
(2009) 05 MP CK 0013
In the Madhya Pradesh High Court

Kishanswarup Sharma

APPELLANT

Vs

Mahakal Automobiles

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Constitution of India, 1950 — Article 227

Citation : (2010) 2 BC 162 : (2010) 1 JLJ 287

Hon'ble Judges : R.S. Garg, J;Prakash Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by the petitioner challenging the order dated 26.11.08, passed by the Court of VIIIth Additional District Judge (Fast Track), Ujjain in Execution Case No. 6-A of 1991, whereby the petitioner's objection questioning the jurisdiction of Executing Court has been rejected.

2. Brief facts are that in 15.11.1986, the petitioner had sold 7,200 sq.ft. of lands with some construction standing thereon for Rs. 7.20 lakh to the respondent and was paid Rs. 01.60 lakh only. He had agreed to accept the remaining amount of Rs. 05.60 lakh in four instalments in three years with interest @ 1.5% per month. The charge was created on the sold property. Instalments as fixed above were not paid by the respondent which led to the filing of Civil Suit No. 13-A of 1989 (New No. 16-A of 1991) by the petitioner for recovery of amount of Rs. 6, 31, 750/-by sale of the suit property. The liability to pay Rs. 5.00 lakh plus interest was admitted by the respondent in the written statement. The suit was decreed by the Court of learned Addl. District Judge in terms of Order 12 Rule 6 of the CPC on the following terms:

As a result application of plaintiff is partly allowed and it is hereby ordered that defendant Nos. 1 and 3 shall pay within 6 months from today Rs. 5,65,000/- and interest @ 1% per month on Rs. 5.00 lakh from the date of institution of suit i.e. 16.6.1989, otherwise the plaintiff would be entitled to get a final decree for

recovery of his amount by sale of charged property. Order as to cost would be given at the time of disposal of other points. A preliminary decree be framed accordingly. Description of charged property be also given in preliminary decree.

3. A preliminary decree was accordingly prepared. On 28.4.1992, the petitioner filed an application for execution. The issue of executability of the preliminary decree came up and the Court on 16.8.1997 held that there was no need of framing the final decree separately, as the preliminary decree in itself was executable. In course of execution proceedings, warrant of attachment was issued and thereafter sale proclamation was issued on 2.2.1998. The Court by order dated 5.1.1998 had permitted the petitioner-decree holder to bid in the auction of the attached property. After issuing warrant of auction, the bids were invited and petitioner-decree holder offered the highest bid which was accepted. The sale was confirmed and made absolute on 4.5.1998. The petitioner and respondent filed I.A. No. 1 to LA. No. 6 raising several objections claiming different reliefs before the Executing Court.

4. On the orders passed on these I.As., the matter travelled to the High Court in Misc. Appeal No. 52 of 2004. The High Court by order dated 28.4.2004 disposed of the Misc. Appeal, dismissing the I.As. 1,2 and 6, by holding that the auction sale in favour of the petitioner was valid and upholding the order of its confirmation. On I.As. Nos. 1,3,4 and 5, the Executing Court was directed to take fresh decision on merits.

5. Against the order of High Court Civil Appeal No. 2598 of 2005 was preferred before the Supreme Court by the respondent-judgment debtor. The Supreme Court by order dated 2.4.2008, disposed of Civil Appeal No. 2598 of 2005 by issuing following directions:

We do not think it necessary to deal with those aspects in detail in view of the order proposed to be passed. From the records it is revealed that Rs. 14,38,893/- and Rs. 4, 46,926/- have been deposited by the appellant purportedly for satisfaction of the Execution Court, Ujjain and Indore respectively. The appellant shall further deposit a sum of Rs. 15,00,000/- within 4 months from today. The respondent No. 1 shall be entitled to withdraw the amount deposited in the Bank with accrued interest. The appellant shall be responsible for payment of the property tax of the property from the date of execution of sale deed i.e. 5.12.1986 till date and the same shall be paid deposited with the concerned authority within the aforesaid period of four months. On payment of the amounts, the title to the property described in the registered sale deed will vest free of all encumbrances on the appellant.

12. If any property of the respondent No. 1 is there in the property in question, the same shall vest to respondent No. 1 with liberty to remove them as soon as the payment is made.

13. The appeal is disposed of accordingly. No costs.

6. The respondent filed an application dated 31.7.2008 under Order 21 Rule 2 of CPC before the Court of Additional District Judge (Fast Track), Ujjain in compliance of the directions of Supreme Court enclosing the demand drafts No. 626020 for Rs. 9,00,000/- and No. 626021 for Rs. 6,00,000/- in total Rs. 15,00,000/-, and stating that he had deposited the balance amount of the property tax in the Municipal Corporation, Ujjain and enclosing true copies of the receipts along with the application, showing the deposit of the amount. In the application it was stated that the respondent had complied with the directions of the Supreme Court, therefore, title of the suit property situated at 82/2, Ujjain Road, Ujjain be held to be vested in favour of the respondent free from all encumbrances.

