
(1990) 09 SHI CK 0041

In the High Court Of Himachal Pradesh

Case No : OMP No. 447 of 1988 in Ex. Petition No. 31 of 1986

Avtar Singh

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 15-09-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 37 Rule 3, 47, 47(1)

Citation : (1990) 2 ILR HP 1574

Hon'ble Judges : D.P. Sood, J

Bench : Single Bench

Advocate : A.K. Goel, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Sood, J.—The pivotal question arising in this application is whether the correctness and validity of the decree passed on compromise can be challenged in execution.

2. The facts giving rise to the aforesaid question shortly are that a decree was passed in Civil Suit 9 of 1985 on the basis of a suit having been filed by the decree holder under order 37 of the Code of Civil Procedure. The Judgment-debtor-objector filed an application seeking leave to defend the suit but was refused by the Court.

3. The aforesaid decree was put in execution. The Judgment-debtor objector at the initial stage in execution proceedings filed OMP No. 392 of 1986 whereby he prayed for easy installments for the repayment of the decretal amount besides withdrawal of the warrants of attachment, of truck No. HPA-1412. However, the sale of the aforesaid vehicle stood postponed because of the applicant-Judgment-debtor having deposited some substantial amount towards the liquidation of the decretal amount.

4. The aforesaid OMP was followed by OMP No. 210 of 1987 wherein the objector prayed for determination of the outstanding dues after adjusting various deposits

made by him on different dates.

5. In OMP No. 211 of 1987, filed on June 21, 1987, the Judgment-debtor objector sought permission to transfer certain portion of the property belonging to him by way of sale to one Shri Suresh Kumar pursuant to an agreement for sale entered into between him and the proposed purchaser which was allowed vide order dated August 3, 1987.

6. The present application raising objections to the executability of the decree in question was filed on October 24, 1988. The main ground alleged is that the decree is based on an unlawful compromise entered into between the decree-holder and the Judgment-debtor-objector through his counsel on the basis of their respective statements so recorded by this Court and as such the decree itself was without jurisdiction and nullity and hence in executable.

7. The decree-holder non applicant refuted the allegations and contended that the question regarding the validity of the decree cannot be agitated in execution because it is not a question which relates to the discharge or the satisfaction of the decree. Further it is contended that the objections that the decree was incorrect in law or on facts, were not entertain able in execution till the decree is set aside in an appropriate proceedings in an appeal or revision. Further contention is that the suit was of summary nature and the applicant/objector having failed to obtain leave to defend the suit, the allegations in the plaint under order 37, read with Rule 3 contained in Chapter 15 of the Delhi High Court (Original Side), Rules, 1967 were to be deemed to be admitted and the Plaintiff was automatically entitled to a decree. As such the recording of the statement of the learned Counsel appearing on behalf of the applicant/objector did not in any way affected the legality of the decree in question.

8. On the pleadings of the parties, the following issues were framed on January 9, 1989:

1. Whether the decree in question has become in- executable as asserted? OP Objector.

2. Whether the J.D./Objector is estopped from raising the objections set out in the objection petition? OP Respondent-D.H.

9. Judgment-debtor Avtar Singh has appeared as his own witness in support of his claim. In his statement he has stated that he did not affect any compromise with the Plaintiff-bank in the suit nor he had authorized his the then counsel Shri Devinder Gupta in that behalf. In his cross-examination, he has admitted having filed various applications through Shri A. K. Goel, Advocate in the execution petition. He further admitted that he did make some payments to the decree-holder-bank in the decree referred to above.

10. The decree-holder-non applicant did not adduce any evidence in rebuttal.

11. The learned Counsel for the Judgment-debtor-objector reiterated the

objections referred to above relying upon the observations made in Gurpreet Singh Vs. Chatur Bhuj Goel, My attention has also been drawn to the statement of the Judgment-debtor-objector who has appeared as his own witness.

