
(1947) 03 CAL CK 0012
In the Calcutta High Court

Byomkesh Mukherjee

APPELLANT

Vs

Bhupendra Narayan Sinha Bahadur and Another

RESPONDENT

Date of Decision : 28-03-1947

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1948 Cal 179

Judgement

1. This is an appeal on behalf of the judgment-debtor and it arises out of an objection u/s 47, Civil P.C., to the execution of a decree. The objection was overruled by the learned Subordinate Judge of Birbhum by his order dated 4th September 1946. The decree in question had been passed on 24th March 1945 in a rent suit by consent of parties. A petition of compromise was put in on that date which was made a part of the decree. The compromise decree as well as the petition of compromise shows that the claim in the suit was for a sum of Rs. 71,947-10-3 on account of rent of a Patni mehal for the period from 1346 B.S. to the month of Jaistha 1349 B.S. calculated at the rate of Rs. 23,705 as the annual rent and Rupees 3025-13-0 as the annual cess payable for the Patni. By the compromise the amount payable by the defendant was fixed at a sum of Rupees 72,986-9-6 including costs. The decretal amount was made payable in a number of instalments which were specified in the solenama and were spread over 11 years from 1352 B.S. to 1362 B.S. There was a default clause which provided that in case there was default in payment of any one of these instalments or any portion of an instalment, the whole of the remaining instalments would be deemed to be in default and the plaintiff would be entitled to enforce payment of the outstanding balance due at the time with interest thereon at the rate of 6 1/4 p.c.p.a. from the date of default until realisation. The whole of this term was embodied in para. 3 of the petition of compromise. In para. 4 there was a further stipulation which also provided that in the contingency therein set out the balance of the instalments which might be outstanding on a specified date would likewise be deemed to be in default as stated in para. 3, and that upon the happening of such contingency the plaintiff would be similarly entitled to enforce

payment of the whole of the amount then due under the decree with interest at the same rate of 6 1/4 per cent, per annum. It is on the effect of the interpretation of para. 4 that this appeal turns. The contingency referred to in this paragraph was this. The amount decreed by the compromise covered the rents due up to the end of 1351 B.S. Paragraph 4 recited that from 1351 B.S. the defendant would go on paying the patni rent in accordance with the kists stipulated in the patni kabuliyat, and it was then stated that if owing to non-payment of any of these kists of the patni rent the landlord decree-holder had to file an application for sale of the patni under Regulation 8 [VIII] of 1819, the defendant would be at liberty to prevent the sale by payment of the amount due as provided in the Patni Regulation itself. It was then stipulated that if the defendant made default in payment of any of the instalments of patni rent for which proceedings might have been instituted under the Patni Regulation, then, on such default and "from the date of the Austam Sale," all the instalments of the rent decreed by the compromise would be deemed to be in default and the provision of para. 3 regarding enforcement of the entire decree irrespective of the instalments would thereupon be attracted.

2. What actually happened in this case was that the defendant patnidar failed to pay the patni rent for the year 1852 B.S. whereupon the decree-holder was obliged to commence proceedings for the sale of the tenancy under the Patni Regulation, The sale was advertised to take place on 15th May 1946. The judgment, debtor made no payment on or before that date In order to save the patni from sale. The landlord, however, did not allow the sale to be held, but withdrew his application under the Patni Regulation, with the result that no sale took place and the arrears for which he had instituted the proceeding remained outstanding. It is in view "of this abandonment of the sale that the judgment-debtor raised his first objection to the present execution proceeding. The present execution was taken out in terms of the default clause. The decree-holder's case was that as the judgment-debtor had failed to pay the patni rent of the year 1332 B.S. for which application for sale had been made under the Patni Regulation, the default clause came into operation under para. 4 of the petition of compromise. The whole of the amount then due under the compromise decree for rent became accordingly payable. The ground which the judgment-debtor took in answer to the application for execution was that on a proper construction of para. 4 of the petition of compromise the contingency upon the happening of which alone the default clause could operate could not be said to have happened. In support of this contention reliance was placed on the language of para. 4. Paragraph 4 was in these terms:

