

Dhani Devi Vs. Tulsi Ram

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Court : Delhi

Decided On : Jul-24-1967

Reported in : 5(1969)DLT293

Judge : S.N. Andley, J.

Acts : Himachal Pradesh Panchayat Raj Act, 1952 - Sections 57; Execution of Panchayat Rules - Rule 165

Appeal No. : Criminal Writ Petition Appeal No. 55 of 1967

Appellant : Dhani Devi

Respondent : Tulsi Ram

Advocate for Pet/Ap. : Sant Ram and; K.C. Pandit, Advs

Judgement :

S.N. Andley, J.

(1) This writ petition was initially filed by the petitioner invoking both Articles 226 and 227 of the Constitution of India for quashing the order dated 22nd November, 1966. passed by the Sub-Divisional Judge, Bilaspur District (Himachal Pradesh). Subsequently, a statement was made before Hardy J. on 19th June, 1967 that this petition may be dealt with only under Article 227 of the Constitution.

(2) The petitioner, who is the wife of the respondent had obtained an order for payment of maintenance by the respondent from the Nyaya Panchayat Lakhanour. This order was made under Section 57(2) of the Himachal Pradesh Panchayat Raj Act, 1952, hereinafter referred to as 'the Act'. By this sub-section applications for maintenance under Section 488 of the Code of Criminal Procedure are to be heard and decided by the Nyaya Panchayat. After this order had been passed, the Nyaya Panchayat sent the order to the Sub-Divisional Judge, Bilaspur, for execution. This was done under Section 97 of the Act and rule 165 of the Panchayat Rules of Himachal Pradesh. The respondent filed various objections before the Sub-Divisional Judge upon which the learned Judge framed the following issues :-

(1) Whether this Court is competent to entertain and decide the objections filed by the objector (Plaintiff) Shri Tulsi Ram? O.P.P. (2) If so, whether there has been an agreement between the objector and the respondent as stated in the application of objector dated 30th November, 1964, i. e. that a sum of Rs. 150.00 was given to the respondent and further a sum of Rs. 8.00 was agreed to, to be paid to the respondent monthly on the condition that she will live with the objector? O.P.P. (3) If so, what is its effect on the execution proceedings? O.P.P. (4) Relief.

(3) I am not here concerned with any of these issues because although no issue had been claimed by the respondent the learned Judge entertained a plea of the respondent's counsel that his Court had no jurisdiction to entertain the execution of the aforesaid order of the Nyaya Panchayat under Section 488 Criminal Procedure Code. The learned Judge considered this matter and came to the conclusion that the execution of the order of maintenance did not lie to the Sub-Divisional Judge as the Nyaya Panchayat had concurrent jurisdiction under Section 488, Code of Criminal Procedure, with the Sub-Divisional Judge. The main ground on which the learned Judge came to the above conclusion was that a judgment under Section 488, Code of Criminal Procedure is not a decree as defined in the Panchayat Act nor is it an order under the Punjab Land Revenue Act, 1887.

(4) As I have stated above, this application for maintenance was decided upon by the Nyaya Panchayat by virtue of Section 57(2) of the Act. Section 97(1) of the Act

provides for the execution of decrees and orders passed by a Nyaya Panchayat and it provides that such decrees or orders shall be executed in such manner as may be prescribed. It is further provided that if the defendant's property is situated outside the jurisdiction of the Nyaya Panchayat passing such order or decree, it may transfer the decree or order for execution in the manner prescribed to the Nyaya Panchayat within whose jurisdiction the property may be situated, and if there be no such Nyaya Panchayat, then to the Court of the Sub-Divisional Judge within whose jurisdiction it may be situated. Sub-section (2) of Section 97 provides for the execution of a decree passed by the Nyaya Panchayat in case the Nyaya Panchayat finds any difficulty in executing a decree and in case of such difficulty it is open to the Nyaya Panchayat to forward the decree to the Sub-Divisional Judge, who will then execute it as if it were a decree passed by him. I may state here that from the record which is before me, it does not appear whether the conditions precedent which are prescribed by sub-sections (1) and (2) of Section 97 were satisfied before the Nyaya Panchayat sent the order in question for execution to the Sub-Divisional Judge. Sub-section (3) of Section 97 of the Act provides for the execution of an order under the Punjab Land Revenue Act, 1887, but I am not concerned with the consideration of sub-section (3) of this Section so far as this case is concerned.

(5) The next relevant provision is rule 165 of the Rules framed under the Act. Rule 165 is set out here under :-

'(1)The holder of a decree or order may, after the passing of the decree or order, put in an application for its execution on payment of the same fee as is provided for the institution of the original suit, case or proceedings before the Nyaya Panchayat which passed the decree or order, and the same shall be included in the costs. (2) The Nyaya Panchayat shall issue a notice to the opposite party to pay up the decretal amount or comply with the order within 30 days or such further time not exceeding three months as it may deem fit to allow after the notice is served. If the amount is not paid or order not complied with within the period specified, the decree or order shall be sent to the Sub-Divisional Judge as the case may be for execution as provided in sub-section (2) of Section 97 of the Act and in case of civil decree the judgment debtor shall be liable to pay interest on

the decretal amount at 6 per cent per annum from the date of institution of the suit till the date of realization of the decretal amount.'

