

(2001) 04 CAL CK 0049

In the Calcutta High Court

Case No : G.A. No. 579 of 2000 and C.S. No. 300 of 1997

Gouri Sirkar and Another

APPELLANT

Vs

Goutam Sirkar

RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1(1), Order 21 Rule 2, Order 21 Rule 2(1), Order 21 Rule 2(2)

Citation : AIR 2002 Cal 70

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Judgement

D.K. Seth, J.—In this application the following prayers have been made :--

"(a) An order declaring that the purported compromise decree dated August 27, 1997. passed in C.S. No. 300 of 1997 is a nullity and void ab initio and not capable of being executed by the plaintiffs:

(b) Alternatively, an order recording satisfaction in full of the said purported compromise decree passed on August 27, 1997, in C.S. No, 300 of 1997 and for a declaration that the entire claim of both the plaintiffs in terms thereof stands satisfied in full, and as such, the said decree has become incapable of execution;

(c) Stay of all further proceedings of the execution application, being G.A. No. 1693 of 2000:

(d) Appropriate injunction restraining the plaintiffs herein from in any way giving effect to and/or enforcing the said purported compromise decree dated August 27, 1997, passed in C.S. No. 300 of 1997;

(e) Ad interim orders in terms of prayers (c) and (d) hereinabove;

(f) If necessary a Special Officer be appointed to go into accounts of the said business carried on under the name and style of "B" Sarkar & Sons" at 124 and 124/1, Bepin Behari Ganguly Street, Calcutta-12"

(g) Costs;

(h) Such further or other order or orders be passed as to Your Lordships may seem fit and proper."

2. On the basis of the pleadings made therein it is said that the decree has since been satisfied. Virtually, the satisfaction is based on the pleadings contained in paragraphs 24 and 25. It is alleged that a sum of Rs. 1,90,000/- has since been paid to the plaintiff by the petitioner and that in consideration the decree having stood satisfied, the plaintiff had signed a letter for issue of trade licence in favour of the petitioner alone specifying that the plaintiff has no claim in the business. Mr. Lahiri, learned counsel for the plaintiff/decreed-holder contends that his client disputes the genuineness of the said document and that he had initiated a criminal proceedings against the petitioner in view of the alleged letter which is alleged to be forged by the petitioner judgment-debtor.

3. This matter was fixed today upon being mentioned in the presence of the learned counsel for the petitioner. No one appears on behalf of the petitioner.

4. The question is one under Order XXI, Rule 2 of the Code of Civil Procedure. In order to get the benefit of Order XXI, Rule 2 the judgment debtor has to inform the Court about such payment of adjustment and also to apply to the Court for issue of notice to the decree-holder as to why such adjustment should not be recorded or certified.

5. Order 21, Rule 2 of the CPC deals with payment/adjustment of decree. Under Sub-rule (1) in case of such payment/adjustment the decree holder has to certify such payment/adjustment to the executing Court and the Court then shall record the same. Under Sub-rule (2) the Judgment debtor may also Inform the Court about such payment/adjustment and apply to the Court for issuing notice to the decree holder for showing cause why the payment adjustment should not be recorded as certified and upon failure to show case the Court will record the same. There are certain precondition provided in Sub-rule (2A) with regard to payment /adjustment at the Instance of the judgment debtor, viz. (a) that such payment/adjustment is made in the mode provided in Order 21, Rule 1, (b) or the payment/adjustment is proved by documentary evidence: (c) or the payment/adjustment is admitted by the decree-holder or on his behalf in reply to the notice under Sub-rule (2) of Rule 1 Order 21. Rule 1 of Order 21 in Sub-rule (1) prescribes how money payable under a decree is to be paid; (2) It is to be deposited in Court or sent to Court by postal money order or through bank; (b) If made out of Court then to the decree holder by postal money order or through bank or by a mode evidencing payment in writing; (c) or as the Court may direct. When such payment is made particulars provided in Clauses (a) to (c) of Sub-rule (3) is to be accurately stated. If payment is made in terms of Clauses (a) and (c) of Sub-rule of Rule 1 of Order 21 notice thereof is to be given by the judgment-debtor to the decree-holder either through Court or directly to him by registered post, acknowledgment due.

