

Girdhari and ors. Vs. Ramprasad

Girdhari and ors. Vs. Ramprasad

SooperKanoon Citation : sooperkanoon.com/500473

Court : Madhya Pradesh

Decided On : Aug-06-1982

Reported in : AIR1982MP232

Judge : K.N. Shukla, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 1

Appeal No. : Misc. Appeal No. 21 of 1977

Appellant : Girdhari and ors.

Respondent : Ramprasad

Advocate for Def. : S.D. Sanghi and ;M.L. Agrawal, Advs.

Advocate for Pet/Ap. : R.S. Garg, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

K.N. Shukla, J.

1. This Misc. Appeal by the judgment-debtors is directed against the order passed by District Judge, Indore on 19-1-1977 in Misc. Appeal No. 32 of 1975.

2. Respondent Ramprasad, who is the plaintiff decree-holder, had instituted a suit against the appellants for possession of certain lands and mesne profits. The suit was dismissed by the trial Judge and also by the first appellate Judge. Respondent Ramprasad preferred a second appeal before the High Court. During the pendency of the appeal parties filed a compromise petition and in terms thereof a decree was passed on 20-11-1973 by the High Court. The decree of the High Court in Second Appeal is reproduced below :

'DECREE IN TERMS OF COMPROMISE : It is ordered that the decree passed by the lower appellate Court is set aside, and instead, the following decree is passed in terms of compromise arrived at between the parties, vide I. A. No. 1367 of 1973.

^~ fjLkUMs UV l~-] 2]] ;k rksvihyk UV dks nkfo;k dqy f'kHkwfe dk dCtk 'krsZ pwdus ij rkjh[k&'&" ds i'pkr nsaxs ;k fuEukuqlkj :i;s 'OO&OO; dh /kujkf'kvnk dj nsaxsA :i;s OOO&OO; rkjh[k 2'&&' rd :i;s2OO&OO; rkjh[k &'&" ;fn ij crk, vuqlkj fu;rrkjh[kksa ij mijksDr jdesa vnk dj nh tkosxh rks vihys UV nkfc;k f'k Hkwfedk dCtk izklr ugha dj ldsxk o nkfo;k f'k Hkwfe ij fjLkUMs UV ua]&2&& iUnzg ' iV yxku dh jde dk eqvкотk vihys UV dks pqdk,fcuk gh viuk ukekUrj.k dj ldsxsa o bl gsrq vihys UV dqy vko';d dk;Zokgh muds fgres djus ds fy, ck/; jgsxk fdUrq ;fn fnukad &'&" rd iqjh jdeugha pqdkbZ xbZ rks Hkweh Lokeh ukrs vfiys UV dks nkfo;k f'k Hkwfe dk dCtkfjLkUMUVI~ - &2&& ls mlh le; rkjh[k &'&"ds i'pkr fMh dh ctkojh djds izklr djus dk iwjk vf/kdkj jgsxkA

2- rhuksa dksVksZ dk vkt rd dk dwy [kpZ izR;sdikVhZ viuk] viuk Lo;a HkxrsxhA bl jkthukesa ls nksuksa ikVhZ ds dwy >xM+sleklr gks tkr gS o ij crkbZ gqbZ 'krksZ ds vfrfjDr u rks vihys UV dkfjLkUMsUVI~ &2&& ij vkSj u fjLkUMsUVI &2&&dks; vihys UV ij fdlh Hkh vU; izdkj dk dksbZ ysuk nsuk jgk gS] o bl jkth ukesa lsdqy lQkbZ gks pqdh gS ;g ekudj pyk tkosxkA

Plaintiff's suit is decreed in terms of compromise. The parties shall bear their own costs, throughout as is also agreed between them.

The compromise application is attached herewith as Annexure A of the decree.

The costs of this appeal, detailed below shall be borne by the parties as incurred.

The costs of the first appeal parties to bear their own costs and the costs of the original suit parties to bear their own costs.'

3. Judgment-debtor Girdhari (appellant No. 1) applied to the Court on 24-4-1974 for accepting the deposit of Rs. 3,000. The Court directed the Nazir to receive the amount. It is not disputed that actually the amount was deposited in the Civil Court deposit on 26-4-1974 i.e. on the next date because deposits as per the High Court Rules and Orders (Civil) are accepted in the Nazarat only up to 2 p.m.

4. The next instalment has fallen due on 1-5-1975 which admittedly was declared as holiday. On the next date i.e. on 2-5-1975 judgment-debtor - Girdhari applied to the Court for accepting the deposit of Rs: 2,001. On the application the Judge concerned directed the Nazir to receive the amount for deposit in the C.C.D. Again, it appears that the amount could not be deposited as account section of the Nazarat had closed at 2 p.m. The amount was deposited only on the next date i.e. 3-5-1975. It may be mentioned at this stage itself that the respondent decree-holder with the permission of the Court withdrew from the C.C.D. the amount of the first deposit on 10-5-1974.