7. The petitioner filed an application dated 15.11.98 before the Executing Court, raising the objection that the Executing Court, Ujjain had no jurisdiction to execute the order passed by the Supreme Court. After hearing arguments of both the parties, the Executing Court by the impugned order dated 26.11.08, has rejected the objection by holding that it has the jurisdiction in respect of the matter in issue. Aggrieved with the said order, petitioner has filed present writ petition under Article 227 of the Constitution of India.

8. Learned Counsel appearing for the petitioner submitted that in terms of Order 45 Rule 15 of Civil Procedure Code, the respondent was required to approach the High Court if he intended to execute the order of the Supreme Court and unless the provisions of Order 45 Rule 15 are complied with and the matter is transmitted to the Executing Court at Ujjain, the said Court will have no jurisdiction to execute the decree of the Supreme Court. He further submitted that Order 45 is a complete Code in respect of the appeals before the Supreme Court and execution of orders of Supreme Court, therefore, general provisions relating to execution will not be applicable for the execution of the decree of Supreme Court. He submitted that the provisions contained in Order 45 Rule 15 are mandatory. In support of his submissions, he has placed reliance on the judgment reported in the matter of Sourendra Mohan Sinha and Ors. v. Hari Prasad Sinha and Ors. AIR 1926 PC 31; in the matter of Mt. Bhagwanta Kuer and Another Vs. Dewan Zamir Ahmad Khan and Others, ; in the matter of Birendra Bikram Singh v. Basdeo and Ors. AIR 1936 Oudh 185 and in the matter of Madarsa Hakimia and Coronation High School Society v. Mulla Ali Bhai 1964 MPLJSN 205.

9. Learned Counsel appearing for the respondent submitted that the Execution Case was already pending at Ujjain and in terms of the order of Supreme Court, the respondent has only deposited the amount before the Executing Court and has not sought execution of any order, therefore, the provisions of Order 45 Rule 15 will not be attracted. He submitted that the provisions contained in Order 45 Rules 15(1) and 15(2) are independent and operation of Rule 15(2) is not dependent upon Rule 15(1) and in the facts of this case, the provisions of Order 45 Rule 15(2) have been complied with, since such an act of transmission of a

decree is a ministerial act which is to be performed by the Registry of the High Court and the High Court has transmitted the decree of the Supreme Court to the Executing Court at Ujjain. He further submitted that the relief under Articles 226/227 of the Constitution is a discretionary relief which can be granted to uphold the substantial justice which has been done by the Executing Court while passing the impugned order. On the issue and scope of Order 45 Rule 15, learned Counsel for the respondent placed reliance on the judgment reported in the matter of *Lingam Krishna Bhoopathi Deo Garu v. Raja of Vijyanagaram and Anr.* AIR 1914 Mad 222 (2); and in the matter of *State of M.P. v. Faizulla Allabux (Firm)* 1972 JIJ 484, and on the scope of interference under Article 226/227, he placed reliance upon the judgment reported in the matter of *B.K. Muniraju Vs. State of Karnataka and Others*, .

10. We have heard learned Counsel for the parties and perused the record.

11. Order 45 Rule 15 provides for the procedure to enforce the order of Supreme Court. It is not in dispute that these provisions are mandatory. In the judgment relied upon by the Counsel for the petitioner, it has been held that the provisions of Order 45 Rule 15 to be mandatory. Rule 15(1) requires a person to apply to the Court from which the appeal was preferred to the Supreme Court to obtain execution of any decree or order of the Supreme Court and in terms of Rule 15(2), the said Court is required to transmit the decree or order of the Supreme Court to the Court which passed the first decree, appealed from or to such other Court as directed by the Supreme Court.

12. In the case in hand, the matter had travelled to the Supreme Court from the order of High Court passed in Miscellaneous Appeal arising from the order of the Executing Court. Thus, it needs to be examined, whether the respondent could have directly approached the Court of Additional District Judge, Ujjain i.e. Executing Court for compliance of the order of the Supreme Court or he was first required to move to the High Court under Order 45 Rule 15, CPC for executing the order of the Supreme Court.

13. A perusal, of the order of Supreme Court indicates that the Supreme Court after taking note of the fact that the execution was pending before the Executing Court at Ujjain and certain amounts were already deposited by the respondent purportedly for satisfaction of the Executing Court, directed the respondent to deposit further sum of Rs. 15,00,000/- within four months from the order of Supreme Court, meaning thereby the amount of Rs. 15,00,000/- was to be deposited by the respondent within the time prescribed by the Supreme Court before the Court where the amount in part was already deposited i.e. the Executing Court at Ujjain. The second direction was in respect of the deposit of property tax with the concerned authority from the date of execution of the sale deed on 15.12.1986 till the date of order of Supreme Court within four months.