(4) San 1352 Sal hoite bibadi paksha salishi pattani mahale khajna kisti kisti adaya diben, protipaksa taha na dewa beta badike austhtam darkhast korite hoile protibadi protyek khajna bakir aushtamer deya taka aushtam nilamer purbe adaya diben ebang bibadi paksa oirup sartanujayi kono ek aushtamer taka adaya dite truti korile taddhetu o je auabtamer taka dite bibadi paksa truti koriben seyi aushtatn nilamer tarikh hoiteyi atra mokaddamar dikrikrita

tatkalinpionakigtisamuha khelap ganya hoibe ebang badibahadur tin dafat barna-namate may samaata asal o suder janya atra baki khajna dikrijari koriya may kharcha samagra raka adaya koriya loite pariben tabate bibadi pakaa kono kichu apatyadi korita pariben na.

3. The argument on behalf of the judgment-debtor was that the reference to austam sale in this paragraph imported the holding of such a sale as a sine qua, non for the coming into operation of the default clause. In other words it was suggested that unless the austam sale was actually held, the decree-holder could not claim that there had been such default on the part of the patnidar as would give rise to the right conferred on the decree-holder in para. 3.

4. A second objection was raised, and that was to the effect that the whole of para. 4 was extraneous to the suit in which the compromise decree was passed and it could not, therefore, be regarded as an operative or effective part of the decree. The effect of the contention, if sound, would be that the only ground on which the decree-holder would be entitled to enforce payment of all outstanding instalments at once would be that specified in para. 3. Paragraph 4 would, in this view, be regarded as if it had not been incorporated in the decree at all. We shall deal with each of the points separately.

5. As regards the first point, we are of opinion that upon a true construction of para. 4 the holding of an austam sale could not be regarded as a part of the conditions therein specified. As already pointed out, the paragraph begins by stating the legal obligation of the patnidar in respect of payment of rent which will be due from 1352 B.S. onwards. It is stated that from 1352. B.S. the patnidara will pay the patni reat in accordance with the instalments in the patni kabuliyat. Then follows a statement that if there is default in such payment, the plaintiff may file an application for sale under Regulation 8 [VIII] 1819. It may be pointed out in passing that the right of the landlord to institute proceedings under Regulation for default in payment of patni rent from 1352 B.S. onwards is also expressly reserved in para, 6 of the compromise. It is then stated that the defendant will be at liberty to pay the money due for which the austam sale may have been ordered, before the sale. That, again, is stating the law as it stands under the Regulation. Then follow the words which create the contingency on the happening of which the plaintiff's right to enforce the decree in terms of para. 3 arises. This clause is to this effect: If the defendant makes default in payment of the amount for which the austam proceeding may have been instituted, then, on that ground and with effect from the date of the austam sale, all the instalments then due under the decree in the suit will be deemed to be in default within the meaning of para. 3. There is no doubt reference to the date of the austam sale, which may be regarded as presupposing the holding of a sale, but it will be observed that the words "and from the date of the austam sale etc.," are really a parenthesis and do not in any way constitute a part of the ground on which the result stated in the later portion of the paragraph is made to depend. The ground on which that result depends is the default in payment of the austam dues. The

other portion of the clause which refers to the austam sale is inserted merely for the purpose of indicating the date with effect from which the default will be deemed to have taken place. That part of the clause, therefore, has nothing to do with the Condition which will bring the default clause into operation. Where the austam sale is held, the words "from the date of the austam sale" will no doubt be literally fulfilled. Where the sale is not held, those words will mean the date which was advertised for the holding of the austam sale. We are unable to accept the appellant's contention that the holding of the austam sale was a condition precedent to the enforcement of the right which the decree-holder claimed by reason of the default clause. This disposes of the first objection.

