

(2012) 09 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : C.M.P.M.O. No. 126 of 2012

Bharat Petroleum Corporation Ltd. and Another	APPELLANT
Vs	
Smt. Swaran Garg	RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5, Order 43 Rule 1(d), Order 6 Rule 4, Order 9 Rule 13, Order 9 Rule 4
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5

Citation : (2012) 3 ShimLC 1679

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : B.N. Misra, for the Appellant; K.D. Sood with Mr. Naresh K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—This petition under Article 227 of the Constitution of India has been preferred by the defendants, petitioners herein, against the judgment of the learned District Judge, rejecting their appeal under Order 43 Rule 1(d) read with Sections 104 and. 151 of the CPC (hereinafter referred to as "CPC"). The appeal was preferred by the petitioners herein against the order dated 10.5.2010 passed by the learned Civil judge (Junior Division), Solan, dismissing the application preferred by the petitioners under Order 9 Rule 13 CPC alongwith the order passed in the application under Sections 151 and 11 CPC with the prayer that the appeal preferred be dismissed as not maintainable.

2. The facts necessary for adjudication of this petition are that the respondent-plaintiff instituted a suit for recovery of Rs. 65,000/- claiming that amount to be arrears of rent against the petitioner-defendants on the pleadings that she is the owner of land comprised in Khata/Khatauni No. 55/72, Khasra Nos. 362/314/85, 317/87 and 384/320/88, Kittas 3, measuring 3 bighas 9 biswas, situated at Mauza Khali, Tehsil and District Solan, which had been leased out to the

petitioners herein on a monthly rent of Rs. 9500/- as per registered lease agreement dated 29.1.2003. The pleading was that the lease was from 1.9.2002 onwards, however, an amount of Rs. 2 lacs was paid as advance up to May, 2004. The plaintiff pleads that according to the terms and conditions of the lease deed, it was provided that in case the rent is in arrears for a period of consecutive six calendar months and the lessee fails to pay the same within a fortnight from the date of service of notice, the lease will stand determined. It was pleaded that the rent from June 2004 to November 2004 was not paid on demand which amount works out to Rs. 56,500/-. Out of this an adjustment of Rs. 500/- was made from the amount of advance. In response to the notice it was alleged vide Ex. PW-1/L by the petitioner that Demand Draft No. 353419, dated 3.11.2004 for Rs. 51,640/- drawn at Oriental Bank of Commerce, Solan, was sent to the plaintiff, respondent herein, who denied receipt of such payment. The notice, determining the lease was issued, but was not complied with. The plaintiff also claimed a sum of Rs. 900/- as out station clearance charges. A decree for recovery of Rs. 65,000/- alongwith interest @ 12% per annum from the date of suit till realization and possession of the land was prayed for.

3. The defendants (petitioners herein) were proceeded ex-parte on 2.6.2006 by the learned trial Court which then proceeded to record evidence on behalf of the plaintiff. The suit was decreed on 16.1.2007 on the ex-parte evidence of the plaintiff. The husband of the plaintiff Shri R.K. Garg, who is a practicing advocate at Solan, appeared as PW-1 proved on record General Power of Attorney Ex. PW-1/A, Lease Agreement Ex. PW-1/B, Notice Ex. PW-1/C, Postal Receipts Ex. PW-1/D and Ex. PW-1/E, Correspondence Ex. PW-1/F, Ex. PW-1/G and Ex. PW-1/H, reply to the notice Ex. PW-1/L addressed by the defendants to the plaintiff stating that an amount of Rs. 51,460/- has been sent to them, Indemnity Bond Ex. PW-1/M, Reply Ex. PW-1/N and correspondence Ex. PW-1/P, Ex. PW-1/Q and Ex. PW-1/R. It would have been in the fitness of things in case the learned trial Court first framed issues and then after discussing the evidence, proceeded to pass the decree. However, the suit has been decreed without adopting such a course, which practice requires to be deprecated.