5. On 16-6-1975 respondent-decree-holder Ramprasad filed an execution application praying that as the judgment-debtors had committed defaults in payment of the instalments in accordance with the compromise decree, the possession of the suit lands be delivered to him. Appellants-judgment-debtors objected against execution of the decree pleading inter alia that the amounts were tendered on due dates before the Court concerned but the same could not be accepted in the C.C.D. as the account section of the Nazarat was closed. Thus, according to the judgment-debtors the decree had been fully satisfied as they had made the deposits in terms thereof and there was no default which could entitle the decree-holder to claim delivery of possession of the suit lands.

6. The Executing Court dismissed the execution application of the decree-holder holding that the judgment-debtor had tendered the amounts in question on the due dates but the amount could not be deposited as the account section of the Nazarat had closed. There was, according to the Executing Court, due and proper compliance of the terms of the decree by the judgment-debtors who had in good

faith tendered the amount on due dates. Decree-holder Ramprasad, aggrieved by this order, appealed before the District Judge. Learned District Judge held that time was the essence of the compromise and payments made by the judgment-debtors after the stipulated dates constituted defaults entitling the decree-holder to execute the decree for delivery of possession.

7. Learned District Judge decided the issue against the Judgment-debtors solely on the ground this judgment-debtors were bound under the terms of the compromise decree to make payments of Rs. 3,000 by 25-4-1974 and Rs. 2,001 by 1-5-1975. According to the learned District Judge the judgment-debtors had the option of making the payments directly to the decree-holder and it was not necessary for them to deposit the amount in Court. If they chose to do so but failed to make the deposits on the stipulated dates, they could not claim any benefit on the ground that they had tendered the amounts before the Executing Court on the due dates but due to the working hours fixed by the accounts section of the Nazarat, the same could not be deposited in the C.C.D. Learned District Judge placed reliance on the following cases : Kunj Behari Singh v. Bindeshri Prasadsingh (AIR 1929 All 207); Indal v. Choudhary Ram Nidh (AIR 1946 Oudh 156). Ram Kinkar Singh v. Smt. Kamal Basini Devi (AIR 1938 Pat 451). He also referred to some observations in Pt. Krishna Chandra Sharma v. Pt. Ramgulam (AIR 1958 Madh Pra 295) and C. F. Angadi v. Y. S. Hirannayya (AIR 1972 SC 239).

8. The first contention of Shri R. S. Garg, learned counsel for the appellants judgment-debtors is that the first instalment, which was payable on or before 25-4-1974, was withdrawn by the decree-holder on 10-5-1974. This showed that time was not of the essence of the contract between the parties, Shri S. D. Sanghi, learned counsel for the respondent-decree-holder fairly conceded that as a result of this withdrawal, the decree-holder must be deemed to have waived his objection with respect to the non-deposit of this instalment on the stipulated date. Thus, it is not necessary to discuss whether the first deposit was made in time or not.

9. As regards payment of the second instalment of Rs. 2,001 admittedly the date stipulated under the decree was a holiday, it was not disputed that on the very

next date i.e. 2-5-1975 judgment-debtor Girdhari applied to the Court for receiving the amount. The Court directed the Nazir to deposit the same in the Civil Court deposit. It was also not disputed that due to closing of the accounts section of the Nazarat the amount was actually deposited in the C.C.D. on 3-5-1975. The question for consideration is whether this payment in Court was a proper and sufficient compliance with the terms of the decree.

10. In *Premchand Bhikabhai v. Ram-deo Sukdeo Marwari* (AIR 1949 Nag 141) a decree for payment of money by instalments was passed against the judgment-debtor. Decree did not prescribe the mode of payment and the judgment-debtor had the option to pay the amount either out of Court or to deposit it in the Executing Court. The Court was closed due to a holiday on the due date and the instalment was paid on the next opening day. Their Lordships of the Nagpur High Court held that since the judgment-debtor had the option to deposit the decretal amount in the Executing Court and the instalment which was due on the date which was declared a local holiday, the deposit was a valid payment under the decree, referring to the principle underlying Section 4 of the Limitation Act and Section 10 of the General Clauses Act, their Lordships held that the law does not compel a man to do that which he cannot possibly perform. The cases decided by the Allahabad (AIR 1929 All 207) and the Patna High Courts (AIR 1938 Pat 451) (supra) and relied on by the learned District Judge were dissented from and series of decisions of different High Courts including the earlier decisions of the Nagpur High Court were followed.

