of the Code of Civil Procedure provides:

'47. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution discharge or satisfaction of the decree. shall be determined by the Court executing the decree and not by a separate suit

This section clearly provides that all questions arising between the parties to the suit pertaining to execution, discharge or satisfaction of the decree will be decided by the executing court. Order 21, Rule 2 of the Code of Civil Procedure runs :--

'21.2. (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 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.

(2A) 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, or on 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 recognized by any Court executing the decree.'

This provision prescribes the procedure about recording of satisfaction of the decree in whole or in part and Sub-rule (3) of this provision provides that any payment or adjustment which has not been certified or recorded shall not be recognized by any Court executing the decree. A reading of the language of Section 47 and Order 21, Rule 2, C. P. C. clearly indicates that Section 47 confers jurisdiction on the executing court to determine questions that may be raised pertaining to execution, discharge or satisfaction of a decree whereas Order 21, Rule 2 provides for the procedure for recording and certifying the satisfaction of the decree in whole or in part.

9. This question was examined by their Lordships of the Supreme Court in AIR 1967 SC 1193 (supra) and it was observed: (at p. 1195)

'But Order 21, Rule 2 prescribes a special procedure for recording adjustment of a decree, or for recording payment of money paid out of Court under any decree. However the plenary power conferred by Section 47 C. P. Code upon the Court executing the decree to determine all questions arising between the parties to the suit in which the decree was passed, and relating to execution, discharge or satisfaction of the decree, is not thereby affected. Whereas Order 21, Rule 2 deals with the procedure to be followed in a limited class of cases relating to discharge or satisfaction of decrees, where there has been payment of money or adjustment or satisfaction of the decree by consensual arrangement. Section 47 C. P. Code deals with the power of the Court executing the decree.'

It is therefore clear that the power of the executing Court to determine the questions is different than the procedure prescribed in Order 21, Rule 2. By reading the language of Order 21, Rule 2 Sub-rule (3) it can only be contended that if the satisfaction of the decree has not been certified as prescribed under Order 21, Rule 2, the executing Court could not go into that question; and to that extent with regard to the satisfaction of the decree the powers of the executing Court may be affected; but whether the decree could or could not be executed is a question altogether independent of Order 21, Rule 2 and if that question is raised,

it could not be contended that the executing Court cannot go into that question because of Sub-rule (3) of Order 21. Rule 2 of the Code.

10. Learned counsel for the petitioner placed reliance on the decision in Civil Revision No. 997 of 1973 (1975 MPLJ (Notes) 14) (supra). Unfortunately, the full report has not been placed before us; but what has been noted in the short-note reads:

'An adjustment is an agreement which extinguishes the decree in whole or part and results in satisfaction of the decree. When by an agreement the parties enter into a fresh contract of tenancy and thereby create a right in the tenant to continue in possession, a decree for ejectment passed earlier against the tenant gets extinguished and, therefore, such an agreement amounts to an adjustment of the decree.'

And it is on this passage that great emphasis was laid by learned counsel for the petitioner. We do not have the agreement which was entered into between the parties in that case, nor is there anything to indicate whether the agreement was intended to satisfy the decree. So far as the facts of the case in hand are concerned, it has been specifically alleged by the judgment-debtor in his objection petition in these words:-

^ g- vtZnkj us g- dtZnkj ds f[kykQ dctkfeyus ckc n tks izorZu izLrqr fd;k gS ml ckr g- dtZnkj vkifk izLrqr djrk gS fd%lnj dh fMh dk IsfVIQsD'ku gks pqdk g SA vkSj g- vtZnkj dks oknxzLr txg dk dCtkfey pqdk Fkk pwafd g- vtZnkj dks mijksDr fMh ds vuqlkj dCtk fey pqdk gksus IsizorZu dh dk;Zokgh py ugh ldrh gS] lcc ctkojh fujLr dh tkosaA

2 ;g fd g- vtZnkj us fMh vuqlkj dCtkizklr djus ds ckn blh dtZnkj dks :i;s 2 egkokj ds vuqlkj jlnj txg fdjk;s Isiqu% mBk nh gS] vkSj ml ds vuqlkj vkt rd fdjk;k clwy djrk pyk vk jgk gS] vkSjfdjk;s dh jlhns og nsrk ugha gS] vkSj fQj Is fdjk;k cln Bhagwati Maharai v. Shambhu Nath, AIR 1960 All 562 it was held that a promise by the decree-holder not to execute an appellate decree if the judgment-debtor agrees not to file an appeal against it is a compromise of a dispute and not an arrangement resulting in the satisfaction or the extinguishment of the decree. Such

a compromise is enforceable under Section 47 and does not fall within the purview of Rule 2 of Order 21 of the Code of Civil Procedure. This decision also supports the view that where an agreement merely renders the decree unenforceable without affecting its terms, the matter does not fall within the purview of Rule 2 of Order XXI of the Code as there is no adjustment of the decree, and it is open to the Court under Section 47 to investigate the plea of the judgment-debtor relating to the agreement.