4. Thereafter, an application under Order 9 Rule 13 read with Section 151 CPC for setting aside ex-parte decree dated 16.1.2007 was filed by the petitioners before the learned trial Court. The main averment made was that the petitioner-defendants were not served in the case for the date fixed, which was 2.6.2006, on which date the petitioner-defendants were proceeded ex-parte. The application avers that no notice either by Registered AD or through the Process Serving Agency was served on the defendants. The pleading then proceeds:--

2...In fact, the applicants received the summons from this Court, the said summons were not accompanied with any copy of document/petition from which the appellant could inferred about the nature of the case. After receipt of the notice, the applicant visited the Solan and engaged the advocate and instructed him to inquire about the nature of case....

5. The pleading then proceeds that no process fee was filed by the plaintiff for issuance of summons for 2.6.2006 and adverse inference under Order 9 Rule 5 CPC could not be drawn against the petitioner-defendants. In a nut shell, the case of the petitioner-defendants is that the decree has been obtained by suppressing material facts, practicing fraud and the ex-parte order which has been passed is per se illegal for the reason that no service was effected and service on the petitioner-defendants could not be ordered pursuant to the provisions of Order 9 Rule 4 CPC since both the defendants were not residing within the limits of the territorial jurisdiction of the Court.

6. In reply, these averments were denied. What follows thereafter is a bizarre sequence of events. This application was taken up for consideration on 1.9.2008 with the direction that the respondent (plaintiff) be served for 17.10.2008. The case was thereafter taken up on 17.10.2008 and time was sought for filing rejoinder etc. On 14.11.2008 further adjournment was prayed for filing rejoinder. On 4.12.2008 the Presiding Officer was on leave and thereafter the case was adjourned to 7.1.2009. On 10.3.2009, adjournment was prayed for by learned Counsel for the petitioner who stated that he has not received copy of the reply filed by the respondent (plaintiff). It was directed that process fee be filed for requisitioning the records. On 6.5.2009 the case was adjourned with the direction that the main file has not been received as process fee has not been filed. On 15.6.2009, the learned trial Court settled three issues. The first one being as to whether it is duly proved by the applicants (defendants) that they have not been served for 2.6.2006 and whether there was sufficient cause for condoning delay in filing the application for setting aside ex-parte decree. The witnesses were summoned for 21.8.2009. The application filed under Order 41 Rule 5 CPC for interim directions was dismissed by the Court being not maintainable. On 21.8.2009 the Court records that no witnesses are present and an application u/s 151 CPC was filed which was taken up for reply etc. This application filed by the respondent pleaded that decree was passed by the Court on 16.1.2007 and proceedings for setting aside ex-parte decree with an application u/s 5 of the Limitation Act was preferred in the trial Court.

7. The application states that since the judgment-debtors/ defendants (petitioners herein) had also filed an appeal against the decree in the Court of learned Additional District Judge, who, by his order dated 17.4.2009 had dismissed both the application and the appeal, no proceedings were maintainable before the trial Court. The precedent of the Supreme Court in P. Kiran Kumar Vs. A.S. Khadar and Others, was invoked. The application then proceeds that the appeal was dismissed, but an application for restoration of the appeal had been filed which was fixed for 4.9.2009. In reply to this application, it was admitted that the petitioners herein had filed an appeal against ex-parte decree alongwith an application u/s 5 of the Limitation Act for Condonation of delay for the reasons that the respondents-defendants came to know about this fact after summons in the execution petition had been received by them. It also pleads that petitioner-defendants had also filed an application before the Id. trial Court

for setting aside the ex-parte decree. It pleads that proceedings were pending before the learned trial Court and were stayed by its order dated 10.3.2009. The petitioners herein were "about to withdraw the appeal pending before the learned Additional District Judge, Solan", Counsel for the petitioners herein had to visit Nahan due to ill health of his father and requested one Mr. Verma, Advocate, to appear in the appeal. The pleading then proceeds:--

2....but it slipped out in his mind to appear in the case result of which the same was dismissed in default for non-appearance. The respondent/defendant immediately filed an application for restoration of the said appeal which was pending for consideration but since in the present facts and circumstances, the respondent/defendant decided to withdraw the said appeal before the Hon"ble Additional District Judge, Solan on the ground that he has already filed an application under order 9 rule 13 CPC before the Trial Court, the said prayer was allowed vide order dated 20.10.2009, copy enclosed. So in view of the facts...

