
(2007) 01 RAJ CK 0049
In the Rajasthan High Court

Gopal and Others	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 19-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 2007 Raj 105 : (2007) 1 RLW 835

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The present revision petition is against the order dated 27th January, 2003, passed by the executing Court Civil Judge (Junior Division), Makrana, District Nagaur.

3. The facts of the case, in brief, are that as back as in the year, 1981, precisely on 25th August, 1981, plaintiff filed the suit for eviction of defendants-tenant the State for getting possession of the rented building which was rented out by the plaintiff to defendant for running school. The suit was decreed after about almost more than 12 years on 8th February, 1994. The operative portion of the decree is as under:

(Vernacular matter omitted...Ed.)

4. The decree-holders-plaintiffs submitted the Execution Petition No. 22/96 in the year, 1996. In the said execution proceedings, a compromise was submitted by the decree-holders and the District Education Officer, Nagaur, on 23rd October, 1997 on behalf of the State the judgment-debtor. The Executing Court, on the basis of the said compromise, disposed of the Execution Petition No. 22/96 by order dated 23rd October, 1997. The terms of the agreement/compromise between the parties dated 23rd October, 1997 are as under:

(Vernacular matter omitted...Ed.)

5. It is pertinent to mention here that in the compromise dated 23rd October, 1997, it has not been mentioned how the Execution Petition No. 22/96 is required to be dealt with. It appears and according to the learned Counsel for the non-petitioners-State also, there was application along with the compromise, wherein both the parties requested that the execution petition may be dismissed in the light of the compromise and after recording the compromise, therefore, the order dated 23rd October, 1997 was passed by the Executing Court.

6. The terms of the compromise dated 23rd October, 1997, referred to above, provided that the decree-holders will pay Rs. 2,00,000/- by 15th November, 1997 and, therefore, shall pay Rs. 1,00,000/- by 24th December, 1997, Rs. 2,00,000/- by 25th January, 1998 and last and final instalment of Rs. 1,00,000/- will be paid by the decree-holder-plaintiffs on 25th March, 1998. It is not in dispute that the decree holder plaintiffs gave one cheque for amount of Rs. 2,00,000/- on 15th November, 1997 in place of demand draft in terms of Condition No. 4 of the compromise dated 23rd October, 1997. The decree-holders submitted present Execution Petition No. 11/2000, on the grounds that the judgment-debtor is not obeying the terms and conditions of the compromise dated 23rd October, 1997 and apart from that, the compromise dated 23rd October, 1997 was beyond the terms of the decree and, therefore, is illegal and not binding upon the decree-holders. It is also submitted that the judgment-debtor has shifted the place of the construction of new building contrary to the Condition No. 2 of the agreement dated 23rd October, 1997. In sum and substance, the contention of the decree-holders plaintiffs was that the decree-holders have right to execute the original decree dated 8th February, 1994, despite the compromise dated 23rd October, 1997.

7. The judgment-debtor-State submitted reply in the execution petition, but, according to the learned Counsel for the respondents, no formal objection petition under Order 47, C.P.C., was submitted by the judgment-debtor. The Executing Court vide order dated 27th January, 2003, held that the parties can enter into compromise, even after the decree and in terms of the compromise, the decree can be modified. The Executing Court rejected the contention of the decree-holders that the compromise was beyond the terms, of the (decree and, therefore, illegal. While dismissing the execution petition, the Executing Court observed that in the decree dated 8th February, 1994 it has been provided that the judgment-debtor shall deliver the possession of the suit property to the decree-holders and in the compromise dated 23rd October, 1996 also, it has been provided that the judgment-debtor will deliver the possession of the suit property to the decree-holders. The Executing Court held that the decree-holders have not complied with the terms of the compromise dated 23rd October, 1997 and for this, one of the reasons given by the Executing Court is that the decree-holders gave a cheque of Rs. 2,00,000/-, instead of making payment by Demand Draft. For this, the Executing Court observed that the demand draft is pre-paid, whereas the person issuing cheque is not bound to pay the cheque amount, The Executing Court rejected the decree-holders objections about the shifting of the

place of new school building on the ground that the decree-holders were duly informed about the new place of school and the representative of the decree-holders was present in the function of the foundation laying down for construction of the school. The Executing Court observed that in terms under the agreement dated 23rd October, 1997, it is provided that the judgment-debtor will deliver the possession of the suit property after construction of the school building. Therefore, the Executing Court held that the decree-holders cannot execute the decree.

