

(2015) 02 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil First Appeal No. 173/1993

Keshri Dal and Oil Mill

APPELLANT

Vs

Rajasthan State Industrial Development and Investment
Corporation and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 33, 96

Citation : (2015) 3 CDR 1179

Hon'ble Judges : Bela M. Trivedi, J.

Bench : Single Bench

Advocate : N.K. Maloo, Senior Counsel, for the Appellant; Ajeet Bhandari,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—The first appeal has been filed by the appellant-plaintiff under Section 96 of the CPC, challenging the judgment and decree dated 29/3/1993 passed by the Additional District and Sessions Judge No. 3, Jaipur City, Jaipur (hereinafter referred as "the Trial Court") in Civil Suit No. 111/90 (532/84), whereby the Trial Court, while dismissing the suit of the appellant-plaintiff, has held that the plaintiff would be entitled to the balance amount if any remaining, after the adjustment of all the outstanding dues of the respondent-defendant Corporation, out of the auction sale consideration received by the Corporation, subject to payment of Court Fees by the plaintiff.

2. The short facts, giving rise to the present appeal, are that the plaintiff had initially filed the suit seeking declaration and injunction challenging the auction proceedings conducted by the respondent Corporation on 23/6/84 in respect of the plot bearing No. F-424, situated in Vishwakarma Industrial Estate, Jaipur. The original plaint of the appellant-plaintiff was amended, and the plaintiff as per the amended plaint confined the prayer as regards the declaration to the effect that the plaintiff was not liable to pay any charges after 3/3/1981 to the respondent

defendant Corporation, and that the auction proceedings held by the defendant Corporation on 23/6/84 was illegal and unauthorised. The plaintiff had also sought the permanent injunction for restraining the defendant corporation from accepting the bid of any bidder in respect of the plot in question and from proceedings further with the auction proceedings, and also seeking direction to hand over the goods/articles lying in the factory by appointing the Commissioner. It was also alleged in the plaint by the plaintiff inter-alia that the plaintiff was a registered partnership firm whose partners were Ram Chandra Goyal and Smt. Kanta Goyal. The defendant No. 1-Corporation, on the application made by the plaintiff had allotted one plot bearing No. F-424, admeasuring 1932 square metres with the shed admeasuring 80x40" situated at Vishwakarama Industrial Estate, Jaipur on 23/1/1979. According to the plaintiff, it had made the payment of Rs. 13,000/- towards the cost of plot and shed, and the plaintiff had to make payment of the balance amount, however due to initial financial crunches in the industry of Dal Mill, some delay had occurred in making said payment of balance amount. According to the plaintiff, the respondent Corporation on the basis of the agreement of hire purchase, which was got signed from the partner of the plaintiff firm on cyclostyle form, took illegal possession of the said plot and shed. It is also case of the plaintiff that there were plants and machineries and other equipments lying in the said factory premises of the plaintiff, which were taken away by the respondent Corporation without following the due process of law. Though the plaintiff had requested to give back the possession of the said factory, and give re-schedulement of payment of loan, the respondent Corporation without considering the said request, had put to auction the entire plot and the factory premises of the plaintiff on 23/6/1984 pursuant to the advertisement published in the local daily Rajasthan Patrika on 20/6/1984. It was further alleged that one Doongarmal Sharma of Doongarmal and Company, the defendant No. 2 had participated in the said auction and his bid was accepted for an amount of Rs. 4,45,000/-, though the value of the said property was more than Rs. 6 lakhs. The appellant plaintiff therefore had filed the suit challenging the auction proceedings and sought declaration and injunction as stated hereinabove.

3. The said suit was resisted by the respondent No. 1-defendant No. 1 Corporation by filing the written statement denying the allegations made in the plaint and further contending inter alia that the plaintiff had failed to make payment of the dues of the defendant since March, 1976, despite number of notices having been given to it, and therefore, by way of last resort, the defendant had cancelled the allotment on 26/11/1979 and taken over the possession of the plot and shed, under the provisions contained in Public Premises (Eviction of Unauthorised Occupants) Act, 1964 (hereinafter referred to as "the said Act"), and that the plaintiff had not challenged the said proceedings by preferring appeal under the said Act. According to the said defendant, the plaintiff therefore could not have challenged the said proceedings by way of suit. It was also contended that the plaintiff had mortgaged the shed constructed by it

on the plot in question with the Rajasthan Finance Corporation by taking loan, however the defendant corporation had the first charge over the entire property, and therefore, the Financial Corporation would be entitled to the balance amount after the adjustment of defendant corporation's dues from the amount realized by auctioning the said property, and not the plaintiff. It was also contended that the auction proceedings were conducted after following the due process of law and the bid of the highest bidder was also accepted. The defendant Corporation had also raised the preliminary objection by contending that the suit was under valued, and the plaintiff had not paid the proper Court fees as even according to the plaintiff the value of the property was more than Rs. 6 lakhs.