8. This application was taken up for hearing on 18.3.2010, 1.4.2010, two other dates were fixed when order could not be pronounced. By its order dated 10.5.2010, the learned Court pronounced the final order on this application holding inter alia that on the basis of the decision of the Supreme Court in Shyam Sundar Sarma Vs. Pannalal Jaiswal and Others, , the application under Order 9 Rule 13 CPC is not maintainable, in view of the explanation appended to that order. The application was allowed and the application under Order 9 Rule 13 CPC was dismissed as being not maintainable.

9. Appeal was preferred by the petitioners herein before the learned Additional District Judge, Solan, who by his order dated 23.10.2010, dismissed the appeal holding inter alia that the appellants before that Court were proceeded ex-parte which has been established on the record. The filing of the application under Order 9 Rule 13 CPC and application for condonation of delay u/s 5 of the Limitation Act was also a matter of record. On 17.4.2009, the Court noticed that no appearance was put in before the learned appellate Court and therefore, the appeal was dismissed in default on 17.4.2009.

10. After the application for restoration of the appeal/application for condonation of delay was dismissed as withdrawn, the appellants pursued the application under Order 9 Rule 13 CPC filed before the learned trial Court inter alia relying upon the decisions of the Supreme Court in Shyam Sundar Sarma Vs. Pannalal Jaiswal and Others, and P. Kiran Kumar Vs. A.S. Khadar and Others, . The appeal of the petitioners herein was dismissed holding that (a) since the appeal was already dismissed by the Court on 17.4.2009 and application for restoration of appeal and application u/s 5 of the Limitation Act was dismissed as withdrawn on 20.10.2009, the learned trial Court was correct in holding that application under Order 9 Rule 13 CPC was not maintainable; (b) that the appeal preferred by the petitioners herein was not competent.

11. C.M.P.M.O. No. 430 of 2010, titled: Bharat Petroleum Corporation Ltd. and

another v. Smt. Swaran Garg, decided on 14.6.2011, was instituted by the petitioners herein in this Court challenging the order of the appellate Court passed on 23.10.2010 (considered supra). This Court quashed and set aside the order remanding the case to the learned appellate Court in the following terms:--

Therefore, the order dated 23.10.2010 is set aside and the matter is remanded back to the learned Lower Appellate Court who shall decide the same after hearing the learned Counsel for the parties. The learned Lower Appellate Court is directed to decide the applications as well the main appeal by one consolidated order since the facts are intertwined. The parties through their Counsel are directed to appear before the learned Lower Appellate Court on 15.7.2011. The learned Lower Appellate Court shall make an endeavour to decide the main appeal as well as the applications at the earliest and in any event not later than 31st August, 2011. The Registry is directed to send the record of the learned Lower Appellate Court back so as to reach well before the aforesaid date. No order as to costs.

Sd/-

(Deepak Gupta)

Judge

June 14, 2011

12. Subsequent thereto, the case was again taken up by the learned Additional District Judge and disposed of on 16.1.2012 dismissing the appeal preferred by the petitioners herein and affirming the order of the learned trial Court. The learned appellate Court after noticing the fact and taking into consideration that on 17.4.2009 the appeal preferred by the petitioners had been dismissed in default, an application for restoration of the appeal and application for condonation of delay have been preferred and were withdrawn. On 20.10.2009 on the statement made by learned Counsel for the appellants therein that the petitioners do not wish to prosecute/press the application for restoration of the appeal since they had already approached the trial Court under Order 9 Rule 13 CPC. The Court recorded:--

17.4.2009

Present: None for the applicants.

Sh. Tek Chand, Adv for respondents.

Called again. It is already 4 P.M. Since none appeared on behalf of applicants, the petition is dismissed in default Be consigned to the Record Room after doing the needful.

