
(1999) 03 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : CIA No. 66 of 1965 CMP No. 146 of 1998

Amar Nath Koul, Major; 2.Divinder Kumar Minor	APPELLANT
Vs	
Jammu and Kashmir Bank Ltd.	RESPONDENT

Date of Decision : 24-03-1999

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Section 21, 47

Citation : (1999) KashLJ 720

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : M.Farooq, M.Amin, Advocates appearing for the Parties

Judgement

1.Jammu and Kashmir Bank, filed a suit against M/S Gana Koul and Sons and others for recovery of Rs.99399.78, on account of outstanding in

cash credit account facility extended by the Bank to the defendant business concern. This suit was instituted in the High Court at Srinagar. The suit

was decreed on 30041964. The decree holder Bank put the judgment and decree in execution. The execution petition was transferred to District

Judge, Srinagar on 71 1965, on the motion of he decree holder. During pendency of the execution proceedings 54 of 1964, judgment debtors

raised number of objections to the maintainability of the execution petition and execution of the decree as such.

2.The District Judge, Srinagar vide his order 111165, over ruled all the objections and held the execution petition in order and maintainable.

Against this order of District Judge, Srinagar, an appeal was filed before this Court on 1211 1965 (Civ. 1st. Appeal 66/65).

3.In the Appeal, the order of District Judge, Srinagar was challenged on the ground that though the sugar weighing about 2915 Mts, valued at

Rs.131175/ was pledged with the Bank, the Bank sold only 180 bags of the sugar, which it thought was fit for consumption. The remaining bags

though found deteriorated had some saleable value, but the Bank took no steps at all to sell these bags, as per the compromise. Besides, about

350 bags of salt also pledged with the Bank were also not put to sale. The sugar was sold in contravention of the terms and conditions of the

compromise arrived at between the parties, culminating in the judgment and decree of the Court.

4.This court on 3111966 after hearing the parties passed the following order:

... We would, therefore, remit this case to the trial court with the direction that it should consider the effect of the sale of the sugar by the decree

holder before the period fixed in the decree and its effect on the rights of the judgment debtors. The learned Judge will also find out whether the

sale took place with the unqualified consent of the judgment debtors. The learned Judge will take the evidence of both the parties on this plea and

send it's finding to this Court...

By another order dated 16566, the Court also directed District Judge, Jammu to sell 350 bags of salt stored in the Go down of Shri S. C.

Magotra by auction and to deposit sale proceeds in the Court of District Judge, Jammu. The District Judge, Jammu sold the salt (593 bags actually

found in the go down) on auction on 1666, in accordance with the directions of the Court and the sale proceed of Rs.5142.50 were deposited in

the Jammu Treasury in terms of report dated 20766 of the Nazir of District Court Jammu.

5.The District Judge, Srinagar pursuant to above order of remand of the matter by High Court on 03111966, initiated proceedings on 141166 and

conducted inquiry. After taking evidence of the parties and also taking note and considering the effect, of the judgment of the High Court in Civil

Original Suit No.4 of 67 titled Davinder Kumar and others Vs. J&K Bank and others, decided on October 27,1977, District Judge Srinagar

found and reiterated that the remand directions of the court dated 1131966, being covered by the Judgment of the Single Bench in above COS 4

of 67, the issues and points required to be reported with finding by the court to High Court, are answered against the judgmentdebtor. The District

Court found:

...there is no cause left as to why the decretal amount should not be recovered from the judgment debtors. The judgment debtors had enough of

protraction so far and this court must see that no further protraction or delay is caused and that the decree is executed forth with....

The counsel for the appellant, judgment debtor submits that the order of the District Judge dated 11/11/1965, subject of appeal is defective, in so

far as the District Judge has overruled contention of the decree holder that both consumable and nonconsumable sugar was not put to auction,

when in terms of the compromise the whole sugar was required to be put to auction. The salt lying in the godown of Shri S. C. Magotra, at Jammu

has not been also auctioned. The compromise was violated in so far as part of the Sugar was auctioned in violation of the terms and conditions of

the compromise. Without findings on all these matters, the execution petition is not maintainable.

7. The counsel for the decree holder submits that in terms of the compromise, only 180 bags of sugar were to be sold which the Bank did and that

though these bags were sold before three month period agreed for sale of sugar after the decree, but this sale was effected with the consent of the

judgment debtor. The predecretal arrangements cannot be gone into by the executing court. Besides the salt in the

godown at Jammu has been also sold by auction, through District Judge, Jammu. The sale proceedings of both Sugar and salt shall be given

credit to the petitioner, once the execution proceedings are with the executing court for required process in terms of Section 47 read with

applicable provision of Order 21 of C.P. C.

8. In terms of the compromise and the decree based thereon, it would be seen that the decree holder and the judgment debtor, through Daya

Krishen Koul, one of the defendants, found only 180 bags of Sugar saleable with about 100 odd empty gunny bags in the godown. The rest of the

sugar without specifying number of bags or quantity of sugar was found deteriorated. Besides about 350 bags of salt in other godowns at Jammu

were also found in saleable condition. These bags of Sugar and Salt were to be offered for sale. Shri Daya Krishen Koul was to cooperate with

the Bank and in case the said Daya Krishen Koul failed to cooperate with the Bank and these goods were not sold within three months, then the

Bank was free to sell these bags unilaterally and to credit the sale proceeds towards the decretal amount. It may be noted that, in all decree was

for Rs.101957.13 with future interest @4 1/2% from the date of decree till actual payment with the condition that the judgment debtor will be given

1 1/2% rebate in future interest in case the whole decretal amount was paid within five years from the date of decree. Besides, adjusting the sale

proceeds on account of sale of Sugar and salt in bags and other empty bags, the remaining decretal amount was ordered to be paid by

judgmentdebtor in monthly installments of Rs.1000/. The order of remand dated 31166 of the High Court, quoted above, would show that the

District Judge was to determine the effect of the sale of the sugar by the decree holder before the period fixed in the decree and its effect on the

rights of the judgmentdebtor. Besides, the District Judge was also to find out if the sale took place with the consent of the judgmentdebtor.

