
(2016) 05 AHC CK 0171

In the Allahabad High Court

Case No : Matters Under Article 227 No. 4131 of 2016

Habib Miya

APPELLANT

Vs

Waqf Vilayati Begum And 6 Others

RESPONDENT

Date of Decision : 30-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97
Constitution of India, 1950 — Article 227

Citation : (2016) 118 ALR 700 : (2016) 2 ARC 768 : (2016) 133 RD 578

Hon'ble Judges : Mrs. Sunita Agarwal, J.

Bench : Single Bench

Advocate : Tawwab Ahmed Khan, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Mrs. Sunita Agarwal, J.—By means of the present petition, the petitioner seeks for quashing of the order dated 16.03.2016 passed by the Revisional Court whereby the revision preferred by the petitioner against the order dated 21.12.2012 passed by J.S.C.C. Court in S.C.C Execution Case no. 10 of 1998 is rejected with the cost of Rs. 10,000/- payable to the decree holder by depositing the said amount in the Waqf account within 15 days.

2. The present petitioner who is heir of the judgment debtor/tenant namely Late. Mohd. Saddiq filed an objection before the Executing Court in Execution Case no. 10 of 1998 with the contention that under a new contract of tenancy with the current Mutawalli, appointed by the Waqf Board, he had again entered into said property which admittedly belongs to the Waqf. The submission is that the objections raised by him were required to be decided by the Executing Court but it had wrongly proceeded to issue Parwana Dakhal by order dated 21.12.2012 without adjudication of the objections of the petitioner to resist his dispossession. Submission is that the petitioner is in possession of the suit property as tenant and therefore, he has a right to resist the dispossession of the tenant under Order 21, Rule 97 CPC.

3. To deal with this submission of learned counsel for the petitioner, relevant fact of the matter are required to be noted.

Admitted facts of the matter are that the SCC suit No. 495 of 1979 filed by Waqf Vilyati Begam against Late Mohd. Saddiq, father of the petitioner was decreed on 18.02.1998 in favour of the Waqf. The Revision No. 18 of 1998 filed in the Court of District Judge, Bareilly was also dismissed on 26.05.1998. The writ petition challenging both the orders was dismissed on 14.09.2012. It appears that the judgment debtor namely Mohd. Saddiq died in the year 2002, during the pendency of the writ petition and a substitution application was filed by his heir, the petitioner herein. The writ petition filed by father of the petitioner namely writ petition No.20376 of 1998 was dismissed on 14.09.2012 with the following observation and directions;-

"4. In the above facts and circumstances, it is provided that petitioner, if files an affidavit within one week from today before the Trial Court containing an undertaking that he shall vacate the premises in question and hand over its vacant possession to the landlord respondent within three months from today, the proceedings for execution of judgments impugned in this writ petition shall not proceed. Petitioner shall also pay the entire arrears of rent within the aforesaid period.

5. However, in case of any default, the above indulgence granted by this Court shall automatically cease and it would be open to landlord to proceed for execution of impugned judgments/orders immediately thereafter in accordance with law.

6. It is also provided that in case the petitioner-tenant after filing affidavit, as aforesaid, and enjoying deferment of vacation of premise in question fail to comply with any of the conditions, as aforesaid, he shall be liable to pay for such non compliance of pious undertaking given to the Court an exemplary costs of Rs. 50,000/- which shall also be recovered from petitioner-tenant along with execution proceedings, if such necessity arises.

7. With the aforesaid observation/direction, the writ petition is dismissed."

4. A perusal of the order passed by the Writ Court on 14.09.2012 clearly indicates that the petitioner herein was required to give an undertaking before the Executing Court that he shall vacate the premises in question and handover its vacant possession to the landlord/respondent within three months from the date of the order. It appears that no such undertaking was filed by the petitioner and hence the execution case had proceeded. The petitioner now appeared in the execution case to raise a plea regarding new contract of tenancy regarding the suit property arrived between him and the new Mutawalli, during the pendency of the execution case.

5. The Executing Court had observed that despite the categorical direction of this Court, the undertaking was not given by the petitioner. The objections/

applications paper no.121-Ga and 123-Ga filed by the petitioner were rejected and Parwana Dakhal was issued. The revision challenging the order of the Executing Court has also been dismissed on the ground that the petitioner/objector being legal heir of the judgment debtor was obliged to handover vacant possession of the suit property to the decree holder. In utter disregard of the order of this Court dated 14.09.2012 the petitioner/objector did not handover the vacant possession of the suit property. The revision was dismissed with the cost of Rs. 10,000/- payable to the judgment debtor.