Sd/-

(L.R. Sharma)

Addl. District Judge, Solan

Announced. 17.4.2009

20.10.2009

Present: Shri M.P. Kanwar, Adv. for applicants.

Shri Tek Chand, Adv. for the respondent

It has been submitted by the Counsel for the applicants that he does not want to prosecute/press the application since he has already filed application under order 9 rule 13 C.P.c. before the Id. Trial Court. In view of the statement made, the petition dismissed as withdrawn. Be consigned to records.

Sd/-

(L.R. Sharma)

Addl. District Judge, Solan

13. The Court then proceeds that by an order dated 20.10.2009 the appeal was never withdrawn, but it was the application for restoration of appeal which was withdrawn. In these circumstances, the order of the learned trial Court was in accordance with law.

14. Aggrieved by this order, the petitioner-defendants have now challenged the order on a number of grounds. The primary being that (a) the judgment and decree was obtained by fraud, misrepresentation and suppression of facts by the plaintiff where the service of the summons was manipulated whereafter the petitioner was proceeded ex-parte; (b) in these circumstances it was the bounden duty of the learned Courts below to have gone into the allegations of fraud, as alleged, (c) that the case of the petitioner was squarely covered by the decision of the Supreme Court in Shyam Sundar Sarma Vs. Pannalal Jaiswal and Others,

15. I have heard learned Counsel for the parties and have gone through the record.

16. As noticed by me supra the case has taken a tortuous turn with no party relenting from manipulating the procedure of law in a game of brinkmanship. This is the second round of litigation before this Court. Application after application has been moved. So much so the petitioners have also allowed their appeal/petition being dismissed in default before the learned appellate Court and thereafter withdrew the application for restoration of the appeal.

17. Adverting to the first two submissions made by the learned Counsel appearing for the petitioners, the law on this point is well settled. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , the Supreme Court holds:--

1. "Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and nonest in the eyes of law. Such a judgment/decreed-by the first Court or by the highest Court- has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings. (p.1)

18. In *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, the Court reaffirmed this proposition holding:--

14...

Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order. (p-587)

19. In *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, the Supreme Court holds:--

20. By filing letter No. 2775 of 26-8-1991 along with the review petition and contending that the other letter, namely, letter No. 2776 of the even date, was never written or issued by the respondent, the appellant, in fact, raised the plea before the Commission that its judgment dated 16-11-1993, which was based on letter No. 2776, was obtained by the respondent by practising fraud not only on the appellant but on the Commission too as letter No. 2776 dated 26-8-1991 was forged by the respondent for the purpose of this case. This plea could not have been legally ignored by the Commission which needs to be reminded that the authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (*Fraus et jus nunquam cohabitant*). It has been repeatedly said that Fraud and deceit defend or excuse no man (*Fraus et dolus nemini patrocinari debent*).

21. In *Smith v. East Elloe Rural Distt. Council*, 1956 AC 736, the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In another case, *Lazarus Estates Ltd. v. Beasley*, (1956) 1 QB 702 at 712 (QB at p.712). Denning, L.J. said:

No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

22. The judiciary in India also possesses inherent power, specially u/s 151 CPC to recall its judgment or order if it is obtained by fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud.

Inherent powers are powers which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order. (See: Benoy Krishna Mukerjee Vs. Mohanlal Goenka and Others, ; Gajanand Sha and Others Vs. Dayanand Thakur, AIR 1947 236 (Nagpur); AIR 1926 315 (Oudh) AIR 1929 385 (Oudh) Bankey Behari Lal v. Abdul Rahman, ILR (1932) 7 Luck 350; Lekshmi Amma Chacki Amma Vs. Mammen Mammen, The Court has also the inherent power to set aside a sale brought about by fraud practised upon the Court Ishwar Mahton and Another Vs. Sitaram Kumar and Others, or to set aside the order recording compromise obtained by fraud. Bindeshwari Pd. Chaudhary Vs. Debendra Pd. Singh and Others, ; Tara Bai Vs. V.S. Krishnaswamy Rao,

30. Forgery and fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inference drawn from proved facts

(pp. 562-564)

20. This principle finds reiteration in United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, holding thus:--

1, Leave granted.