8. It will be worthwhile to mention here that after holding so, as mentioned above, the Executing Court, in operative part of the order, mentioned that both the parties shall proceed to comply with the terms of the compromise submitted in Execution Case No. 22/96. The Executing Court also declared that in case in future, the decree-holders will comply with the terms of the compromise and if the judgment-debtors fail to comply with the terms of the compromise, the decree-holders shall be entitled to submit another execution petition for execution of the decree.

9. The decree-holders, being aggrieved against the order dated 27th January, 2003, have preferred this revision petition.

10. Learned Counsel for the decree-holders petitioners vehemently submitted that the non-petitioner judgment-debtor failed to comply with the terms of the agreement dated 23rd October, 1997 and the Director Primary Education of the State of Rajasthan has issued an order dated 6th February 1998 and by that, the said authority unilaterally altered all terms and conditions of the compromise. The conditions imposed by order dated 6th February, 1998 by the Director, Primary Education, Government of Rajasthan, are as under:

(Vernacular matter omitted...Ed.)

11. Learned Counsel for the petitioners further submitted that in the compromise dated 23rd October, 1997, it is specifically provided that the decree-holders shall be entitled to take possession of the suit property and the judgment-debtor shall deliver the possession of the suit property to the decree-holders. It is also provided that the possession will be delivered by 15th May, 1998. However, it is also provided that otherwise, when the building will be constructed, as mentioned in para 1 of the compromise dated 23rd October, 1997, the possession of the suit property will be delivered by the judgment-debtor to the decree-holder. But for that, learned Counsel for the petitioners submitted that the time given in subsequent para up to the construction of new school building is not indefinite time and that has been made specifically up to the academic session period of the year, 1997-98 by incorporating Condition No. 8 in the agreement dated 23rd October, 1997. Therefore, according to the learned Counsel for the petitioners, the Court below has committed serious error of law by drawing wrong inference from the admitted and proved facts and wrongly held that the decree-holders, at present, cannot execute the decree, because of

the compromise dated 23rd October, 1997. It is also submitted that the petitioners-decree-holders have been declared defaulter in complying with the compromise dated 23rd October, 1997, merely on the ground that the decree-holders offered payment of Rs. 2,00,000/- on due date by giving cheque instead of demand draft.

12. Learned Counsel for the petitioners vehemently submitted that in the alternative, the compromise dated 23rd October 1997 is beyond the terms of the decree and, therefore, this compromise cannot be given effect to.

13. Learned Counsel for the petitioners relied upon the judgments of this Court in the case of the State of Rajasthan v. Jeev Raj Singh RLW 1997 (3) Raj 1991 ; Kanmal and Others Vs. Hukam Chand, and Rameshwar Das Gupta Vs. State of U.P. and Another,

14. Learned Counsel for the petitioners also tried to refer one communication received by the petitioners from the officers of the non-petitioner-State, wherein it has been stated that the "Sahbhagita Scheme," under which the new building was to be constructed, has been abolished by the State. However, in the said communication, it has been said despite abolition of said Scheme, the amount will be made available for the purpose of raising construction of the school by taking fund from VI plan. It is also submitted that the non-petitioners put different conditions and put the additional burden also and as per the order dated 6th February, 1998, it is clear that the authorities want to dictate their terms and are not interested in obeying the agreement dated 23rd October, 1997.

15. Learned Counsel for the non-petitioners vehemently submitted that the Executing Court considered the contentions raised by both the parties and examined the terms of the decree as well as the compromise dated 23rd October, 1997 and, thereafter, held that the petitioners have violated the agreement dated 23rd October, 1997 and, therefore, there is no jurisdictional error in the impugned order and, consequently, this Court has no jurisdiction to interfere in the order dated 27th January, 2003, on any grounds. It is also submitted that after the decree, the decree can be completely settled or by compromise the decree can be altered or modified. Not only this according to the learned Counsel for the non-petitioners. the petitioners, with their open eyes, entered into the compromise dated 23rd October, 1997 and, thereafter, according to them, they paid rupees two lacs by cheque and that compromise was recorded by the Court as required under Order 22, Rule 2, C.P.C., therefore, the petitioners cannot challenge the compromise dated 23rd October, 1997. It is also submitted that the order which was passed in Execution Case No. 22/96 cannot be challenged by the decree-holders in the present execution petition.

