
(1974) 09 MP CK 0013
In the Madhya Pradesh High Court
Case No : C.R. No. 883 of 1973

Bahadur Singh Gaiind Singh Gupta	APPELLANT
Vs	
Smt. Gulardevi Onkar Prasad, and another	RESPONDENT

Date of Decision : 04-09-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148
Contract Act, 1872 — Section 74

Citation : (1979) ILR (MP) 658 : (1975) JLJ 649

Hon'ble Judges : Shiv Dayal Shrivastava, J

Bench : Single Bench

Advocate : M.V. Tamaskar, for the Appellant; K.S. Dabir with A.K. Khaskalam, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Dayal, J.—In Civil Suit No. 61-A of 1965, a compromise decree was passed on July 25, 1972, under which an amount of Rs. 13,000 was payable by the defendants (judgment-debtors) towards rent of the suit accommodation, to the Plaintiff (decree-holder) a sum of Rs. 6,500 was paid on July 25, 1972. The defendants (judgment-debtors) had to pay the remaining amount of Rs. 6,500 in two yearly instalments of Rs. 3,250 each. The first instalment was payable on July 25, 1973, and the second on July 25, 1974. There was also an exigibility clause stipulating that in case of default in payment of any instalment, not only the full amount would be payable in lumpsum, but also the judgment debtors shall be liable to be ejected from the plot and the decree-holder would also be entitled to forfeit the superstructure constructed by the judgment-debtors. The judgment-debtors have a rice mill on the plot. These facts are not in dispute.

2. It appears that the judgment-debtors did not pay the first instalment on the due date. The decree-holder, therefore, took out execution of the decree. The judgment-debtors sought indulgence of the Court stating that judgment-debtor No. 1 is an old and Pardanashin lady, while judgment-debtor No. 2 was not in

good health and was confined to bed. The judgment debtors, therefore, prayed for extension of time to deposit the amount of instalments. Eventually, on September 11, 1972, they applied to the Court for permission to deposit Rs. 7257.50. This was allowed by the executing Court, whereupon the judgment-debtors deposited on September 13, 1973, a sum of Rs. 7,257.50.

3. The decree holder opposed the judgment-debtors' application on the ground that in the case of a compromise decree, the Court was bound to execute it as it was and could not relieve the judgment-debtors of the consequences stipulated in the compromise. The learned Judge of the executing Court held that section 74 of the Contract Act applies to a case of a compromise decree also and the Court is competent to relieve parties against any term in the consent decree, which operates as penalty. Before the executing Court, the judgment-debtors said that the value of the superstructure was about Rs. 55,000. while, on the other hand, the decree-holder's estimate was that the value of the superstructure was only Rs. 15,000.

4. Having said so, the executing Court framed the following two issues for the purpose of entering into the enquiry:--

(1) Was the judgment-debtor prevented from paying the instalment of Rs. 3,250 on or before 25-7-1973 due to illness ? If so, its effect?

(2) Does the decree contain a penal provision in entitling the decree-holder to forfeiture of the superstructure ? If so, its effect ?

5. In this revision, the decree-holder is aggrieved by the above order.

6. This questions arise which are independent of each other: (1) Whether the time granted in the compromise decree could be extended by the Court u/s 148, CPC on the ground of illness, as alleged by the judgment-debtors; and (2) whether the consequence of default of payment of instalment, as contained in the compromise decree, was penal so that the Court can relieve the judgment-debtors of it.

7. As regards the second question, the trial Court has expressed its opinion and framed issue No. 2 which, in my opinion, was unnecessary.

8. It is no more in doubt that section 74 of the Contract Act applies to a compromise decree as well and if a stipulation is found to be a penal clause, the Court can relieve a party against forfeiture. This view was also taken in *Bhagwan v. Chhotelal* 1960 M P L J 293; and recently in *Rameshchandra v. Ramkaran C. R.* No. 616 of 1972 decided on 29-3-31974 (Indoore Bench), decided by Verma, J. It is obvious enough that under the compromise between the parties, the judgment-debtors were to pay the total amount of Rs. 13,000 out of which Rs. 6,500 was paid and the balance was to be paid in two equal yearly instalments. The exigibility clause, that is, if there was default in payment of any instalment, the whole amount would become payable, is understandable. It does not involve any penal clause. Because of default, the defendants merely forfeited the

indulgence which was granted to them. i.e., the facility of payment by instalments. The defendants would lose that privilege and the whole amount would become payable in a lump sum at once. This is not a penalty. But, here, it was further stipulated that in case of default in payment of any instalment, the judgment-debtors would forfeit their right to the superstructure constructed earlier by them and that the decree-holder will be entitled to take possession of the superstructure as well. This was a penal clause. The Court has discretionary jurisdiction to relieve the judgment-debtors of the said penal clause.

9. In *Messrs Bishambar Nath Swaroop Narain v. Messrs Gaya Cotton and Jute Mills Ltd* 1968 SCD 309. the High Court had held that the stipulation in the compromise decree that in default of payment of any one of the instalments on the due dates the appeal would stand dismissed was penal in character and that the time fixed for payment of these instalments was not of the essence of the contract. On appeal, the Supreme Court held that the stipulation for payment of the much larger claim in default of payment of any instalment was designed to secure performance of the primary obligation. The stipulation was by way of penalty as contemplated by section 74 of the Contract Act. The Court had the power to give relief against the penalty.

10. This is not a case where there is an agreement to pay a particular sum followed by a concession that if the debtor pays the same or a similar sum in instalments, the creditor would accept in full satisfaction of the debt coupled with stipulation that on default of payment of any instalment, the entire debt would become payable. In that case, the stipulation would not be regarded as a penalty. In the present case, the decree-holder was given the right not only to recover the amount which remained unpaid, but also to eject the judgment-debtors and, further more, to be entitled to the superstructure. Even if the value of the superstructure is only Rs. 15,000, what for the decree-holder to get this superstructure. He was entitled merely to rent and the total amount of rent was fixed at Rs. 13,000, plus the running rent at Rs. 100 per month. The stipulation as to forfeiture was *in terrorem* to secure payment. Therefore, it was not necessary to enquire into any further facts, apart from those already on record. The executing Court could straight-way decide the second issue.

11. As regards the first question, the executing Court framed issue No. 1. It will require an enquiry. However, it is worthy of note that if the judgment-debtors have deposited the entire amount and they are entitled to be relieved of the penal clause in the compromise decree, the decision on issue No. 1 will have no bearing on the decision of issue No. 2. Both the issues are independent in their scope and effect.

12. This revision is dismissed with costs. Counsel's fee Rs. 50. The case shall now go back to the executing Court for proceeding with the execution according to law.