12. On the other hand, Mr. K.D. Sood, Id. counsel for the decree-holder has contended that the executing court cannot go behind the decree. According to him, even if a decree is erroneous it is as much binding on the party as a legal decree unless the same is shown to be nullity or is shown to have been parsed by a Court having no jurisdiction to make it. Reliance has been placed on the observations made in OMP No. 418 of 1989 and 31 of 1990 filed in Execution Petition No. 34 of 1988 decided on May 7, 1990 by a Single Bench of this Court.

13. Having heard the learned Counsel for the parties, I am of the view that the submissions made by the learned Counsel for the Judgment-debtor-objector are devoid of any merit.

14. Once the suit has been decreed and the said decree having become final and is put in execution, it is only within the purview of Section 47 of the Code that the objections could be raised, Section 47(1) is very material and the relevant part of the same is set out below:

.....All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

15. The scope of objection by the judgment-debtor is pertaining to execution, discharge or satisfaction of the decree and not to go behind the decree to question its validity on the grounds which were open to the Judgment-debtor at the appropriate stage before the decree was passed or in the alternative till the decree was got set aside in an appropriate proceeding in an appeal or revision. What Section 47 contemplates is that the executing court must take the decree as it is according to its tenor and must not entertain any objection that the decree was incorrect in law or on facts till the decree is set aside in the manner stated above. The executing court cannot go behind the decree nor it can go into the question of its correctness or validity except where the decree is a nullity.

16. Admittedly, this Court had the jurisdiction to entertain the suit and to pass a decree. Also the contents of application seeking leave to defend shows that the entire principal amount was admitted by the Judgment-debtor-objector from the very beginning and this position remains the same throughout and only interest was disputed. In case of Gurpreet Singh's case (supra), the legality of the compromise was challenged in appeal by special leave whereas in the instant case the legality of the compromise has been challenged in execution. It has been held as under by the Supreme Court in Gurpreet Singh's case (supra):

....Under the rule prior to the amendment, the agreement compromising the suit could be written or oral and necessarily the Court had to enquire whether or not

such compromise had been affected. It was open to the Court to decide the matter by taking evidence in the usual way or upon affidavits. The whole object of the amendment by adding the words "in writing and signed by the parties" is to prevent false and frivolous pleas that a suit had been adjusted wholly or in part by any lawful agreement or compromise, with a view to protract or delay the proceedings in the suit.

17. The fact whether the decree in question is valid or not is to be decided after examining the witnesses adduced at the trial and holding that the compromise so entered into between the parties leading to the passing of the said decree is a mixed question of law and fact. As such the decree cannot be said to have been passed without jurisdiction or to be a nullity. Also, question of the validity of a decree is not one which relates to the discharge or satisfaction thereof. The objections thereof cannot be raised in execution. The jurisdiction has assumed such a connotation that irregularity or illegality in the procedure or in the pleadings is not covered by the expression "jurisdiction".

18. Since the decree aforesaid has not been set aside in an appropriate proceeding by way of an appeal or a revision, this objection cannot be allowed to be raised at the stage of execution of the decree. These objections must have been taken at the stage of the trial. In other words, the executing court would have no power within the meaning of Section 47 CPC to entertain such objections. At this stage, the observations made by the Supreme Court in *Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others*, may be quoted:

For the purpose of determining whether the Court which passed the decree, had jurisdiction to try the suit, it is not necessary to determine the facts on the decision of which the question depends and the objection does not appear on the face of record, the executing Court cannot enter upon in any way into those facts.

Viewed in the light of principles set out above, it cannot be disputed that this Court did have the jurisdiction to pass the decree in question. If the Court did not adopt the proper procedure as postulated under Order 23, Rule 3 CPC the decree does not v. become void ab initio. At best it could be termed as voidable but such an objection is not within the domain of the executing court. As such the decree in question has not become inexecutable as asserted by the learned Counsel for the Judgment-debtor-objector. Also, as the objections regarding validity of the decree cannot be raised in execution, issue No. 2 is therefore, redundant. Issues No. 1 and 2 are decided accordingly.

19. In view of the reasons given above, this objection petition, being not maintainable, is rejected.