

Dhani Ram Vs. Narinder Singh

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Court : Jammu and Kashmir

Decided On : May-05-2006

Reported in : 2006(2)JKJ421

Judge : J.P. Singh, J.

Acts : Jammu and Kashmir Houses and Shops Rent Control Act, 1966 - Section 12 and 12(4); ;Code of Civil Procedure (CPC) , 1977

Appeal No. : CIA No. 30/2002

Appellant : Dhani Ram

Respondent : Narinder Singh

Advocate for Def. : L.K. Sharma, Adv.

Advocate for Pet/Ap. : Nirmal Kotwal, Adv.

Disposition : Appeal dismissed

Judgement :

J.P. Singh, J.

1. Dhani Ram, appellant, has filed this appeal against order dated 08.06.1982 of learned District Judge, Jammu, whereby while upholding the decree of ejectment passed by Sub Judge, Jammu, against the appellant, the case was remanded to

the trial Court for framing an issue in regard to arrears of rent.

2. This appeal was filed on 15.02.2001 alongwith an application seeking condonation of delay in filing the appeal. This condonation application appears to have been allowed on 12.11.2002, when nobody seems to have appeared on behalf of the respondent despite substituted service.

3. Sh. L. K. Sharma, learned Counsel for respondent, raised a preliminary objection that the appeal was not maintainable, which according to learned Counsel warranted dismissal with exemplary costs for prolonging the litigation and depriving the respondent of the fruits of the decree of ejectment affirmed in his favour by District Judge, Jammu, on 08.06.1982. Learned Counsel refers to Gayatri Devi and Ors. v. Shashi Pal Singh reported as : AIR 2005 SC2342 .

4. Sh. Nirmal Kotwal, learned Counsel for appellant, meeting the preliminary submission of Sh. Sharma, urged that his appeal was maintainable in view of the law laid down in . He, when confronted with the situation, as to how the appellant would question the decree of ejectment, which had attained finality, in the absence of any civil second appeal having been filed against it, made a statement at the bar that the appellant would not press his appeal in so far as it questioned the decree of ejectment, which stood affirmed on 08.06.1982 by learned District Judge, Jammu. Sh. Kotwal, however, submitted that decree for ejectment could not be executed if the issue framed by the trial Court, pursuant to the remand order, was decided against the plaintiff/respondent.

5. I have considered the submissions of learned Counsel for the parties and gone through the records of the case as also the certified copies of the orders passed in connection with the litigation in question, certified copies whereof were supplied by learned Counsel for the respondent on 21.04.2006, when the matter stood reserved for judgment.

6. Facts leading to the filing of this appeal are these.

7. Suit No. 84 for ejectment of the appellant/defendant from a house situated at Pacca Danga, Jammu, as also for recovery of Rs. 1,170/- as arrears of rent, was

decreed by Sub Judge, Jammu, on 11.09.2000. Civil 1st Appeal No. 114 of 1982 preferred by the appellant against the decree, was decided on 08.06.1982 by learned District Judge, Jammu, affirming the decree of ejectment and upholding the striking out of the defence of the appellant for non-payment of rent, ordered to be deposited in terms of Section 12(4) of the J&K; Houses and Shops Rent Control Act, 1966. The learned District Judge, however, remanded the case to the trial Court in so far as the decree was for payment of Rs. 1,170/- as rent with a direction to the Court to frame an issue in regard to arrears of rent before deciding the issue.

8. It appears that the appellant, rather than following the course contemplated by the Code of Civil Procedure in filing a civil second appeal or civil first miscellaneous appeal against the decree/order of learned District Judge, Jammu, opted to file a writ petition in this Court, which came to be registered as Writ Petition No. 207/1983. This writ petition remained pending for a period of seven long years, when it was dismissed in default of appearance on 31.05.1990. A copy of this order has been produced by Sh. L. K. Sharma, which shall form part of the records. The appellant appears to have filed a civil suit challenging the decree of ejectment passed by Sub Judge, Jammu, and affirmed by District Judge, Jammu, in which he is stated to have obtained stay of the execution proceedings. This suit, too, was dismissed by learned 2nd Additional District Judge, Jammu. The appellant filed Civil 1st Appeal No. 12/1997 questioning the dismissal of suit by 2nd Additional District Judge, Jammu. This appeal, too, was dismissed on 01.04.1999 and the judgment of dismissal of appeal came to be reported in 2000 KLJ 268.

