

(2011) 09 GUJ CK 0088
In the Gujarat High Court

Case No : Civil Revision Application No. 153 of 2011

Karsanbhai Ramjibhai

APPELLANT

Vs

Jay Co-operative Housing Society Ltd and 1

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, 115

Citation : (2011) 09 GUJ CK 0088

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : Asim Pandya for H.L. Patel Advocates s, for the Appellant; A.B. Gateshaniya for Opponent(s) : 1 and Unserved-Expired (N) for Opponent(s) : 2, for the Respondent

Judgement

Honourable Ms. Justice Harsha Devani

1. The learned advocate for the applicant seeks permission to delete respondent No.2-Parsottambhai Laljibhai Bavishi from the array of respondents. Permission as prayed for is granted. Respondent No.2-Parsottambhai Laljibhai Bavishi shall stand deleted from the array of respondents.

2. Rule. Mr A.B. Gateshaniya, learned advocate waives service of notice of rule for the respondent.

3. By this revision u/s 115 of the Code of Civil Procedure, 1908, the applicant-original defendant No.1 has challenged the order dated 30.4.2011 passed by the learned Principal Senior Civil Judge, Surendra nagar below Exh.69 in Execution Application No.181 of 2001 whereby he has rejected the application filed by the applicant herein under Order 21 Rule 2 and 2A of the Code.

4. Mr Asim Pandya, learned advocate for the applicant invited attention to the judgment and order dated 10.3.2011 passed by this Court in Civil Revision Application No.79 of 2011 whereby the challenge made by the applicant to the order dated 11.2.2011 in Execution Application No.181 of 2001 had been

repelled on the ground that in the absence of a specific prayer no adjustment could be certified or recorded by the Court and the objections raised by the applicant could not be treated as a request for adjustment as provided under Order 21 Rule 2 of the Code. It was submitted that pursuant to the aforesaid order dated 10.3.2011, the applicant moved an application under Order 21 Rule 2 and 2A of the Code on 11.3.2011 for certification of the adjustment in view of the resolution dated 30.9.2000 passed by the General Board of Jay Cooperative Housing Society. Inviting attention to the impugned order dated 30.4.2011 passed by the Executing Court, it was pointed out that the sole ground for rejecting the application made by the applicant is that during the pendency of the application, the High Court has passed an order in Civil Revision Application No.79 of 2011 whereby the High Court has rejected the prayer of the present objectors and has accordingly disposed of the application as having become infructuous. It was pointed out that the Executing Court has proceeded on an erroneous assumption that the High Court has passed the order in Civil Revision Application No.79 of 2011 during the pendency of the present application under Order 21 Rule 2 and 2A of the Code. It was submitted that in the circumstances the Executing Court having failed to apply its mind to the facts of the case and without examining the issue involved on merits, the impugned order passed by the Executing Court deserves to be quashed and set aside and the matter is required to be remanded to the Executing Court for deciding the same afresh in accordance with law.

5. On the other hand, Mr A.B. Gateshaniya, learned advocate for respondent No.1 has submitted that the resolution on which reliance has been placed by the applicant has subsequently been revoked by the Society and as such, the very basis of the application under Order 21 Rule 2 and 2A of the Code is no longer in existence. It was submitted that in the circumstances, no useful purpose would be served by remanding the matter to the Executing Court.

6. Be that as it may, on a perusal of the impugned order dated 30.4.2001, it is apparent that the Executing Court has rejected the application made by the applicant herein under Rule 2 and 2A of Order 21 of the Code solely on the ground that during the pendency of the application, the High Court passed an order in Civil Revision Application No.79 of 2011 whereby the prayer of the objectors has been rejected. Thus, it is apparent that the Executing Court has proceeded on an erroneous assumption that the High Court has passed the order in Civil Revision Application No.79 of 2011 during the pendency of the aforesaid application made by the applicant without considering the fact that the application had in fact been made in the light of the observations made by the High Court in the order dated 10.3.2011 passed in Civil Revision Application No.79 of 2011 whereby the High Court had observed that in the absence of a specific prayer no adjustment could be certified or recorded by the Court and that objections could not be treated as a request for adjustment as provided under Order 21 Rule 2 of the Code.

7. In the circumstances, the impugned order stands vitiated on account of non-application of mind and as such, cannot be sustained.

8. For the foregoing reasons, without entering into the merits of the controversy, the impugned order dated 30.4.2011 passed by the learned Principal Senior Civil Judge, Surendranagar below Exh.69 in Execution Application No.181 of 2001 is hereby quashed and set aside. The application Exh.69 shall stand restored to file. The learned Principal Senior Civil Judge, Surendranagar shall decide the application Exh.69 afresh after affording an opportunity of hearing to the learned advocates for the respective parties in accordance with law within a period of 30 days from the date of receipt of a copy of this order. It is clarified that it will be open for both the sides to raise all contentions as may be available to them including the contention raised by the learned advocate for respondent No.1 before this Court to the effect that the resolution on which reliance has been placed by the applicant has been subsequently revoked as well as on the maintainability of the application. Till then, the parties shall maintain status-quo in respect of the suit property. Rule is made absolute accordingly.