4. The respondent Nos. 2 and 3 - the defendant Nos. 2 and 3 also filed the written statement by contending inter alia that they had participated in the auction proceedings, which had taken place on 23/6/1984, pursuant to the notice given in the local daily Rajasthan Patrika on 20/6/1984, and their bid having been accepted, the suit was liable to be dismissed, which was filed with ulterior motives.

5. It appears that the respondents-defendants having raised the preliminary objection as regards the non-payment of requisite Court fees, the appellant/plaintiff had amended the original plaint by deleting the prayers with regard to the payment of the balance amount from the auction proceedings after deducting Rs. 63,000/-, and also the other prayer for declaration in respect of the under valuation of the property in the auction proceedings. The amended plaint was submitted by the plaintiff on 12/2/1988 with the permission of the Trial Court. The Trial Court from the pleadings of the parties had framed following issues:--

6. Out of the aforestated issues, the Trial Court decided the issue No. 2 in favour of the appellant-plaintiff and rest of the issues against the appellant-plaintiff. After appreciating the evidence on record, the Trial Court dismissed the suit of the appellant/plaintiff, however directed that the plaintiff would be entitled to the balance amount if any remaining, from the auction proceedings, after the adjustment of the defendant's entire dues, subject to payment of additional court fees. Being aggrieved by the said judgment and decree passed by the Trial Court, the present appeal.

7. The learned Senior Counsel Mr. N.K. Maloo for the appellant vehemently submitted that the respondent defendant Corporation had acted in a very high handed manner while taking possession of the plot and shed in question, and thereafter had put it to auction sale by giving only three days notice. Pressing into the service the provisions contained in the said Act, and relying upon the evidence of D.W.1, the Officer examined on behalf of the defendant Corporation, Mr. Maloo submitted that the Estate Officer was required to give at least 14 days notice to the plaintiff before disposing of the said property by public auction, and the same having not been done, the entire auction proceedings had vitiated. According to him, the defendant Corporation had not given the notice of due amount of Rs. 2,02,000/- and in any case, the plaintiff was entitled to the

balance amount from the auction proceedings, after adjustment of the dues of the defendant Corporation. Of course, he also submitted that the defendant Corporation could not have sold the Shed, which was constructed by the appellant-plaintiff by taking loan from the Financial Corporation and the first charge on the said shed being of Financial Corporation, the defendant Corporation could not have put the said shed to auction. Mr. Maloo assailing the action of the respondent Corporation in taking possession of the plot and shed in question submitted that the said action was illegal even as per the lease agreement executed between the parties pursuant to the Rules for Allotment of Land, 1979. According to Mr. Maloo, the Trial Court had failed to assign any reason as to how the notice period of auction was sufficient, when Section 6 of the said Act required the Corporation to give 14 days notice. Of course, he has supported the direction given by the Trial Court to pay the balance amount to the plaintiff on payment of Court fees and further submitted relying on the decision of Apex Court in case of Union of India (UOI) Through Director of Income Tax Vs. Tata Chemicals Ltd., , that the appellant-plaintiff was entitled to the balance amount, with interest as per the prevailing rate. Mr. Maloo has also relied upon the various decisions of the Apex Court in support of his submission that the Financial Corporation and other Corporation and the Industrial Corporations must act in accordance with the statute and should not act unfairly or unreasonably.

8. However, the learned counsel Mr. Ajeet Bhandari for the respondent Corporation supporting the findings recorded by the Trial Court submitted that the appellant-plaintiff was not entitled to seek any relief in respect of the auction proceedings, when the plaintiff had not challenged the action of the respondent Corporation in recovering the possession under the provisions contained in the said Act. Even otherwise, runs the submission of Mr. Bhandari, the auction proceedings were held in accordance with law, and the provisions contained in Section 6 were not applicable to the facts of the present case as the plaintiff was already given sufficient notices for the payment of outstanding duties of the Corporation. According to Mr. Bhandari, the appellant-plaintiff having deleted the prayer for recovery of the balance amount from the auction sell proceedings, as he did not want to pay Court fees, the Trial Court should not have directed the Corporation to pay the balance amount if any, after adjusting the dues of the Corporation subject to payment of Court fees. Mr. Bhandair has relied upon the decision of the Apex Court in case of Bachhaj Nahar Vs. Nilima Mandal and Another, to submit that the Civil Court could grant the relief only with reference to the prayers made in the pleadings and could not grant any other relief not prayed for. Of course, he fairly submitted that the respondent Corporation would comply with the direction of the Trial Court, if any amount is found payable to the appellant after deduction of the entire outstandings dues of the defendant corporation, subject to payment of Court fees by the appellant.