16. Learned Counsel for the non-petitioners vehemently submitted that there is a reference of the order of the Director, Primary Education, Bikaner dated 6th February, 1998, but that order appears to have not been placed before the Executing Court and, therefore, the Executing Court passed the order dated 27th

January, 2003, on the basis of the material available on record. So far as "Sahbhagita Scheme" is concerned, learned Counsel for the non-petitioners vehemently submitted that the petitioners cannot rely upon the documents which were not in existence before 27th January, 2003 when the impugned order was passed and the document which had not been placed on record before the Executing Court.

17. Learned Counsel for the non-petitioners, in addition to support the order of the Court below, submitted that the Executing Court itself permitted the decree-holders to execute the decree by the same impugned order, in case the compromise is obeyed by the decree-holders and is not obeyed by the judgment-debtor. Therefore, in case the decree-holders are of the view that the judgment-debtor has not obeyed the terms and conditions of the compromise, then he can certainly submit another execution petition to execute the decree.

18. Learned Counsel for the non-petitioners relied upon the judgment of the Apex Court in the case of Lakshmi Narayanan Vs. S.S. Pandian, wherein the Hon"ble Apex Court very specifically held that the parties can enter into compromise, even after the decree and that compromise can be recorded by the Executing Court under the provisions of Order 21, Rule 2, C.P.C., and in case the agreement is recorded as per Order 21. Rule 2, C.P.C., then, that compromise is required to be given due weightage.

19. Learned Counsel for the non-petitioners also submitted that the compromise dated 23rd October, 1997 is within the ambit of the litigation as well as the decree dated 8th February, 1994. Even if some conditions have been incorporated which may not be covered under the decree or litigation between the parties, still, the Court has jurisdiction to pass the decree with respect to the subject-matter which are not involved in the litigation, therefore, by applying scheme analogy, the parties can enter into compromise in execution and may put additional burden upon one himself.

20. Learned Counsel for the non-petitioners also relied upon the judgment of the Bombay High Court in the case of Prataprai Trumbaklal Mehta Vs. Jayant Nemchand Shah and Another, and Badriprasad Vs. Mallubhai and Others,

21. I considered the submissions of the learned Counsel for the parties.

22. The core question involved in this revision petition is whether the Executing Court committed jurisdictional error and the order of the Executing Court is perverse so as to give jurisdiction to this Court to interfere in the order dated 27th January, 2003, if the strict view about the jurisdiction of the High Court u/s 115, C.P.C., is taken. Therefore, without entering into this controversy what is the jurisdiction of the High Court in a matter while examining the orders of the trial Court, it will be appropriate to first examine the impugned order in the light of the said strict restriction upon the jurisdiction of the High Court.

23. The facts are not in dispute that the plaintiffs filed the suit for eviction of the

tenant and about 25 years ago from now. The suit was decreed about 13 years ago from now. The judgment-debtor is the State. The property involved is a school building. In the decree, it is provided that the judgment-debtor shall deliver the possession of the suit property to the decree-holders within a period of two months, obviously from 8th February, 1994. The decree also provides payment of rent at the rate of Rs. 60/-, till the premises are vacated. As law permits, the judgment-debtors are not bound by the dictate of the Court, the order given in the decree and, therefore, the decree-holders are required to submit the execution petition for getting the relief, for which the decree-holders already paid Court-fees in the suit and the suit proceeding is closed without granting full relief to the plaintiffs decree-holders by leaving them to put life in the decree by launching execution under Order 21, C.P.C. Despite knowing all difficulties in execution of the decrees, the Order 21 has not been touched while amending the C.P.C. in the year, 2000. Be it as it may we have to look into the compromise entered into by the parties in Execution Case No. 22/96 dated 23rd October, 1997. The Condition No. 1 of the agreement dated 23rd October, 1997 clearly provides that the possession of the suit property shall be given to the decree-holders by 15th May, 1998. It is vehemently submitted that, thereafter, there is a line and that line makes a condition that the delivery of possession will be given by the decree-holders when the new school building will be ready. This argument has been advanced, ignoring the Condition No. 5 which specifically provides that the school building will be constructed by end of the academic session of the school of the year, 1997-98. Otherwise also, the alternate time given by the Condition No. 1 for delivery of possession by the judgment-debtor to the decree-holders could not have been left for indefinite period or at the mercy of the judgment-debtor alone, who alone was to construct the school building. Even if the new building could not have been constructed without the help of the decree-holders, then, the judgment-debtors could have enforced the condition of getting benefit arising from agreement dated 23rd October, 1997 and it is clear that there is no material available on record which can show that the judgment-debtors tried to enforce the conditions of the agreement dated 23rd October, 1997 which is apparent from the facts and reasons given in the reply to the execution from the facts and reasons given in the reply to the execution petition of the decree-holders. Be it as it may it is clear from the order of the Executing Court that the Executing Court has not considered the complete Condition No. 5 of the agreement dated 23rd October, 1997 and, therefore, the order of the Executing Court is perverse, because of the simple reason that both the parties are in agreement that the agreement was executed between the parties on 23rd October, 1997 and according to the non-petitioner itself, that is binding agreement and even the Executing Court itself clearly held that the agreement dated 23rd October, 1997 is binding and in compromise dated 23rd October, 1997, it is provided that the judgment-debtor shall deliver the possession of the suit property to the decree-holder by the end of academic session of the year, 1978 and that condition was ignored by the Court below. Because of the above reason of non-consideration of Condition No. 5 of the

