

Dev Singh Vs. Subhash Chandra

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Court : Madhya Pradesh

Decided On : Feb-24-2004

Reported in : AIR2005MP97

Judge : S. Samvatsar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47 - Order 21, Rules 1 and 2; Code of Civil Procedure (CPC) (Amendment) Act, 1976; Code of Civil Procedure (CPC) (Amendment) Act, 1976

Appeal No. : C.R. No. 179 of 2003

Appellant : Dev Singh

Respondent : Subhash Chandra

Advocate for Def. : N.K. Jain and ;Rashmi Agarwal, Advs.

Advocate for Pet/Ap. : K.B. Chaturvedi, Sr. Adv. and ;G.P. Chourasia, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

S. Samvatsar, J.

1. Heard.

2. This revision is tiled by the judgment-debtor against the order dated 4-4-2003 passed by the Executing Court whereby the Court below has rejected his objection as to the executability of the decree.

3. The brief facts of the case are that a decree, for recovery of Rs. 11,000/- is passed in favour of the respondent decree-holder. The decretal amount is to be paid as per the terms of the decree in two instalments. As the said installments are not paid the decree-holder filed execution proceedings. In the said execution proceedings an objection was raised by the judgment-debtor stating that, he has already paid the amount to the decree-holder, hence the decree cannot be executed. The Court below rejected the objection relying on the provisions of Order 21, Rule 2 sub-clause (3) of the Code of Civil Procedure by Stating that since the payment is not certified in accordance with the provisions of Order 21, Rules 1 and 2 CPC the same cannot be recognised.

4. Learned counsel for the applicant has submitted that the view taken by the Executing Court is without jurisdiction. For this purpose he relied upon a judgment of Apex Court in the case of M.P. Shreevastava v. Mrs. Veena, (AIR 1967 SC 1193) and on a Division Bench decision of this Court in the case of Bherulal Narayanji v. Ramautar Bihari, 1981 MPLJ 333 : (AIR 1981 Madh Pra 181). In both these cases it was held that the judgment-debtor can oppose the decree by saying that he has already satisfied the decree without certification. The scope of Order 21, Rule 2, CPC and objection under Section 47, CPC are quite different and objections without certification of the execution of the decree can be gone into by the Executing Court. In both these cases the decree was passed prior to the amendment in the Code of Civil Procedure and the decree put into execution prior to the amendment in the Civil Procedure Code in the year 1976 which has come into force from 1-2-1977. By the said amendment sub-clause (3) is incorporated under Order 21, Rule 2, CPC which provides that a payment or adjustment which has not been certified or recorded as provided by Rules 1 and 2 shall not be recognised by any Court executing the decrees. Thus, this proviso is introduced which creates a bar against executing Court to recognize any payment which is not certificated as provided by Rules 1 and 2, CPC in the light of the said proviso, the decisions referred by the learned counsel for the petitioner, have no

application in the present case.

5. In the present case the decree is passed after aforesaid amendment in the Code of Civil Procedure hence I do not find any jurisdictional error in the impugned order. The revision is, therefore, dismissed with no orders .as to costs.

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