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Court : Rajasthan

Decided On : Apr-13-2007

Reported in : RLW2007(3)Raj2508

Judge : Prakash Tatia, J.

Appellant : Renu (Smt.) and Ors.

Respondent : Deceased Shri Baboolal's legal representative Bhim Singh

Disposition : Petition dismissed

Judgement :

Prakash Tatia, J.

1. Heard learned Counsel for the parties.

2. The petitioner/judgment debtor is aggrieved against the order dated 21.2.2007 by which the executing court dismissed the petitioners' objection petition filed under Section 47 CPC dated 5.12.2006.

3. It will be appropriate to narrate few facts why the present objection petition was filed by the petitioners.

4. A suit was filed by the plaintiff/decree holder which was compromised in Lok Adalat in pursuance of compromise decree dated 19.12.1992 was granted by the trial court. As per the decree, the plaintiff and defendant were required to construct their own separate walls leaving the space between the walls as open. When the defendants started raising construction in common lane, then execution petition was filed by decree holder in the year 1994 and in that execution proceedings, even application was filed for obtaining interim order of injunction against the judgment debtor so that he may not proceed with the construction of wall. The executing court on 15.5.1994 passed the interim order and directed both the parties to maintain status quo and also appointed Commissioner. The Commissioner submitted his report before the executing court. The judgment debtor also filed objection petition against execution of decree. Thereafter, on 2.3.1995, the executing court passed a detailed order and rejected the objection raised by the judgment debtor and directed the judgment debtor to remove the encroachment made by him on the common lane within a period of 15 days. The executing court also held that in case, the judgment debtor failed to remove the encroachment within 15 days, then the decree holder will be free to get encroachment removed through the court. However, the executing court deferred the order on the application submitted by the decree holder for punishing the judgment debtor because of judgment debtor's willful disobedience of the court's order dated 2.3.1995. This detailed order of the executing court was challenged by filing revision petition before this Court which was registered as SB Civil Revision Petition No. 54/2004 which was dismissed by this Court by order dated 24.7.2006. Therefore, the order dated 3.2.2004 attained finality.

5. It will be worthwhile to mention here that before all above, the executing court decided to hold enquiry to interpret the decree sought to be executed by the decree holder and the order of executing court was challenged by filing SB Civil Revision Petition No. 873/1998 before this Court by the decree holder which was allowed by this Court vide order dated 7.5.2003 after holding that the executing court had no jurisdiction to go beyond the decree and no finding could have been recorded after taking evidence so as to find out what was the intention of the parties for entering into the compromise. That effort of the executing court was beyond the jurisdiction of the executing court.

6. Now the judgment debtor has submitted an application under Section 47 CPC before the executing court.

7. According to learned Counsel for the petitioners, the said objection petition was dismissed by the executing court without holding any enquiry despite the fact that in fact, the proceedings under Section 47 CPC is akin to the suit proceedings and as per the judgment of Punjab and Haryana High Court delivered in the case of Woolways, Shop-cum-Office, Chandigarh and Ors. v. Central Bank of India, Chandigarh and Ors. reported in , the executing court should hold enquiry before deciding the objections under Section 47 CPC.

8. Learned Counsel for the petitioners vehemently submitted that in fact, the decree holder is seeking to execute the decree beyond its scope and the Hon'ble Supreme Court in the case of Jai Narain Ram Lundia v. Kedar Nath Khetan and Ors. reported in : [1956]1SCR62 clearly held that the executing court can execute the decree and not beyond the decree. For same purpose with different context, another judgment of the Hon'ble Supreme Court delivered in the case of Rameshwar Das Gupta v. State of U.P. and Anr. reported in : AIR 1997 SC410 was relied upon by learned Counsel for the petitioners.

9. So far as query of this Court regarding how the petitioners filed second objection petition when their earlier objection petition was dismissed by the executing court, learned Counsel for the petitioners pointed out that in earlier objection petition, points which have been raised in the present objection petition were not raised, therefore, the objections which have been raised by the petitioners in this objection petition are neither decided by any court of law nor any enquiry was held so as to record any finding. It is also submitted that even the executing court without looking into the grounds raised by the petitioners, rejected the petitioners' present objection petition merely because of the reason that the executing court rejected the petitioners' objections by order dated 3.2.2004 and that was upheld by this Court.

10. Learned Counsel for the petitioners also submitted that though the petitioner did not made a request for giving opportunity to produce evidence but for holding an enquiry about the objections of the judgment debtor, the judgment debtor since

submitted application under Section 47 CPC, then that is a implied request of permitting the judgment debtor to produce evidence.