I therefore, hold that the Courts below were in error in holding that the agreement set up by the appellant amounted to an adjustment of the decree and could not be investigated as it had not been certified-recorded within time as required by Sub-rule (3) of Rule 2 of Order XXI.'

In his decision reliance was placed on the Division Bench decision reported in AIR 1958 Madh Pra 333 (supra). In that case the Division Bench of this Court considered the impact of Order 21, Rule 2 and Section 47 of the Code and observed :-- (at p. 337)

'On this point also, it appears to us that the question whether the agreement to extend the time for payment was an adjustment is really not material for the decision of the appeal. It is only when a decree is adjusted in whole or in part that Order 21, Rule 2, of the Code of Civil Procedure intervenes and directs an executing Court to record it. If the adjustment is not recorded the only result is that the executing Court cannot take notice of it.

But this is a disability attaching only to the executing Court: See *Raghoji Parkaji v. Vithoba*, AIR 1937 Nag 217. To such an adjustment, Order, 32, Rule 7, would be applicable if a minor is involved in the ground that execution proceedings are a continuation of the suit:

See *Tulsiram v. Kevalram*, AIR 1943 Nag 231; *Muthelakkammal v. Narippa Reddiar*, ILR 56 Mad 430 : (AIR 1933 Mad 456 (FB)) and *Virupax v. Shidappa*, (1902) ILR 26 Bom 109. Order 21, Rule 2, however, only applies to adjustment of a decree, not to any other contract which effects its terms: As already observed, the Code of Civil Procedure puts no restriction on the parties' liberty of contract

with reference to their rights and obligations under the decree. Even if, therefore, an agreement may not involve an adjustment of a decree but if it affects the question of execution, discharge or satisfaction thereof, it will be required to be investigated and adjudged in proceedings under Section 47.' (Underlining mine).

The underlined passage in the decision quoted above clearly goes to show that Order 21, Rule 2 does not restrict the right of a party to enter into a contract; and if an agreement does not involve any adjustment of a decree but affects the question of its execution, it will have to be enquired into under Section 47 of the Code of Civil Procedure.

12. These observations, therefore, clearly go to show that the first part of the objection about satisfaction and handing over of possession to the decree-holder may be affected by the provisions of Sub-rule (3) of Rule 2 of Order 21. But the second objection quoted above clearly refers to an agreement apart from the decree which comes in the way of the execution of the decree and thus pertains to the 'execution of the decree' and will have to be enquired into. The decision in *Devidas Ganpati v. Shree Bala Saheb Sansthan*, AIR 1948 Nag 374, to which also a reference was made, is in no way of any help because it only holds that Order 21, Rule 2 will apply to a decree for eviction also and there appears to be no doubt about this proposition.

13. It is therefore clear that under Section 47 of the Code of Civil Procedure the executing Court is conferred with powers to determine objections with regard to three things: (i) execution, (ii) satisfaction, and (iii) discharge. So far as 'satisfaction' is concerned, a specific procedure has been provided under Order 21, Rule 2 and if that is not followed, Sub-rule (3) of Rule 2 provides that the Question cannot be gone into by the executing court. But there could be no difficulty when the objection pertains to the 'execution' of the decree and as discussed earlier the objection No. 2 raised by the non-applicant judgment-debtor clearly pertains to the execution of the decree. Similar is the view taken in 1977 Jab LJ 29 (supra) and that also finds support from the decision of a Division Bench of this Court reported in AIR 1958 Madh Pra 333 (supra).

14. Our answer to the question there-fore is that in the facts and circumstances of this case, the judgment-debtor can resist the execution of the decree without any application being made by him under Order 21. Rule 2 of the Code of Civil Procedure and adjustment and/or satisfaction having been recorded by the Court which passed the decree.

15. In the light of the answer given by us the revision petition shall be disposed of by the learned Single Judge before whom in normal course the petition may be listed for final hearing.

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