9. After having heard the learned counsels for the parties, and after considering the evidence on record, it appears that though the Trial Court had framed as many as 10 issues, the main issues, which fall for consideration before this Court

are issue Nos. 5 and 6, inasmuch as the learned counsels for the parties had hardly made any submission on the other issues. Though issue No. 2 as to whether the plaintiff was given the possession of the plot in question by the defendant Corporation on 9/3/1976 or not and whether the defendant Corporation was entitled to receive rent prior to the said date or not, was decided against the defendant Corporation, the said defendant has not chosen to challenge the said finding, nor has chosen to challenge the direction given by the Trial Court in the operative part of the judgment, by filing the cross-objections in the present appeal or by filing the separate appeal. Of course though the respondent may not have appealed against any part of the decree can support the decree and also state that the findings in respect of any issue recorded by the Court below ought to have been in his favour, in view of Order XLI, Rule 22, and the Appellate Court also has power to pass any decree and make any order which ought to have been passed or made, though the respondent may not have filed any appeal against that part of the decree, which is against him, in view of the provisions contained in Order XLI, Rule 33 of CPC.

10. Now so far as the oral evidence is concerned, it appears that the appellant-plaintiff had examined only one witness i.e. P.W.1 Shri Sughan Chand Keshri Mal, power of attorney holder of Shri Ram Chandra, who was partner of the firm, and the defendant Corporation had also examined only one witness i.e. D.W.1 Shri Uday Naraian Sharma, an officer in the defendant Corporation. The defendant Nos. 2 and 3 had chosen not to examine any witness. Now before appreciating the evidence of P.W.1 Shri Sughan Chand Keshri Mal, it is required to be noted that the suit before the Trial Court and the appeal before this Court were filed by the appellant-plaintiff firm through its partner Smt. Kanta Goyal and the only witness examined on behalf of the plaintiff firm was the said P.W.1 Shri Sughan Chand Keshri Mal, who was the power of attorney of the other partner Shri Ram Chandra Goyal. Neither the said witness Ram Chandra nor Smt. Kanta Goyal had chosen to step into the witness box to prove their case. The special power of attorney produced at Ex. 1 shows that the said document was executed in January, 1992 by the Principal Shri Ram Chandra Goyal in favour of the said witness Sughan Chand to do acts mentioned therein on behalf of the said Principal.

11. That apart, the said P.W.1 Sughan Chand had categorically admitted in his cross-examination that it was only Shri Ram Chandra Goyal, who was looking after the firm and not Smt. Kanta Goyal and that he himself had his own separate shop in the Johari Bazar. He had also admitted that he was neither Manager nor working in the plaintiff firm. He also did not have the knowledge about the bank accounts of the plaintiff firm or about the dues of the Financial Corporation towards the loan taken by the plaintiff firm. He had also stated that after the possession of the property of the plaintiff firm was taken over by the Estate Officer of the defendant Corporation in March, 1981, the plaintiff firm had not filed any appeal or other proceedings, challenging the said action, and that thereafter Shri Ram Chandra Goyal had also left Jaipur to settle down at Karnataka. He had stated that Smt. Kanta Goyal was in Jaipur only, however she

did not have any knowledge about the affairs of the firm, and therefore was not able to depose. This witness has nowhere stated as to how he had knowledge about the affairs of the plaintiff firm. Under the facts and circumstances, it is difficult to believe his version as the power of attorney holder of one of the partners of the plaintiff firm, as regards the allegations levelled in the plaint. It is settled legal position that the power of attorney holder can give evidence with regard to the transaction for which he has personal knowledge, but cannot depose with regard to the acts done by the Principal. Beneficial reference of the decision of the Apex Court in case of *Man Kaur (dead) by LRS. Vs. Hartar Singh Sangha*, and in case of *S. Kesari Hanuman Goud Vs. Anjum Jehan and Others*, be made in this regard. Thus, the P.W.1 who was the power of attorney of Shri Ramchandra, partner of the plaintiff firm having no knowledge about the transactions and acts done by the Principal i.e. Ramchandra, could not have deposed in his place.