2. If what the appellant-Insurance Company now says is true, then a rank fraud had been played by two claimants and wrangled two separate Awards from a Motor Accident Claims Tribunal for a bulk sum. But neither the Tribunal nor the High Court of Allahabad, before which the Insurance Company approached for annulling the awards, opened the door but expressed helplessness even to look into the matter and hence the Insurance Company has filed these appeals by Special leave.

3. "Fraud and justice never dwell together." (Frans et jus nunquam cohabitant) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed "in a language without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything" (Lazarus Estates Ltd. v. Beasley, 1956 (1) QB 702.)

4. For a High Court in India to say that it has no power even to consider the contention that the awards secured are the by products of stark fraud played on

a Tribunal, the plenary power conferred on the High Court by the Constitution may become a mirage and people's faith in the efficacy of the High Courts would corrode. We would have appreciated if the Tribunal or at least the High Court had considered the plea and found them unsustainable on merits, if they are meritless. But when the Courts pre-empted the Insurance Company by slamming the doors against them, this Court has to step in and salvage the situation.

(pp. 584)

21. I need not consider the other precedent on this point but only mention that the principle laid down by the High Court in *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, , *National Insurance Co. Ltd. Vs. Gaisuddin Khan and Another* , *United India Insurance Co. Ltd. Vs. Pawan Tikkiwal and Others*,), *The Branch Manager, United India Insurance Co. Ltd. Vs. Sri. Chandrashekara and Another*, *New India Assurance Company Ltd. v. Raj Kumar and others*, 2010 (4) ACJ 2535 (J & K) and *United India Insurance Company Limited Vs. Gaviyappa and Others*, follows the law laid down by the Supreme Court on the point.

22. This is the crux of the entire matter. In other words if the vehemence with which it is urged before me that fraud has been practiced on the Court or statement has been made by suppressing or misreading facts, then obviously it was a serious matter requiring investigation and decision after evidence was led by the parties. The preliminary ground urged on behalf of the petitioners is that no process fee was filed for summoning the defendants (petitioners herein) for the date on which they were proceeded ex-parte, but an inference was drawn that notices were sent by Registered AD Post which were served. The defendants could not be served by this mode of service considering the fact that they are not residents within the jurisdiction of the learned trial Court. Reliance was placed on the decision of this Court in *Aar Kay Traders Vs. Satish Electronics*, , holding:--

Service of summons on defendant residing within the jurisdiction of the Court

23. On a close and careful scrutiny of the legal provisions, it is apparent that in the case of defendants residing within the territorial jurisdiction of the Court where the suit is pending, the Court is required to normally issue summons only through the process-serving agency or through approved courier service. It may, however under rule 3, also direct service of summons on the defendant(s) by registered post acknowledgement due, speed post, courier service as well as fax message or e-mail. In addition, the plaintiff can apply that he may be permitted to serve the defendant personally under rule 9A.

Service of summons where the defendant resides outside the jurisdiction of the Court.

24. In cases where the defendant resides outside the territorial jurisdiction of the Court in which the suit is instituted, the Court cannot issue summons by registered post acknowledgement due. It has been urged that this is a retrograde step and will unnecessary delay the suit It does not appear to be so. Probably,

the reason why registered post service has not been permitted when the defendant resides outside the jurisdiction is that in a large number of cases, the registered letter never comes back and then a declaration of deemed service is made after thirty days. The legislature, probably felt that where the defendant resides far away, outside the jurisdiction of the Court, it would be unjust to raise such a presumption.

25. Be that as it may, this Court cannot go into the reasons which may have weighed with the legislature since the language of sub-rule (4) is absolutely clear and the only interpretation which can be given to sub-rule (4) is that when the defendant resides outside the jurisdiction, he can under this sub rule only be served by speed post, courier service, fax message or e-mail but not by registered post acknowledgement due.

(p. 52)

On this aspect learned Counsel for the petitioner urges that since the defendant(s) was a Corporation, it would be deemed to be resident within the meaning of explanation to Section 20 of the CPC.