11. Shri S. D. Sanghi, learned counsel for the respondent-decree-holder referred to another decision of this Court in *Pt Krishna Chandra Sharma v. Pt. Ramgulam* (AIR 1958 Madh Pra 295). The learned District Judge has also referred to this decision. Superficially seen, there appears to be a conflict between *Premchand Bhikabhai's* case (AIR 1949 Nag 141) (supra) and *Krishna Chandra's* case. *Ramkinker's* case of the Patna High Court (supra) was dissented from in *Premchand Bhikabhai's* case but was followed in *Krishna Chandra Sharma's* case, at one stage I thought that the matter may be referred to a larger Bench to resolve the conflict. However, the facts in *Krishna Chandra's* case being clearly distinguishable and the remarks made in paragraph 18 of the said judgment with

regard to applicability of Section 10 of the General Clauses Act being obiter in nature I do not think any such reference is necessary, in fact, reference to Section 10 of the General Clauses Act in paragraph 18 in Krishna Chandra Sharma's case was only for the purpose of repelling the contention advanced by the appellants in that case. In the case of Pt. Krishna Chandra (supra) there was no Court decree and the matter had to be decided in terms of a contract between the parties and in that context it was observed that Section 10 of the General Clauses Act was not applicable. I may at once emphasize here that in the case of Premchand Bhikabhai, their Lordships of the Nagpur High Court did not in terms apply Section 10 of the General Clauses Act but highlighted the underlying principle and gave benefit to thereof to the judgment-debtor.

12. In C. F. Angadi v. Y. S. Hirannavya (ATR 1972 SC 239) (supra) their Lordships of the Supreme Court considered the scope of Order 21, Rule 1 of the Code of Civil Procedure. After setting out the terms of the compromise decree their Lordships held that if the amount which was to be deposited by the plaintiff-respondent on a particular date in terms of the compromise decree but could not be deposited on that date as the Court was closed due to holiday, deposit made on the next date was in effect a deposit made in terms of the compromise decree. The Supreme Court referred to the conflicting views of the Allahabad and Patna High Courts on the one hand and the Madras and the Nagpur High Courts on the other but kept the question open as it was not necessary to resolve it on the facts of the case before it. In the case before the Supreme Court the deposit had to be made in Court and, therefore, the effect of option available to a judgment-debtor to pay the amount out of the Court or through Court did not arise for consideration. Even so a close perusal of the judgment in Angadi's case (AIR 1972 SC 239) and its tenor will indicate that the Court tended to favour the view that when the judgment-debtor was to pay or deposit any sum on a particular date under the terms of a compromise decree and the same could not be paid or deposited due to closure of the Court on a holiday, payment made on the next date will be treated as a proper compliance of the condition in the decree.

13. Learned counsel for the respondent-decree-holder Shri S. D. Sanghi, however, raised a further objection with respect to the payment of the second instalment.

According to him assuming that the amount could be deposited on the next date i.e. on 2-5-1975, 1-5-1975 being a holiday, actually the amount was deposited on 3-5-1975 and, therefore, the judgment-debtors clearly committed a default. To this Shri Garg replied that the judgment-debtor Girdhari had tendered the amount before the Court by making an application that the amount be received in deposit and the Court made an endorsement on that application directing the Nazir to deposit the same. But, as the accounts section of the Nazarat was closed, the amount could be deposited only on the next following date i.e. 3-5-1975.

14. Since it was not disputed that the amount was tendered to the Court with an application to receive the same and the Court directed the office to receive it, it must be treated as a proper tender in compliance with the decree. If the ministerial staff due to some reason could not accept the deposit, it will not detract from the fact that the judgment-debtor had tendered the amount for payment to the Court. Shri Sanghi contended that actually the amount had to be deposited in the Nazarat and its tender or offer was made on 3-5-1975 before the Nazir. This argument cannot be accepted because the judgment-debtor has to deposit the amount 'into the Court whose duty is to execute the decree'. If the judgment-debtor offered to deposit the amount in the Court and the Court while accepting the offer directed the ministerial staff to do the needful, it must be held that the tender or offer was made to the Court on 2-5-1975.

15. Shri S. D. Sanghi, learned counsel for the respondent-decree-holder lastly contended that Order 21, Rule 1, C.P.C. will not apply to this decree because it refers to money 'payable under a decree'. According to Shri Sanghi the money in the compromise decree was not 'payable under a decree' inasmuch as the decree-holder was not entitled to recover the amount under the decree. This argument which seeks to interpret the provision of law in a very narrow and technical fashion has to be rejected. It may be noted that in the case of C. F. Angadi (AIR 1972 SC 239) (supra) the compromise decree did not entitle any of the parties to the suit to recover the amount mentioned in the compromise decree and yet Order 21, Rule 1, C.P.C. was held to be applicable. In that case as in this case no money was 'payable under a decree' and yet the effect of deposit into Court in terms of Order 21, Rule 1, C.P.C. was considered and decided by the Supreme Court.

16. In the case under appeal the decree clearly directed payment of a specified amount in instalments and, therefore, the money was 'payable under a decree' within the meaning of Order 21, Rule 1, C.P.C. In view of the discussion above, this appeal is allowed. The order passed by the learned District Judge is set aside and that passed by the Executing Court on 1-9-1975 is restored. The execution application stands dismissed as the decree had been fully satisfied. Parties shall bear their own costs throughout.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com