14. The respondent was only required to comply with the aforesaid directions of the Supreme Court and deposit further sum of Rs. 15,00,000/- before the

Executing Court at Ujjain and the amount of property tax before the concerned authority and file proof of deposit before the Executing Court.

15. The respondent has only taken steps in pursuance to the order of Supreme Court to deposit the amount as directed by the Supreme Court within the stipulated period. The sale deed dated 15.12.1986 was already executed in favour of the respondent. Therefore, in terms of the order of Supreme Court and on complying the directions of the Supreme Court in respect of the deposit of further sum of Rs. 15,00,000/- before the Executing Court and the property tax from the date of the sale deed, the title to the property prescribed in the registered sale deed is to vest free from all encumbrances to the respondent.

16. It is worth noting that the provisions of Order 45 Rule 15 are attracted when a party desires to obtain execution of decree or order of the Supreme Court. In the present case, the respondent is not seeking execution of the decree or order of the Supreme Court, but is complying with the direction issued by the Supreme Court.

17. It is not a case, where the respondent has approached the Court for obtaining execution of the order of Supreme Court on the premises that the appellant has not complied with the directions contained in the order of the Supreme Court, but, it is a case where the respondent has voluntarily complied with the directions of the Supreme Court by depositing the amount mentioned therein.

18. It is also worth noting that the petitioner raised present objection when respondent along with a draft of Rs. 15,00,000/- and proof of payment of property tax had filed an application before the Court of Addl. District Judge, Ujjain under Order 21 Rule 2 of the Code.

19. Order 21 Rule 1 of CPC provides for modes of paying money under decree and that all money payable under a decree shall be paid by depositing into the Court whose duty was to execute the decree. Some the Execution Case was already pending before the Court of Addl. District Judge, Ujjain and in the pending execution proceedings, the Supreme Court had issued the directions to deposit the amount, therefore, the respondent had rightly approached the Court of Addl. District Judge, Ujjain for depositing the amount in compliance of the order of the Supreme Court.

20. Even otherwise the execution proceedings are already pending before the Court of Addl. District Judge (Fast Track), Ujjain. The matter had travelled to the Supreme Court on the issue of certain applications filed by both the parties in the pending Execution Case and the Supreme Court had disposed of the Civil Appeal by issuing directions to take steps to deposit the amount before the Court where the Execution Case is pending.

21. The original ex parte preliminary decree out of which the Execution Case No. 6-A of 1991 had arisen, was passed by the Court of Addl. District Judge, Ujjain.

The order impugned in Misc. Appeal No. 52 of 04 decided by the High Court on 28.4.04 from which the matter had travelled to the Supreme Court, was also passed by the Court of Addl. District Judge, Ujjain. Therefore, respondent has rightly approached the Executing Court i.e. the Court of Additional District Judge, Ujjain to comply the direction issued by the Supreme Court.

22. Section 38 of the CPC deals with the mode by which decree may be executed and provides that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. In Section 37, the expression, "Court which passed the decree," has been defined to mean the Court of the first instance in a case where the decree to be executed is passed in exercise of the appeal jurisdiction. Therefore, undisputedly the Court of Addl. District Judge, Ujjain was the competent Court to execute the decree which was originally passed in the matter and in terms of Order 45 Rule 15(2) the High Court could transmit the order of the Supreme Court to the Court of Additional District Judge, Ujjain for execution.

23. The Madras High Court in the matter of Lingam Krishna Bhoopathi (supra) has held that when the Privy Council transmits its decision to High Court, the High Court in receiving and filing it does pure ministerial act. The District Court whose decision was appealed against does not cease to be a Court "which passed the decree" for the purpose of recognizing the transferee decree-holder and ordering execution at his instance. This Court also in the matter of State of M.P. v. Faizulla Allabux (supra) has held that all that is required for conferring jurisdiction on Court executing a decree is an order of the High Court transmitting the decision order worth noting that the order of Supreme Court was transmitted by the Registrar of High Court vide communication dated 2.8.2008 (Annexure R-1) to the Court of Addl. District Judge, Ujjain in connection with Execution Case No. 6-A of 1991 for information and necessary action. Thus, for this reason also the Court of Additional District Judge, Ujjain has the jurisdiction.

24. Thus, the objection which the petition is taking is only a technical objection. It cannot be disputed that the Court of Additional District Judge which is the Executing Court ultimately has the jurisdiction to entertain respondents application in compliance of the direction of the Supreme Court.

25. In view of the aforesaid analysis, we find that the learned Additional District Judge has committed no error in rejecting the petitioners objection about the jurisdiction of the said Court. We do not find any good ground to interfere in the order of the subordinate Court in exercise of limited jurisdiction under Article 227 of the Constitution of India.

26. Thus, we find no merit in the writ petition and the same is accordingly dismissed. No orders as to costs.