agreement dated 23rd October, 1997, the Executing Court wrongly held that the decree of possession cannot be executed till the other conditions are not complied with. To make it clear, it is mentioned in Condition No. 1 that the decree-holders shall deliver possession by 15th May, 1998 or till new building is constructed and for construction of the new building, the time agreed by both the parties was up to the academic session of the year, 1997-98 and that period has already passed long ago before execution was launched. Therefore, the Executing Court could not have denied the possession to the decree-holders on the ground of alleged noncompliance of other conditions by the decree-holder in the light of specific condition fixing time for deliver of possession in the agreement dated 23rd October, 1997. as referred to above.

24. The order of the Court below is further perverse because of the simple reason that the Executing Court was of the view that the time was given to the decree-holders to pay Rs. 2,00,000/- by 15th November, 1997 through demand draft but the decree-holders gave cheque of Rs. 2,00,000/- in place of paying it by demand draft and, therefore, it is not a valid tender of the amount. While declaring so, the Executing Court has not considered any of the facts, by which the conduct of the petitioners decree-holders can be condemned. It is not the case of the judgment-debtors that they refused to accept the cheque or they returned the cheque to the decree-holder and the judgment-debtor demanded payment through demand draft. Not only this, it is not case of even the non-petitioner judgment-debtor that because of this lapse, the agreement has been breached by the plaintiffs decree-holders and, therefore, the judgment-debtor is not bound to obey the conditions of the agreement dated 23rd October, 1997. A mere absolutely insignificant act of making payment through cheque in place by draft has been considered to be a grave fault of the decree-holders and the Court below, while examining the fault of the non-petitioner observed that even if the place of construction of the new school building has been changed, then, that cannot be a fault of the non-petitioner, because of the reason that the representative of the decree-holders was given information and the members of the committee were present in the function of laying down the foundation stone. Therefore, there were two standards of judging the two parties which were before the Court.

25. The order of the Executing Court is self-contradictory, inasmuch as, because of the reason that the Executing Court specifically held that as per the terms of the agreement dated 23rd October, 1997, the decree-holders can get possession, only after construction of the new building, but that in the operative portion, gave liberty to the decree-holders to comply with the terms of the agreement dated 23rd October, 1997 and, in case, the judgment-debtor fails to comply with the conditions of the agreement dated 23rd October, 1997, then the decree-holders were given liberty to execute the decree. If there was no time for constructing the new school building in the agreement dated 23rd October, 1997, then whether it was dependent upon the mere wish of the dominating party the State who alone could have constructed the new school building? Other

contradiction is that if the plaintiffs breached the condition as back as on 23rd October, 1997, then, that too, by not making payment of the amounts as provided under Condition No. 4, whether the said time could have been extended by the Executing Court which if strictly understood in the light of the stand taken by the non-petitioners, then that cannot be one without consent of both the parties and without recording compromise as provided under Order 21, Rule 2, C.P.C. In the light of the judgment relied upon by the learned Counsel for the non-petitioners in the case of Lakshmi Narayanan Vs. S.S. Pandian, which itself provides that the decree can be compromised or altered or modified and that modification can be enforced when satisfaction is recorded by the Court under Order 21, Rule 2, C.P.C. Admittedly, both the parties have not given their consent for extension of time or gave any concession in altering the condition of the compromise dated 23rd October, 1997, then the Executing Court could not have extended the time for compliance of conditions of payment by the decree-holder to judgment-debtor beyond the time given in compromise dated 23rd October, 1997.

