Belrex India Ltd. Vs. Singhal Electric Co. and ors.

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Court : Delhi

Decided On : Mar-18-1983

Reported in : AIR1983Delhi430; 1983(5)DRJ94; 1983RLR435

Judge : Sultan Singh, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 60(1)

Appeal No. : E.A.O. 238 of 1980 in Ex. No. 58 of 1977

Appellant : Belrex India Ltd.

Respondent : Singhal Electric Co. and ors.

Advocate for Def. : P.K. Seth, Adv.

Advocate for Pet/Ap. : K.C. Sharma, Adv

Disposition : Application dismissed

Judgement :

Sultan Singly, J.

1. M/s. Belrex India Ltd. Calcutta a decree for recovery of Rs. 1,83,641.48 besides interest and costs against Singhal Electric Company and its partners. The judgment debtors were carrying on business in a shop at 1868, Mahalaxmi Market, Bhagirath Palace, Chandni Chowk, Delhi. The goods lying in the shop were

attached by actual seizure. A local commissioner put his own lock and seal at the shop. The attached goods have since been removed from the shop and it is lying vacant. The decree holder states that the said shop is only asset of the judgment debtors known to the decree-holder, that they are not in a position to run business in the shop as they have no funds and it will be futile to restore possession of the shop to them. The decree-holder states that it is willing to take possession of the shop in order to run a show room-cum-retail sale depot, and to adjust Rs. 2000/- permonth for use and occupation of the shop from the amount of the decree. Thus it is prayed that the possession of the vacant shop be handed over to the decree holder and the amount for use and occupation be fixed and it be allowed to adjust the same towards the amount due from the judgment debtors.

2. The judgment debtors submit that the shop is tenanted premises, that the shop cannot be transferred or handed over to the decree-holder to enable it to realign the decretal amount, that the tenancy premises are not attachable or saleable. It is submitted that judgment debtors have no saleable interest in the tenancy rights of the shop and have no right to transfer it and thereforee it is not liable to be attached or sold in execution of the decree for recovery of money.

3. Section 60(1) of the Code of Civil Procedure reads as under :

'60(1) The following properly is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment debtor or by another person in trust for him or on his behalf : Provided that the following particulars shall not be liable to such attachment or sale, namely :--

a) to (kb) xx xx

(kc) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply.'

The properties mentioned in Section 60(1) of the Code of Civil Procedure are liable to be attached and sold in execution of a decree i.e. a decree for the recovery of money. The sub-section also provides that all other saleable property belonging to the judgment debtor or over which he has a disposing power for his own benefit may be attached. Thus it means that all properties whether movable over which the judgment debtor has disposing power and which is capable of being sold may be attached. The property in order to be attachable under this sub-section must be (i) 'saleable property' and (ii) capable of being transferred. Property which is riot capable of being transferred cannot be attached. If transfer of property is prohibited by law it cannot be attached. The proviso to Section 60(1) of the Code provides what properties are exempt from attachment. Clause (kc) of the proviso as set out above exempts from attachment the interest of a tenant in residential building to which the Rent Control Act is applicable. The premises where the judgment debtors were carrying on business is a shop at Bagirath Palace, Delhi and is governed by the Delhi Rent Control Act, 1958. Mr. Sharma, learned counsel for the decree-holder submits that the shop, being non-residential building though governed by Rent Control Act is not included in Clause (kc) and is thereforee liable to be attached. The proviso no doubt mentions which are exempt from attachment but non mention of a property in the proviso does not mean that it is attachable. Proviso is not to be interpreted so as to nullify main provision (See : T. Devadasan v. Union of India and Anr., : (1965)IILLJ560SC). The object of a proviso is often to remove misapprehension (See . Madanlal Fakirchand Dudhediya v. Shree Changdea Sugger Mills Ltd. and Anr., : AIR 1962 SC1543). Whether a property is attachable or not one has to refer to Sub-section (1) of Section 60 of the Code. According to Sub-section (1) property belonging to the judgment debtor over which he has a disposing power and which is saleable may be attached in execution of the decree for recovery of money. The tenancy rights of the shop are governed by Delhi Rent Control Act, 1958. Section 14(1)(b) of the Act reads as under :

'14(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant :

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely :--

a) x x x x b) that the tenant has, on or after the 9th day of June, 1952 sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord'.

According to Clause (b) of the proviso to Section 14(1) of this Act, the tenant has no right to sublet, assign or otherwise part with the possession of whole or part of the tenancy premises without obtaining the consent in writing of the landlord. In other words, the tenant has no disposing power over the premises under his tenancy. He has no right to transfer the tenancy rights. The tenant can do so only with the consent of the landlord in writing. Thus, the tenant has, no saleable interest or disposing power over the tenancy rightsof the premises. Section 14(1)(b) of the Delhi Rent Control Act prohibits transfer of the tenancy rights by a tenant except with the written consent of the landlord. In my opinion thereforee the judgment debtors have no disposing power or any saleable interest in the tenancy rights of the shop at 1868, Bhagirath Palace, Delhi. If the possession of the shop is handed over to the decree-holder, it would amount to violation of Section 14(1)(b) of the Delhi Rent Control Act, 1958.

4. It is thereforee held that possession of shop can not be handed over to the decree-holder as the tenancy rights are not attachable or saleable in execution of the decree. The application is, thereforee, dismissed with no order as to costs.