12. Having said that, it is also required to be noted that admittedly the possession of the suit plot and shed was taken over by the defendant Corporation as back as in March, 1981 by the Estate Officer under the provisions contained in the said Act, and thereafter the plaintiff firm had chosen not to challenge the said proceeding. It was only when the respondent Corporation published the notice in the local daily *Rajasthan Patrika* on 20/6/1984 for holding auction of the said property on 23/6/1984, the plaintiff firm through its partner Smt. Kanta Goyal filed the suit challenging the auction proceedings. As stated by the P.W.1 Shri Sugan Chand, it was Shri Ram Chandra Goyal who was looking after the affairs of the plaintiff firm and he had already left Jaipur and settled down in Karnataka after the possession of the plot in question was taken over by the respondent Corporation in 1981, and that the other partner Smt. Kanta Goyal did not have any knowledge about the affairs of the firm. Therefore, filing of the suit at the instance of Smt. Kanta Goyal, raises a serious doubt as to the existence of the plaintiff firm itself in 1984 when the suit was filed, and more particularly when the P.W.1 had admitted that he did not have the certificate of registration of firm with him. He had also not produced any documentary evidence whatsoever in support of his oral statement, with regard to the working of the firm or the transactions of the firm or with regard to the mortgage of the shed in question with financial corporation as alleged in the plaint. There was also no evidence produced to suggest as to whether any plants or machineries were lying in the said factory premises of the plaintiff firm as alleged in the plaint. Under the circumstances, the learned counsel Mr. Bhandari had rightly submitted that the plaintiff firm having miserably failed to prove its pleadings, by not leading any cogent or documentary evidence, the suit of the plaintiff was rightly dismissed by the Trial Court.

13. The Court also finds substance in the submission made by the learned counsel Mr. Bhandari for the respondent Corporation that the Trial Court had exceeded its jurisdiction by giving direction while dismissing the suit, to the respondent Corporation to make the payment of balance amount if any, after

adjusting the dues of the Corporation, subject to payment of Court fees by the plaintiff. In this regard, a very pertinent observations made by the Apex Court in case of Bachhaj Nahar v. Nilima Mandal (supra) relied upon Mr. Bhandari are required to be reproduced :--

"16. The observation of the High Court that when a plaintiff sets forth the facts and makes a prayer for a particular relief in the suit, he is merely suggesting what the relief should be, and that it is for the court, as a matter of law, to decide upon the relief that should be granted, is not sound. Such an observation may be appropriate with reference to a writ proceeding. It may even be appropriate in a civil suit while proposing to grant as relief, a lesser or smaller version of what is claimed. But the said observation is misconceived if it is meant to hold that a civil court may grant any relief it deems fit, ignoring the prayer. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of Rs. one lakh, the court cannot grant a decree for Rs. Ten lakhs. In a suit for recovery possession of property "A", court cannot grant possession of property "B". In a suit praying for permanent injunction, court grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc." 14. In view of the above stated settled legal position that the Trial Court could grant the relief only with reference to the prayers in the suit, and in view of the amendment made by the plaintiff specifically deleting the prayer for recovery of the excess of the balance amount, the Trial Court ought not to have given such direction, while dismissing the suit. In any case, the respondent Corporation having not preferred any cross-objection or separate appeal against the said direction and the learned counsel Mr. Bhandari also having fairly stated that the respondent corporation would comply with the said direction, if any excess amount is found due and payable to the appellant-plaintiff, this Court refrains itself from making any further observation in that regard.

15. So far as the challenge to the auction proceedings is concerned, it is true that the notice given by the defendant Corporation published in the local daily Rajasthan Patriak on 20/6/1984 for holding the auction on 23/6/1984 could not be said to be a sufficient notice in view of Section 6 of the said Act, nonetheless the plaintiff firm having not challenged the proceedings of eviction undertaken by the defendant Corporation and the action of taking over the possession of the plot and shed in question, at any point of time, and that the auction proceedings having already become final in favour of the respondent Nos. 2 and 3 long back, the Court is not inclined to interfere with the same, after the expiry of almost 30 years, and that too when the appellant-plaintiff had miserably failed to prove its

case before the Trial Court, by not leading any cogent evidence.

16. In that view of the matter, the Court does not find any illegality or infirmity in the impugned judgment and decree passed by the Trial Court. The appeal being devoid of merits deserves to be dismissed and is accordingly dismissed.