6. Thus unless the adjustment or payment is made under Rule 1 by the judgment-debtor and the same is certified by the decree-holder since recorded by Court under Sub-rule (1) of Rule 2, Order 21 or under Sub-rule (2) thereof, the same cannot be re-corded in view of Sub-rule (2A). Unless certified or recorded, payment or adjustment cannot be recognised by the executing Court.

7. Therefore in order to claim adjustment, the judgment debtor has to satisfy the conditions contained in Rule 2. If the tests as discussed above are not satisfied and unless the adjustment conforms to Rules 1 and 2 of Order 21 the Court cannot recognise any such claim for adjustment. Similar view was taken in *Kamta Prasad Vs. IInd Additional District Judge Mainpuri and others*, .

8. Now, there is nothing pleaded in the application to show that there has been any such payment or adjustment. It is pleaded that a sum of Rs. 1,90,000 has been paid. But this amount was received by the Decree-holder in terms of different orders passed by this Court viz. Rs. 30,000/- under Order dated 8th April, 1999, Rs. 10,000.00/- under order dated 12th May, 1999. Rs. 50,000.00/- under order dated 22nd August. 2000. Rs. 50,000.00/- under order dated 19th Sept. 2000, Rs. 50,000.00 under Order dated 12th Feb. 2001. The same is received pursuant to different orders of the Court as above. Unless the orders specified that the same was being paid in full satisfaction of the decree, the payment of such amount cannot be treated to be an adjustment to the full satisfaction of the decree. It may be adjustment against the total dues and claims under the decree in pro tanto satisfaction. It cannot be said that the whole decree is satisfied. There is nothing to show that the payments are made in full satisfaction of the decree and that there is any such notice as provided either under Rule 1 or under Rule 2 or any such recording by Court under Rule 2. On the other hand by reason of Sub-rules (2A) and (3) of Rule 2 the same can be recognised to be full satisfaction, though it can be recognised as pro tanto satisfaction. The terms of settlement provides that from the date of the decree, on all dates when the shop would remain opened, the plaintiffs/decreed-holder will be receiving a sum of Rs. 2000/- per day. If it is so, the amount for one year would definitely exceed Rs. 1,90,000/-. Be that as it may. the same is a question which has to be gone into at the time of execution itself. Payment made pursuant to an order of the Court can never be treated to be an adjustment of the whole decree within the meaning of Order XXI, Rule 2 for the purpose of discharging of the decree on being satisfied unless such direction conforms to Rule 2 read with Rule 1 of Order 21, satisfying the test as held above.

9. The alleged letter contained in Annexure "A" is only a letter which does not say that there has been an adjustment and the decree is satisfied in full. It is also not mentioned by the petitioner as to how the decree stood satisfied and how the adjustment had taken place. In the absence of any material simply by reason of making an application which does not disclose particulars, it cannot be treated that the decree has since been adjusted fully. In order to initiate a proceeding under Order XXI, Rule 2, one has to at least, make out a prima facie

case to be gone into. In the present case, on the basis of the pleadings it appears that the decree could not be satisfied simply by reason of payment of Rs. 1,90,000/- when the total claim is around Rs. 30,60,000/-and would be more than what would be available after the date of filing of the execution.

10. In such circumstances, this petition fails and is accordingly dismissed.

11. The petitioner will pay a further sum of Rs. 50,000/- within a fortnight from date to the plaintiff. Let this matter appear in the list on 2-5-2001.

12. It is contended that the Reciver was appointed by an order dated 23-6-2000 but no remuneration was fixed. In such circumstances, Receiver shall be paid a remuneration of 300 Gms. to be borne by the plaintiff/decreed holder at the first Instance.

13. In view of the submission made by Mr. Lahiri, the petitioner, who is running the business, shall maintain day to day accounts and weekly statement of such accounts shall be handed over to the Receiver.

14. All parties including the Receiver are to act on a xeroxed signed copy of this dictated order upon usual undertaking.