23. It is also urged on behalf of the plaintiff respondent that the order of the two Courts below is in accordance with law as no proceedings were maintainable before the learned trial Court. Reliance was placed by the learned Senior Counsel appearing for the plaintiff on the decision in P. Kiran Kumar Vs. A.S. Khadar and Others, and Shyam Sundar Sarma Vs. Pannalal Jaiswal and Others, True the sequence of events as noticed by me above disclose woeful lack of diligence on the part of the petitioners. It is also urged by learned Senior Counsel that in the pleadings itself it is admitted that notice was received by the defendant but without any plaint etc. These pleadings have been filed on affidavit of a responsible officer, which constituted an admission and all that has happened subsequently is nothing but multiplicity of litigation which is uncalled for. Once it is admitted that the petitioners herein were served in accordance with law, there was no justification for the Courts below to have entertained the application even assuming that it was maintainable.

24. As noticed by me above, the application preferred under Order 9 Rule 13 CPC at one point of time had reached the stage where issues had been settled and the case was fixed for recording evidence on behalf of the petitioner-defendants. During this period an appeal was also preferred before learned District Judge, which appeal was dismissed in default, application for restoration was withdrawn, the trial Court dismissed the application under Order 9 Rule 13 CPC which order was appealed against. When an adverse order was passed by learned appellate Court, the petitioner approached this Court with the complaint that it has not been heard in the main case as such it was remanded by this Court to the learned appellate Court which again decided against the petitioners and now the present petition. This litigation has been tossed between the trial Court, appellate Court and this Court could have been avoided but that was not to be.

Each party was bent upon establishing its superior knowledge of law to outsmart the other. What must not be lost sight of is the fact that proceedings in a Court of law are solemn proceedings and cannot be turned into a game of chess to outwit each other. In the present petition I am dealing with litigants who are well versed with the law. The plaintiff is the wife of a practicing advocate and the defendants-petitioner is a Corporation which commands the best legal advice in the country. But what bothers my mind is the ground of purported misrepresentation and fraud pleaded by the petitioner herein. I also note that the particulars of fraud as required under Order 6 Rule 4 CPC have not been pleaded but nonetheless innocence of legal procedure is put forth before me as a ground of lack of these pleadings which becomes very difficult to believe. At the same time I cannot overlook the law on fraud (*supra*) for the obvious reason that it vitiates the solemnity of the entire proceedings and sullies the legal system. I need not say more.

25. Another plea raised by the petitioner is that the premises being within the Municipal Limits of Solan, no order of ejectment can be executed unless orders for eviction has been passed u/s 14 of the H.P. Urban Rent Control Act, 1987. Obviously, there being no pleading before the learned trial Court on this count there is no finding.

26. In these circumstances, the petition is disposed of with the following directions:--

(a) This petition does not determine the rights of the parties on all the submissions as made in this petition or before the learned Courts below for the reasons that the point of purported misrepresentation, fraud etc. if committed, as alleged, have been left open for adjudication by the learned executing Court.

(b) In view of the judgment passed in S.P. Chengalvaraya Naidu's case (*supra*) since the plea of fraud can be set up in any proceedings, it will be open to the petitioners herein to institute objection(s) in execution pending before the learned executing Court.

(c) It will be open to the petitioners herein to object to the execution of the decree on the ground that its execution is barred by the provisions of H.P. Urban Rent Control Act, 1987.

(d) The learned executing Court shall grant an opportunity to both the parties to lead evidence on their respective pleas set up by them and then render its decision. For this purpose both the parties shall be granted adequate opportunity to lead evidence oral/ documentary.

Petition disposed of. As noticed by me, the petitioners have been running from Court to Court, suffered dismissal in default of its petition(s) proceedings before the learned appellate Court, withdrew its application for restoration, again have approached this Court twice claiming improper adjudication before the appellate Court, it would be in the fitness of things if costs of Rs. 25,000/- are imposed on

the petitioners to be paid to the respondent. The decree in execution shall remain stayed till adjudication of the objections, if any, preferred by the petitioners.