

Kishan Singh Vs. Madan Jha, Financial Commissioner and ors.

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Court : Delhi

Decided On : Dec-13-1994

Reported in : 57(1995)DLT139; (1995)110PLR7

Judge : Devinder Gupta, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 10; Slum Area (Improvement and Clearance) Act, 1956 - Sections 19

Appeal No. : Civil Miscellaneous (Main) Appeal No. 361 of 1994

Appellant : Kishan Singh

Respondent : Madan Jha, Financial Commissioner and ors.

Advocate for Pet/Ap. : Sunil Malhotra and; H.S. Chandhiok, Advs

Judgement :

Devinder Gupta, J.

(1) Order passed on 7.3.1994 by the Competent Authority (Slum), Delhi (Annexure D) dismissing petitioner's application moved under Section 10 of the Code of Civil Procedure for stay of proceedings till decision of the suit preferred by him as also the order passed on 22.4.1994(Annexure E) by respondent No.1 dismissing the petitioner's appeal are under challenge in this petition under Article 227 of the Constitution of India.

(2) It is not in dispute that a suit for specific performance of contract was filed by the petitioner against respondents 2 & 3 seeking to enforce an agreement, alleged to have been entered into between him and respondents 2 & 3 for sale of a property. After institution of suit, a petition under Section 19 of the Slum Area (Improvement and Clearance) Act, 1956 (hereinafter referred to as 'the Act') was filed by respondents 2 & 3 seeking permission to file proceedings for eviction against the petitioner from the premises in question. During the pendency of these proceedings, petitioner filed an application under Section 10 of the Code seeking stay of these proceedings till the pendency of the civil suit.

(3) PETITIONER'S application was dismissed by the Competent Authority (Slum) on 7.3.1994 after following a decision of this Court in *Inder Pal Singh Hassanwalia v. Mis Bir Tibetan Woollen Mills* : AIR1974 Delhi95 that Section 10 of the Code applies only to suits and cannot apply where one of the two proceedings is not a suit. Another decision in *Gurcharan Singh v. Smt. Kaur* : AIR1975 Delhi36 was also followed in declining petitioner's prayer for stay of the suit. Appeal preferred by the petitioner was also dismissed by respondent No.1 through the impugned order dated 22.4.1994.

(4) I have heard learned Counsel for the parties and gone through the entire record. Reliance has been placed by Counsel for the respondent on a decision of this Court in *Jai Singh Rana v. Mohinder Mohan Goel* 1994 4 Ad 582 to the effect that it is not in every case where a prayer is made for stay of proceedings for eviction pending before Rent Controller during pendency of suit of specific performance that injunction be granted staying the eviction proceedings. But the decision in *Jai Singh Rana's* (supra) will not be helpful in so far as the instant proceedings are concerned since the question involved here is as to whether during pendency of a suit for specific performance, which admittedly has been instituted prior to taking out proceedings under the Act seeking permission to file proceedings for eviction, later proceedings taken out under the Act should or should not be stayed. Stage for seeking tenant's eviction has not reached. It is only when permission is granted that such proceedings can be instituted by respondents 2 & 3 against the petitioner. Question might arise in those proceedings whether such proceedings should or should not be stayed due to the

pendency of civil suit. The scope of proceedings under the Act seeking permission to take out eviction proceedings was considered by this Court in Gurcharan Singh's case (supra) and the Competent Authority rightly by placing reliance thereon and in Inder Pal Singh Hassanwalia's case dismissed the application under Section 10 of the Code is not maintainable. There is no ground to order the stay of proceedings under the Act since the scope of proceedings under the Act is neither nor can be subject matter of an issue before a Civil Court in a suit for specific performance of the alleged agreement of sale. The petition, in view of the above, deserves dismissal and is hereby dismissed leaving the parties to bear their own costs.

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