26. It will be worthwhile to mention at this juncture that the learned Counsel for the petitioners, even after arguing the revision at length and submitting that the agreement dated 23rd October, 1997 has been violated by the non-petitioners, candidly submitted that the petitioners are still ready to pay Rupees 8 lacs, but they are not bound to comply with the conditions which the non-petitioners want to put upon the petitioners. The grievance of the petitioners is that despite the fact that, according to the non-petitioners, the scheme of Sahbhagita" itself has been abolished, still the petitioners are ready to pay Rs. 8 lacs, but the condition No. 3 of the agreement dated 23rd October, 1997 should be followed strictly.

27. Learned Counsel for the non-petitioners also submitted that the petitioners may pay Rupees 8 lacs, because that amount will be used for welfare of the entire school as it will be used for only school purposes and if any condition which puts additional financial burden upon the petitioners is concerned, for that, it may be observed that the petitioners shall be liable to pay Rupees 8 lacs to the school and may not be bound to contribute up to 51% as demanded by letter dated 6th February, 1998. So far as name of the petitioner's ancestor is concerned, which was required to be given to the school, the non-petitioner has only mentioned in the order dated 6th February, 1998 that the petitioner shall pay additional amount in case the school is upgraded and it is clearly provided in Condition No. 6 of the order dated 6th February, 1998 that in ease the petitioners will not pay the additional amount on upgradation of the school, the other donors may come forward and over that building, which will be constructed by fresh donor, name of that donor or name given by that donor will be mentioned. It is also submitted that the petitioners"-ancestors Seth Badrinarain Balklshan Toshniwal will not be removed.

28. The offer given by the petitioners to the non-petitioners it is suffice to observe that even after the decision of the revision petition, the parties may sort

out their dispute. This Court is not proposing now to alter the agreement dated 23rd October, 1997 or the decree dated 8th February, 1994, because of the simple reason that the parties should also behave in proper manner if they want to take the benefit by their mutual consent and good senses. But, in this case, unfortunately, a litigation, which was started in 1981, that too, against the State and in which decree was passed in the year, 1994 and in a case where parties agreed for delivery of suit property to the decree-holders by compromise dated 23rd October, 1997, neither school was constructed, nor decree-holders got the possession of the suit property and that has already burdened the Court, apart from harassment to the petitioners decree-holders. At this juncture, it will also be relevant to mention here that the conditions have been put by the non-petitioner-State by the subsequent communication which were relied upon by the learned Counsel for the; petitioners, but I do not find any substantial reason for making any further comment because of the reason that there is law which provided that the Court can take the note of subsequent events and may mould the relief, but, in this case, without help of any document, this Court is of the view that the order of the Court below is absolutely perverse and has been passed without appreciating even the conditions of compromise dated 23rd October, 1997 which, according to the non-petitioner itself, is binding upon the non-petitioner which itself provides a time for vacating the suit premises. However, this Court can expect from the parties and in view of the contention of the learned Counsel for the petitioners that the petitioners are still ready to pay Rs. 8 lacs for welfare of the school and children, if that happens then it will be in large public interest, but so far as claim of the respondent for the-amount on the basis of the compromise dated 23rd October, 1997 cannot be appreciated because of the simple reason that it is not case between two litigants who may be greedy for the premium or "Pagri" for vacating the suit premises and to prohibit such tendency, the law was enacted long ago by, making provision in State Rent Act against: premium, or "Pagri." In this case, the non-petitioner is not demanding any premium or "Pagri" for any other purpose, but for welfare of the school and if one wants to take the benefit of some sort or the other, then that should be by humble person or the humble authority, not a authority dictating its own terms.

29. In view of the above, the revision petition is allowed. The order of the Executing Court dated 23rd March, 2003 Is set aside and it is held that the decree dated 8th February, 1994 is executable and decree-holder is bound to deliver the possession of the suit properties to the petitioners. However, since it is a matter relating to the school and about 300 students are in the school, therefore, this Court deems it proper that the decree under-challenge may not be executed till 30th June, 2008 and this concession is granted only on the condition of the non-petitioners submits undertaking before the Executing Court in writing from the competent authority that they shall hand over vacant possession of the suit property to the decree-holders by or before 1st July, 2008 and further that the judgment-debtor shall pay all arrears of rent if due under the decree to the

petitioners or may deposit the amount in the Executing Court. The judgment-debtor shall also pay the rent as awarded by the decree month by month by 15th day of each succeeding month of tenancy till possession is delivered to the decree-holder. The decree-holders may give their Bank account particulars in writing to the learned Counsel for the non-petitioners so that the judgment-debtor may deposit the amount in the Bank. The undertaking be submitted within a period of two months from today.