6. A perusal of the order of Writ Court dated 14.09.2012 further indicates that while dismissing the writ petition, it was categorically observed that in case, the petitioner/tenant after filing affidavit and enjoying deferment of vacation of premises in question, fail to comply with any of the condition mentioned in the order, he shall be liable to pay exemplary cost of Rs. 50,000/- which shall be recovered from him in the execution proceedings.

7. The petitioner has not moved further to challenge this order and as such it has become final between the parties. By not filing the undertaking, the petitioner has clearly violated the order of this Court. It is the petitioner who had contested the writ petition after death of his father namely Mohd. Saddiqui in the year 2002. Admittedly he had filed a substitution application through a counsel who was representing him. This fact is reflected from the order dated 14.09.2012 passed by this Court wherein name of Sri Sahid Ali Siddiqui, Advocate appears on behalf of the petitioner. Merely because no order was passed on his substitution application or it has remained pending, it cannot be said that the petitioner was not represented before this Court. Moreover, no application for recall of the order dated 14.09.2012 has been filed by the petitioner. Thus, it is concluded that the petitioner had appeared and contested the earlier writ petition after death of his father.

8. The petitioner has succeeded in retaining possession of the suit property in clear defiance of the order of Writ Court dated 14.09.2012 on the pretext that he has now been inducted in the suit property by new Mutawalli. He has dragged the execution case and subjected the decree holder to litigation by filing frivolous applications and revision. In any case, the petitioner cannot retain the possession of the suit property after dismissal of the writ petition filed by the original tenant being his heir.

9. He cannot resist the execution of decree by lying his hand on Order 21, Rule 97 CPC which applies to a case of possession of a third party. In any case, the petitioner is not a third party to the suit property rather he is a party to the litigation which had reached its logical conclusion. For a period of four years, he did not handover vacant possession of the suit property and contested the execution case on frivolous ground.

10. Having noted the above facts, it is held that the petitioner is liable to be pay/ deposit an exemplary cost of Rs. 50,000/- as awarded by this Court vide

judgment and order dated 14.09.2012. The cost of Rs. 10,000/- which has been awarded by the Revisional Court would be adjusted in the amount of Rs. 50,000/- to be deposited by the petitioner before the Executing Court within a period of one month. The amount so deposited can be withdrawn by the decree holder.

11. The petitioner shall also handover the vacant and peaceful possession of the suit property within a period of 15 days from today i.e. on or before 15.06.2016 to the decree holder.

12. In case, the petitioner resist or refuses to hand over the possession, the Executing Court shall ensure the delivery of possession to the landlord with the help of the police force. The cost, if not deposited within the time given above, appropriate proceeding for recovery thereof shall be initiated by the Executing Court.

13. Reliance is placed upon judgment of Apex Court in 2009 (2) SCC page 656 (Ashok Kumar Mittal v. Ram Kumar Gupta and the order passed by this Court dated 02.12.2014 in Civil Revision No. 589 of 2014 (Sanjay Kumar Katta v. Mahabir Prasad Katta (since deceased and others) to state that the Civil Court has no jurisdiction to impose cost of more than Rs. 3000/- as the levy of cost in civil litigation is governed by the Code of Civil Procedure. Placing reliance upon judgment of Apex Court in 2012 (1) SCC 455 it is submitted that the cost awarded in a civil litigation cannot be beyond Rs. 3000/- in view of the express provision of Section 35 and 35-A CPC.

14. In view of the above discussion, it is evident that in the instance case, an exemplary cost of Rs. 50,000/- has been awarded by this Court in a writ proceeding which is not governed by Section 35-A CPC. The cost of Rs. 10,000/- awarded by the Revisional Court in fact was lesser than the cost which has already been awarded by this Court.

15. The view taken by this Court herein above finds support from the observation made by the Apex Court in paragraph no. 8 of Ashok Kumar Mittal (supra) case wherein it is held that the provisions of Section 35 and 35-A CPC do not in any way affect the wide discretion vested in the High Court and in exercise of its inherent power, the High Court can award cost in the interest of justice in appropriate civil cases.

16. In view of the above, this petition is dismissed, with the above observations and directions noted herein above.