11. Learned Counsel for the respondent/decree holder placed before this Court copies of orders dated 25.10.1999 and 3.2.2004 of the courts below and the orders of this Court dated 7.5.2003 and 24.7.2006 passed in Revision Petitions No. 873/1998 and 54/2004 respectively and submitted that the objection petition filed before the executing court under Section 47 CPC was absolutely frivolous and only abuse of process of the Court. The petitioners raised objection which was decided by detailed order by the executing court and the decree is very clear and it provided for construction of wall by the plaintiff and defendant both and which have been complied by both of them. So far as part of the decree that there shall be open land in between two walls, that has been violated by the judgment debtor and this fact is not disputed and cannot be disputed because of the fact that the decree holder is executing the decree for removal of said structure and the judgment debtor is opposing the demolition of construction which he raised in violation to decree. It is also submitted in view of the above reasons, the order of the court below suffers from no illegality.

12. I considered the submissions of learned Counsel for the parties and perused the reasons given by the court below in the impugned order as well as perused the orders mentioned above.

13. The compromise decree is very clear and the contents of the decree are not disputed. It is even the case of the judgment debtor that under the decree, both the plaintiff and defendant could have raised the wall which they in fact raised. The decree provides some space to remain open. The construction raised is in that open space which as per the decree was to remain open. The executing court appointed Commissioner and site report was obtained. The executing court even passed the interim order. Thereafter, construction was ordered to be removed by the executing court. The objection petition filed by the judgment debtor was considered and dismissed by the executing court by detailed order dated 3.2.2004. The judgment debtor challenged the order of executing court dated 3.2.2004 before this Court by filing revision petition (SB civil Revision Petition No. 54/2004)

which was dismissed by this Court on 24.7.2006 yet the objector/judgment debtor filed this second objection petition on the pretext that he, for the reasons best known to him, did not raise the grounds which he has raised in the present objection petition.

14. The contention of learned Counsel for the petitioners that since in the earlier objection petition, some grounds were not raised, therefore, the petitioners filed this second objection petition is contrary to law because of the simple reason that the judgment debtor had no right to submit one after another application in same execution proceedings raising objection against executability of the decree. The order dated 3.2.2004 for removal of structure operates as res judicata against the petitioners because of the simple reason that principle of res judicata applies also as between two stages in the same litigation. Therefore, the contention of learned Counsel for the petitioners that the petitioners could have filed successive objection petition merely because the petitioners did not choose to raise objection on earlier occasion is absolutely devoid of any force. Otherwise also, there is no reason to not to apply the principles of Order 2 Rule 2 CPC, in principle, then also the objections which the petitioners did not raised earlier, then the petitioners were precluded from raising those objections.

15. The situation is not only above because of point of law against the petitioners but the factual position is that when the petitioners themselves admitted that as per the decree, the space in question is required to be kept open, then they had no right to submit before the executing court that the executing court cannot maintain the space open by passing appropriate order in execution. The decree passed by the court below was not only decorative so far as it relates to open space. Therefore, on merits also, the petitioners' objections were frivolous.

16. So far as holding of enquiry in such proceedings is concerned, learned Counsel for the petitioners relied upon the judgment of M/s. Woolways's case (supra) which itself clearly says that the objection petition can be decided after holding enquiry provided one prays for opportunity to lead evidence. In the present case, admittedly, no prayer was made by the petitioners before the executing court for taking any evidence. However, the worst against the petitioners is that the

executing court itself when passed the order to hold an enquiry to interpret the decree, this Court in revision No. 54/2004 held that the effort of executing court in the facts was beyond the jurisdiction of the executing court.

17. Even if there is a request of any party for leading evidence in support of any contention raised by the party in summary proceedings and particularly in execution proceedings and further when the proceedings arising out of the objection against the execution of the decree, then it is not at all necessary to hold enquiry in all matters. It is the discretion of the said court whether to hold the enquiry or not. Provided factual enquiry is needed looking to the objections, for which there are several judgments which have already decided this issue. I need not to refer them. In view of the above reason, there was no reason for holding any enquiry by the executing court for considering the objection petition of the petitioners.

18. Another objection is that the executing court dismissed the objection petition only on the ground of order dated 3.2.2004 which was upheld by this Court. The executing court rightly did so because of the simple reason that the second objection petition was not maintainable and secondly because of the reason that the order dated 3.2.2004 attained finality and, therefore, by another mode, the effect of order dated 3.2.2004 could not have been avoided by party because of the simple reason that that order decided the controversy between the parties.

19. Since the compromise decree was passed as back as in the year 1992, the decree was alleged to be violated in the year 1994, the decree yet has not been executed despite the fact that more than 13 years have passed and it is clear case of abuse of process of the Court by the judgment debtors/petitioners and the petitioners deprived the decree holder from the fruits of the decree for such a long period of 13 years on absolutely false and frivolous grounds, therefore, this revision petition is hereby dismissed with a costs of Rs. 10,000/-.

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