

(2016) 04 AHC CK 0093
In the Allahabad High Court
Case No : First Appeal No. 147 of 2016

Gupta Rubber Industries and Others	Vs	APPELLANT
Damodar Valley Corporation and Others		RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 96

Citation : (2016) 5 ADJ 345

Hon'ble Judges : Arun Tandon; Abhai Kumar, JJ.

Bench : Division Bench

Advocate : Madhav Jain, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant.
2. This appeal under Section 96 of the Code of Civil Procedure has been filed against the judgment and order dated 21st December, 2015 passed by the Additional District Judge, Court No.7, Saharanpur in Misc. Case No. 5 of 2005 (Damodar Valley Corporation v. M/s Gupta Rubber Industries and Others) arising out of Original Suit No. 494 of 1995.
3. Facts in short giving rise to the present appeal are as follows :

The appellant before us had instituted Original Suit No. 494 of 1995 for recovery of the money to the tune of Rs. 6,16,246/- from the defendant-respondent no.1. This suit was decreed on 26th November, 1997. The application made by the defendant-respondent dated 23rd December, 1997 for recall of the said judgment and decree was also dismissed vide order dated 20th December, 1999. The order so made was subjected to challenge before the High Court by means of Civil Revision No. 142 of 2000. The revision was allowed by the High Court vide order dated 29th October, 2004. The judgment and decree dated 26th November, 1997 was set aside and the trial court was directed to decide the suit afresh.

4. While the aforesaid proceedings were pending, the plaintiff appellant made an application for execution of the decree granted in his favour being Execution Case No. 3 of 1988. The Executing Court vide order dated 29th March, 1998 attached the bank-account of the judgment debtor/defendant-respondent no.1 and from the attached account the plaintiff appellant received a sum of Rs. 8,73,383.90/-.

5. After the order of the High Court setting aside the judgment and decree of the trial court dated 26th November, 1997, the defendant filed an application under Section 144 for restitution i.e. for return of the money, which has been recovered in the execution of the decree granted earlier. This application under Section 144 has been allowed under the judgment and order impugned in the present appeal dated 21st December, 2015.

6. Learned counsel for the appellant contended before us that the High Court while allowing the revision had required the trial court to decide the suit in a time bound manner. It has failed to do so. If ultimately the suit fails, he shall return the money. On such pleas, the judgment and order passed under Section 144 of the Code of Civil Procedure is objected to.

7. We have considered the submissions made by the learned counsel for the appellant and have examined the records.

8. For appreciating the controversy raised, it would be worthwhile to reproduce Section 144 of the Code of Civil Procedure as amended in the State of Uttar Pradesh, which reads as follows:

"144. Application for restitution.- (1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified ii any suit instituted for the purpose, the court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified and, for this purpose, the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are property consequential on such variation; reversal, setting aside or modification of the decree of the decree or order.

Explanation: For the purposes of sub-section (1), the expression "court which passed the decree or order" shall be deemed to include,--

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the court of first instance;

(b) where the decree or order has been set aside by a separate suit, the court of first instance which passed such decree or order;

(c) where the court of first instance has ceased to exist or has ceased to have

jurisdiction to execute it, the court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

State Amendment

Uttar Pradesh.- In Section 144, for sub-section (1) the following shall be substituted:

"(1)Where and in so far as a decree or an order is varied or reversed in appeal, revision or otherwise, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made, as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied or reversed; and for this purpose, the Court may made any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal." U.P. Act 24 of 1954, Section 2 and Sch. Item 5. Entry 7 (30.11.1954)."

9. From a simple reading of Section 144, it is apparent that the Court of first instance is left with no other option but to pass an order for restitution on a decree or an order being reversed in appeal, revision or otherwise. No other option is left with the Court of first instance.

10. In the facts of the case we, therefore, find that the judgment and order dated 21st December, 2015 passed by the Additional District Judge, Court No.7, Saharanpur in Misc. Case No. 5 of 2005 (Damodar Valley Corporation v. M/s Gupta Rubber Industries and Others) arising out of Original Suit No. 494 of 1995 is strictly in conformity with the provisions of Section 144 of the Code of Civil Procedure. No case for interference is made out.

11. The present appeal is accordingly dismissed.