

(2004) 08 DEL CK 0122

In the Delhi High Court

Case No : CRP 439 of 2000

Alauddin (deceased) through legal representatives

APPELLANT

Vs

Hakim Syed Hussain (Deceased) through legal
representatives

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197

Slum Areas (Improvement and Clearance) Act, 1956 — Section 19, 19(1)

Citation : (2004) 77 DRJ 75 : (2005) 2 RCR(Civil) 161

Hon'ble Judges : Om Prakash Dwivedi, J

Bench : Single Bench

Advocate : V.L. Madan, for the Appellant; H.L. Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Dwivedi, J.—This petition is directed against the order dated 7.1.1999 passed by the learned Civil Judge whereby the application filed by the Judgment debtor for rejection/dismissal of execution proceedings instituted by the decree holder was dismissed.

2. Briefly stated the facts leading to the petition are that respondent/decreed holder filed a suit for possession and arrears of rent, damages etc. against the petitioner/judgment debtor in respect of property in question. The said suit was decreed on 23.5.1978 and the appeal there from was dismissed on 7.3.1981. The provisions of Slum Areas (Improvement & Clearance) Act were made applicable to this area vide notification No. D/L.B./1850/175/81 dated 2.5.1981 published on 28.5.1981. The decree holder/respondent herein filed the execution petition on 28.4.1982. A subsequent notification dated 3.8.1988 was issued whereby Slum Act ceased to apply to this area. In the meantime, the Execution proceedings could not proceed for one reason or other. Ultimately on 16.10.1998, petitioner filed an application before the executing court seeking dismissal of the execution proceedings on the ground that the same was filed

without prior written permission of the competent authority (slum) as the area in which property is situated, was declared a slum area by the Delhi Gazette published on 28.5.1981 vide notification no. D/L.B./1850/175/81 dated 2.5.1981. Therefore, in view of Section 19(1)(b) of the Slum Areas (Improvement and Clearance) Act which prohibits execution proceedings arising from any decree or order in any suit in respect of properties situated in slum areas without prior permission of the competent authority. This application was opposed by the decree holder/respondent. After considering the respective submissions of learned counsel for the parties, learned Civil Judge dismissed the said application vide impugned judgment dated 7.1.1999. Feeling aggrieved, petitioner has preferred this revision petition.

3. I have heard learned counsel for the parties and perused the records.

4. Learned counsel for the Judgment debtor/petitioner herein has relied upon the decisions in the case *Ajudhia Pershad vs. Chief Commissioner, Delhi* reported in 1960 (Vol.62) PLR 172 and *Albein Plywood Ltd. Vs. Janak Kapur and Others*, wherein it was held that permission u/s 19 is mandatory and is pre-requisite for initiating the eviction proceedings.

5. In the present case, the decree of possession has been passed on 23.5.1978 i.e. even before Slum Areas (Improvement & Clearance) Act was made applicable to this area vide notification dated 2.5.1981. Therefore, decree of possession dated 23.5.1978 cannot be faulted on this ground. The other decisions cited by learned counsel for the decree holder/respondent herein in the case *Acharya Rajneesh Vs. Naval Thakur and Others*, , *R.N. Sharma Vs. Union of India*, , AIR 1945 16 (Federal Court) and *T. Savariraj Pillai Vs. M/s. R.S.S. vastrad and Company*, relate to prior sanction u/s 197 Cr.P.C. for initiating the criminal proceedings. All these decisions do not lay down any law regarding legal status or maintainability of execution application which has been filed after enforcement of Slum Act relating to a property situated in slum area. From a plain reading of provisions of Section 19(1)(b) of Slums Act, it is clear that decree of possession cannot be executed so long as notification remains in force. As already stated, the decisions cited above, do not speak directly on the point. On the other hand, learned counsel for the respondent/decreed holder cited a decision of this Court in the case *Shankar lal vs. M/s. Shadi Ram Ram Swaroop & Ors.* 8 1971 DLT 311 wherein the executing court had dismissed the execution application as prior permission in view of Section 19 (1)(b) of the Slum Areas Act had not been obtained. In para 11 of the judgment, B.C. Misra, J. observed as under :

"..... As a matter of fact, the executing court ought to have kept the said application pending on its file and it ought to have only adjourned the application sine die with liberty to the decree holder to revive it on receipt of permission of the Competent Authority Slums. The court erred in dismissing the application on 18.4.1950 as infructuous and since the dismissal was illegal it is possible to hold that the application is in law still pending and the subsequent applications would only amount to revival of the same."

6. It may be pointed out here that no objection was raised regarding maintainability of the execution petition filed by the judgment debtor in their reply. It is for the first time in the year 1998 that objection regarding maintainability of the execution was taken through application dated 16.10.1998. By that time, the Slum Areas (Improvement & Clearance) Act had already ceased to be applicable to the area, Therefore, disability if any attaching to the execution proceedings stood removed long back. In view of the clear observations made by B.C. Misra, J. in para 11 of the judgment in case Shankar Lal (supra), it must be held that execution application was maintainable. Of course, the executing court ought to have adjourned the application till the necessary permission was obtained by the decree holder. In view of denotification of slum area in 1988, necessity for obtaining the permission u/s 19 was no more there. Under the circumstances, I do not find any legal infirmity in the impugned order passed by the learned civil Judge. Accordingly, this petition is dismissed.