6. As regards the second point, we are of the opinion that that is also without any substance. The argument in effect was that in so far as the rent for 1352 B.S and succeeding years was not the subject-matter of the suit, any provision relating to the payment or non-payment of such rent could not be regarded as a matter relating to the suit and could not, therefore, properly form a part of the decree. Reliance was placed on the terms of Order 23, Rule 3, Civil P.C., which make it clear that where a suit is adjusted by a lawful agreement or compromise, though the agreement or compromise is recorded in its entirety, the decree which the Court passes in the suit is only a decree in accordance with the compromise so far as it relates to the suit. This need not be disputed, and in fact this interpretation was accepted by the Judicial Committee in the well-known case in Hemanta Kumari Devi v. Midnapur Zemandary Corporation Ltd AIR 1919 P.C. 79. In the present case the decree as drawn up also expressly states that the suit is decreed in terms of the petition of compromise in so far as it relates to the subject-matter of the suit. The subject-matter of the suit was the rent due up to the end of the year 1351 B.S. It may accordingly be conceded at once that so far as subsequent rents are concerned, that is to say, rents due from and after 1352 B.S., they were outside the scope of the suit, but we do not understand para. 4 of the petition of compromise to give any direction regarding the payment of any part of such subsequent rent. In fact the decree, as we read it, does not profess to deal with rents for the subsequent period at all. The whole of the relief which is granted under the compromise relates to the claim in the suit. So far as that claim is concerned, the amount was settled at a given figure, and then it was provided that this amount would be payable in a number of instalments which were specified in detail. There was then added a default clause, under which in certain contingencies the instalments would be scrapped and the whole of the balance due under the decree would be recoverable at once in execution. One of such contingencies was specified in para. 3. That related to omission or failure to pay any of the instalments in which the amount decreed was made payable. A further contingency was laid down in the next paragraph. That did not relate to any of the instalments under the decree, but to a contingency which may no doubt be regarded as outside the scope of the suit. Default in payment of patni rent due for the year 1352 B.S. or any subsequent year was certainly extraneous to the suit, but as already stated, the decree made

no provision regarding the payment of such rent. All that para. 4 says is that if in respect of payment of the patni rent from 1352 B.S. there is any default, then the fact of such default will be taken to be equivalent to the occurring of a default in payment of one or more of the instalments due under the decree itself. We do not see how the fact that the contingency contemplated is one outside the scope of the suit be regarded as making it wholly inoperative, though it directly affects the relief which is admittedly granted by the decree and is within the scope of the suit.

7. A number of cases were cited before us, but it is sufficient for our purpose to refer to the decision of Mitra J. in *Gobinda Chandra Pal v. Dwarkn, Nath* 35 Cal. 837 where it was pointed out that the question whether any particular term in a compromise relates to the suit must be decided from the frame of the suit, the relief claimed, and the relief allowed by lawful agreement. No hard and fast rule can be laid down. Each case is governed by its own facts. This view was adopted later by Rankin Order J. in *Shashi Bhusan Shaw Vs. Hari Narain Shaw*, . It may be stated that as a general rule all the terms which form the consideration for the adjustment of the matters in dispute, whether they form the subject-matter of the suit or not, become related to the suit, and can be embodied in the decree. Thus, where A sues B on a promissory note, and a compromise is arrived at between the parties whereby B agrees to pay the amount of the note by instalments and the amount is also made a charge on certain immovable property of B, it could not be said the Court was not entitled to make the amount a charge on this property, because the relief claimed was for a money decree only. The charge, though not claimed as a relief, would still be a matter relating to the suit. So here also the contingency referred to in para. 4 of the compromise, though not a part of the relief sought for or granted in the suit, was nevertheless a matter relating to the suit, in so far as it affected that relief. The nearest case which the learned advocate for the judgment debtor appellant was able to place before us was the case in *Gauri Dutt v. Dohan Thakur* 5 AIR 1918 Pat. 635. The words used by Roe J. in that case may seem to lend plausible support to the learned advocate's contention, but if the facts of the case are examined, it will be seen that all that was held was that where a plaintiff sues for recovery of money lent at a certain rate of interest, the Court could not make a decree, even by consent of parties, at a higher rate, because a higher rate would be something outside the scope of the suit. There is no such consideration present in the case before us. The only question was whether the instalments which were awarded by the compromise decree could be scrapped, so to say in certain events Merely because the eventuality contemplated refers to a matter outside the suit, it did not follow that it could not still be inserted as a condition of the relief granted. The fact that it affected the relief granted under the decree would itself make it, a matter relating to the suit. We see no reason therefore why effect cannot be given to para. 4 of the compromise. The second ground urged on behalf of the appellant there fore also fails. The result is that the appeal is dismissed with costs. Let the records be sent down as early as possible.