9. It needs to be noticed that the suit which was remanded by District Judge, Jammu, to Sub Judge, Jammu, for framing an issue on the question of payment of arrears of rent, too, was decreed on 11.09.2000. Against this decree too, the appellant filed an appeal, which was dismissed for non-prosecution on 29.05.2004. The decree for ejectment, when put to execution before Sub Judge, Jammu, was objected to by the appellant by filing objection petition, which was dismissed on 04.02.2002. Against this rejection too, the appellant filed another appeal before 2nd Additional District Judge, Jammu, which too was dismissed for non-

prosecution on 10.06.2004.

10. Before the aforementioned dismissal, the appellant had filed the present appeal alongwith condonation application in this Court and obtained stay of the execution of the ejectment decree.

11. The facts disclosed hereinabove would show that the present appeal is nothing but an abuse of process of the Court by the appellant, who has successfully delayed the execution of the decree for ejectment of the appellant from the house in question, which having been affirmed by District Judge, Jammu, on 08.06.1982, had attained finality. With the dismissal of writ petition No. 207/1983 on 31.05.1990, all doors stood closed to the appellant to re-question the decree for ejectment passed against him. Conscious of that, learned Counsel had no other option except not to press the appeal in so far as it questioned the decree for ejectment. Rest of the portion of the appeal regarding remanding of issue by learned District Judge to the trial Court for framing an issue and determine the arrears of rent payable by the appellant to the respondent, too, had attained finality because appeal filed against the decree stands since dismissed by the 2nd Additional District Judge, Jammu, vide his order dated 29.05.2004 and which order, too, has attained finality. The appellant can not, thus, in my opinion, question the impugned decree in so far as it directs the remand of the case to the Court of Sub Judge, Jammu. Even otherwise decision of the issue regarding arrears of rent, one way or the other would not affect the ejectment decree which had attained finality with the judgment of learned District Judge, Jammu, and additionally because the defence of the appellant stood struck out under Section 12 of the J&K; Houses and Shops Rent Control Act and he had been placed in a position which disabled him to contest the claim/suit for ejectment filed by the respondent.

12. Judgment relied upon by learned Counsel for appellant may not be applicable to the facts and circumstances of the present case because in the case cited neither any decree was shown to have been passed after the remand and nor the decree had attained finality. The present case is clearly distinguishable from the case cited by the appellants counsel.

13. There is, thus, no force in this appeal, which is, accordingly dismissed.

14. The history of litigation between the parties to this appeal demonstrates as to how an unscrupulous litigant has succeeded in abusing the process of the Court resultantly depriving the respondent of the fruits of the decree, that had been passed in his favour directing ejection of the appellant from the house in question.

15. This litigation exhibits nothing but cussedness and determined mala fide effort of the appellant in depriving the respondent of the fruits of litigation by polluting the stream of justice. Such approach on behalf of the litigants deserves high degree of condemnation. Temple of justice is open to all but Courts of Law have to be careful enough to see through the diabolic plans of the judgment debtors to deny the decree holders the fruits of the decree obtained by them. The Courts have not to encourage frivolous and cantankerous litigation causing loss to the opposite party besides bringing bad name to the judicial system. He, who resorts to such type of tactics is liable to be burdened with exemplary costs as held in Gayatri Devis case (supra).

16. In view of the aforesaid, I consider the present case to be fit and appropriate one where exemplary costs of Rupees thirty thousand should be imposed on the appellant for his dishonest prolongation of litigation by abusing the process of the Court.

17. I order, accordingly.