9.In Civil Original Suit 4/67, titled 'Dayakrishen Koul and others Vs. J&K Bank and others', the above compromise, judgment and decree and the

very terms and conditions of the compromise memo dated 30464, for recovery of the suit amount in these execution proceedings, was adjudicated

upon. The judgment debtor challenged the compromise, judgment and decree providing for sale of pledged sugar with the Bank and for recovery

of Rs.179750/. The Hon'ble Single Bench of this Court (Hon'ble Mr. Justice I. K. Kotwal) tried the suit. Numbers of issues were raised in the suit

on 2241971. Besides, the issues touching the validity of the compromise, following two issues also were framed:

5.Whether 2195 mounds of sugar was stocked in the go down of Gana Kaul and Sons when this was pledged with the defendant No. 1? OPP.

6. How much quantity of sugar was found at the time of the opening of the Go down? Whether this sugar was sold for a price lesser than it should

have fetched? OPP

The Court in its judgment dated 271077, replied the issues against the plaintiff and while finding compromise valid and legal, returned finding on

above issue No.5 as:

That only 180 bags of sugar were found in saleable condition in the go downs. They are stopped from saying that the quantity of sugar for which

they were entitled to get credit was more...

10.The Court also found that the compromise decree was binding on the parties.

11.About Issue No.6, the Court found that 180 bags of sugar were sold in terms of Clause 3 of the compromise deed and the decree holder was

entitled to get credit for sugar. Plaintiff neither pleaded nor made out a case that the sugar was sold for lesser price or in violation of the terms of

the compromise, and therefore, it cannot be said that the case is made out thereto by the (judgment debtor) plaintiffs to the suit.

12.In the ultimate analysis, the learned Single Bench dismissed the suit. The District Judge, Srinagar has taken note of and reckoned the effect of

the judgment on the points he was required under orders of the High Court to return a finding. The District Judge has found that the Sugar has been

sold in accord with the terms of the compromise. The period fixed in the decree for sale of sugar with or without cooperative of Daya Krishen

Koul, defendant one of the judgment debtors, has not been breached. The sale took place with the consent of the judgment debtors. Even these

points as already observed, have been decided by the learned Single Judge of this court in the above referred C. O. S. 4/67. The District Judge

has found that the objections raised by judgment debtors to points referred to District Judge for adjudication on remand have been over ruled and

the points stand conclusively determined by the judgment and decree dated 27/10/77 of the Hon'ble Single Bench in above Civil Suit 4/67.

13.On examination of the findings and report of the District Judge, on the points of remand, referred to that court for adjudication by the High

Court and on appreciating the weight and effect of the judgment of the learned Single Bench in COS 4/67 if it is fully made out, on the touch stone

of preponderance of probabilities, the norm of proof required in a civil case, that the 180 bags of sugar were sold by the decreeholder in terms and

on conditions of, the decree on consent of the judgment debtors. The effect of sale of the sugar, salt and empty bags is that the sale proceeds shall

have to be adjusted and given credit while working out and adjusting the liabilities of the parties under the decree during the course of its execution.

14.That deteriorated sugar not being part of the compromise and also pertaining to pre compromise and predecree arrangement is not matter,

which would arise in these execution proceedings. Even on a fullfledged finding in a suit challenging the decree sought to be executed in these

proceedings in COS 4/67 the Court found that the deteriorated sugar cannot be and is not a matter which can be said to be part of decree or

judgment in execution. It falls outside the scope not only of the execution proceedings, but also of the main suit. Such a pre decretal arrangement

cannot be looked or gone into by the executing Court, as it is neither incorporated in the decree itself nor forms part of the settlement agreement,

basis of consent decree in this case. (See AIR 1990 P&H: 28, AIR 1935 Mad. 860 (FB), AIR 1937 Lah. 537 (1971)2 MLJ 382, and ILR

(1941) Kar. 223). Therefore, the objections raised to the executability of the decree on the ground of failure of the decree holder to adjust the

deteriorated sugar in the cash credit account of the Judgment debtor, is without any legal basis. Any predecree matter or a matter falling outside the

terms and conditions of the compromise decree, cannot be gone into by the executing court. After all the executing court cannot go beyond the

decree.

15. In view of the above referred judgment and decree of this Court and the report of the District Judge, the ground of appeal questioning the order

of the District Judge dated 11/11/65 based on non adjustment of accounts with regard to deteriorated portion of the sugar and contravention of

terms of the decree regarding the period and the manner in which the sugar was sold, are wholly without any legal or factual basis. The judgment

and decree on compromise, as already observed, has been adjudicated as valid, legal and binding vide judgment of October 27, 1977 in COS

4/67 by the High Court. Therefore, the said self educated self same points and issues cannot serve as ground(s) of appeal to question the impugned

order of the learned District Judge, overruling objection thereto qua the maintainability of the execution proceedings.

16. In the result, for the aforesaid reasons, the appeal cannot succeed and is dismissed on merits. The executing court of District Judge, Srinagar

shall proceed with the execution petition (OS 54/64 on the file of District Judge, Srinagar) in accordance with law. While ordering

execution/discharge/satisfaction of the decree, the executing court shall work out and adjust the sale proceeds of sugar, empty bags and the salt

bags referred elsewhere hereinabove, against the decretal amount and decree holder Bank, shall give credit for the amount(s) in its accounts to the

judgment debtors.

Certify decision to the court below while sending record.