(6) The scheme of the Act: and the Rules appears to be that the Nyaya Panchayat has jurisdiction to decide certain matters and to pass orders and decrees in respect of such matters. It has been given power to execute such orders or decrees but in cases of difficulties as are contemplated by sub-section (1) and (2) of Section 97 and rule 165 of the Rules, it is open to the Nyaya Panchayat, after going through the procedure prescribed, to send the order for execution to, inter alia, a Sub-Divisional Judge and when that is done. it is for the Sub Divisional Judge to execute the order as if it were an order passed by him.

(7) From the issues which were framed by the learned Sub-Divisional Judge or from the counter-affidavit filed in this Court, it does nto appear whether the respondent had challenged the issuance of the order by the Nyaya Panchayat for execution by the Sub-Divisional Judge on the ground that the conditions precedent contemplated by Section 97 of the Act and Rule 165 of the Rules had been complied with. Whether or nto such objections can be raised before the Sub-Divisional Judge, I am nto deciding in this writ petition because the necessary facts and pleadings in this behalf are nto here before me. thereforee, I am unable to accede to Mr. Pandit's request, in the event of my allowing this writ, to give any direction to the Sub-Divisional Judge to entertain or decide such objections if they are filed before him by the respondent. That will be a matter for the Sub-Divisional Judge to decide if and when objections arc filed by the respondent before him

(8) It is difficult for me to follow the reasoning of the learned Sub- Divisional Judge for coming to the conclusion that he has no jurisdiction to execute this order. Undoubtedly, this order of maintenance was passed with jurisdiction by the Nyaya Panchayat. It has to be assumed for the purposes of this petition that the Nyava Panchayat was unable to execute that order and was, thereforee, obliged to send it for execution to the Sub-Divisional Judge. Sub-section (2) of Section 97 refers to a decree whereas sub-section (1) of Section 97 refers to a decree and order. Sub-rule (2) of Rule 165 gives power to the Nyaya Panchayat to send for execution to the Sub-Divisional Judge nto only a decree, but also an order. When reference is

made to sub-section (2) of section 97 of the Act it is merely to the procedural part and it is difficult for me to accept Mr. Pandit's contention that because 'order' is not mentioned in sub-section (2) of section 97 and 'order' cannot be sent for execution. The learned Sub-Divisional Judge says that the executing powers vested in him under section 97 of the Panchayat Act are confined to a decree or an order under the Punjab Land Revenue Act, 1887. This conclusion is obviously contrary to the language of section 97 itself. Sub-section (3) of section 97 merely enumerates another category of orders, namely, orders passed under the Punjab Land Revenue Act, 1887 in respect of which proceedings can be taken under the Act and sub-section (3) does not by any means confine the operation of Section 97 merely to orders passed under the Punjab Land Revenue Act, 1887. Nor am I able to appreciate the observations of the learned Sub-Divisional Judge when he says 'But the judgment under section- 488 Cr. P.O. is neither a decree as defined in the Panchayat Act nor an order under the Punjab Land Revenue Act, 1887.' An order such as can be passed under section 488 of the Code of Criminal Procedure can be passed also by the Nyaya Panchayat under sub-section (2) of section 57 of the Act and the moment such an order is passed by the Nyaya Panchayat, it is to be executed in the same manner as any other of its orders or decrees. It is no doubt true that the Nyaya Panchayat can also execute an order made by it under sub-section (2) of section 57 of the Act and it can execute it if the respondent is resident or any of his properties is situated within its jurisdiction. If that is not so, then an order of maintenance has to be executed and for execution recourse has to be had to the other provisions of the Act read with the Rules. If the Nyaya Panchayat is satisfied that the conditions specified under section 97 of the Act and rule 165 of the Rules are present and if the Nyaya Panchayat sends the order of maintenance for execution to the Sub-Divisional Judge, I do not find any justification either in the language of the statute or of the rules to hold that the Sub-Divisional Judge has no jurisdiction to execute such an order. In my view, the Sub-Divisional Judge has undoubtedly refused to exercise his powers and his jurisdiction which is conferred upon him. I would, therefore, allow the writ and issue a direction in exercise of the powers of this Court under Article 227 of the Constitution to the Sub-Divisional Judge, Bilaspur District (Himachal Pradesh) to proceed to execute the aforesaid order of the Nyaya Panchayat, Lakhampur in

accordance with the provisions of the Act and the Rules.

(9) In view of the fact that the question of jurisdiction was raised by the learned Sub-Divisional Judge himself, I leave the parties to bear their own costs.

(10) I record my appreciation of the assistance given to me by Mr. K. C. Pandit, who has appeared in this case amicus curiae on behalf of the respondent in the absence of the respondent's counsel.

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