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(2001) 10 P&H CK 0124

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 167 of 1989

Maya Devi (Died) Reptd by Her Lrs — APPELLANT

Vs

Raj Kumari (Died) Reptd by Her Lrs — RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, Order 21 Rule 95

Citation : (2002) 2 CivCC 318 : (2002) 1 RCR(Civil) 712

Hon'ble Judges : Arun B. Saharya, C.J;V.K. Bali, J

Bench : Division Bench

Advocate : S.K. Singla, for the Appellant; Arun Jain and Amit Jain, for the Respondent

Final Decision : Dismissed

Judgement

V.K Bali, J.—Hans Raj, survived by his widow, Maya Devi, embroiled Smt. Raj Kumari Bhatia for nearby two and half decades in execution proceedings, giving rise to present Letters Patent Appeal, by moving series of applications in resisting the decree that came to be passed against him. Whether there was any substance, merit or even a tinge of these in the objections filed in resisting the decree or that all these were an endeavour to manoeuvre the things from time to time, is the question that needs adjudication in this case. Before we may, however, come to the only objection now seriously mooted before us in nullity or non-executable, it will be necessary to give backdrop of the events, culminating into present Letters Patent Appeal under Clause X of the Letters Patent.

2. Smt. Raj Rani Batra (hereinafter referred to as the ''Decree Holder'') successfully brought a suit for recovery of Rs. 60,000/- plus costs and interest as the same stood decreed vide judgment dated October 25, 1976. She moved an application for execution of the decree aforesaid on December 2, 1976 and was able to obtain on order of attachment of property, i.e. SCF No. 9, Sector 27-D, Chandigarh on December 2, 1976. Vide a separate order dated April 15, 1978, on an application moved on that behalf, she was also successful in obtaining an

order that she could participate in the auction sale. She did participate in the auction which was held on April 17, 1978. SCF No. 9, Sector 27-D, Chandigarh was auctioned for an amount of Rs. 82,000/- which was the highest bid given by her. She had also obtained another decree for recovery of money against Shri Hans Raj (hereinafter referred to as the ''Judgment Debtor'') from the Court of Senior Sub Judge, Chandigarh, which was transferred to the Court, before which execution proceedings were pending. The Judgment Debtor filed objections under Order 21 Rule 90 of the CPC objecting to attachment and auction of the property in question. During the pendency of his objections, the parties arrived at a compromise, terms whereof were as follows:-

"The sale of the property in question, i.e. SCF No. 9 Sector 27-D, Chandigarh, may be confirmed subject to the condition of payment of Rs. 35,000/- (Rupees Thirty Five Thousand only) to the Judgment Debtor in full and final settlement of the claim of the decree holder against the judgment debtor and also any charge of the Estate Officer, U.T., Chandigarh, on this property. The amount of Rs. 35,000/- will be paid by the decree holder to the judgment debtor on 16.7.1979 before this Hon''ble Court and the judgment debtor will hand-over the vacant possession of this building to the decree holder on this date, i.e. 16.7.1979 by delivering the keys of the premises.

In case the decree holder does not turn up on that date to fulfil his part of the said compromise, the judgment debtor shall have a right to deposit the decretal amount in the court in pursuance of the order of the Hon''ble Court dated 25.5.1979 till 31.7.1979.

That incase the judgment debtor does not deliver the possession of the building to the decree holder, the decree holder shall deposit the amount of Rs. 35,000/- in the Court and the judgment debtor shall not withdraw the amount from the court until the possession is delivered to the decree holder through Court, and the decree holder shall have a right to take the possession through process of law, and the non-delivery of possession shall not affect the confirmation of the sale in any manner."

3. This compromise was submitted in the Court as Ex.PC. The statements of the parties alongwith their counsel were recorded and the case was adjourned to July 16, 1979. On the adjourned date i.e. July 16, 1979, the decree holder deposited Rs. 35,000/-, but the Judgment Debtor moved an application before the Court pleaded therein that the compromise was result of fraud and was unforceable as also void ab-initio. The Executing Court, vide order dated August 30, 1979 dismissed this application/objections and ordered confirmation of sale held on April 17, 1978 and also ordered issuance of sale certificate which was then issued by the Court on September 11, 1979, for an amount of Rs. 82,000/-. On September 11, 1979 the decree Holder filed an application under Order 21 Rule 95 C.P.C. for delivery of possession and issuance of warrant of possession. This was physically resisted by the Judgment Debtor. Meanwhile, FAO No. 502 of 1979 against orders dated August 30, 1979 was filed in this Court. It is the case of

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Judgment Debtor that the same was heard on the date when Bailiff went for delivery of possession. This Court, in the FAO aforesaid, had initially granted stay of dispossession of - Judgment Debtor but the same was later on vacated. Constrained Judgment Debtor filed a SLP in the Hon''ble Supreme Court in which initially stay was granted but it is an admitted position that the SLP, referred to above,- was also dismissed. Meanwhile, learned Single Bench of this Court vide orders dated March 31, 1981 dismissed the FAO aforesaid. Inasmuch as the only contention raised by learned counsel representing the Judgment Debtor emanates from some observations made by learned Single Judge of this Court in FAO No. 502 of 1979, it will be appropriate at this stage itself to produce the said observations. Same read thus :-

"Lastly, it was contended that the sale having been held in violation of the provisions of Rules 84 and 85 of Order 21 Civil Procedure Code, the alleged compromise was hit by the provisions of Section 23 of the Contract Act and, therefore, could not be enforced. To elaborate this contention, the learned counsel for the appellant contended that any sate conducted in violation of the said provisions, as held in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, in a nullity and any compromise to confirm such sale would obviously be illegal and not enforceable in a court of law. The argument is wholly misconceived and proceeds on an erroneous basis. If the sale held by the Court was to be confirmed, the argument would have been unexceptionable. On the contrary, the sale has now been confirmed on the terms agreed to between the parties which certainly amounts to the adjustment of the decree within the meaning of Rule 2 of the Order 21 Civil Procedure Code. As noticed above, the sale had been held for an amount of Rs. 82,000/- only whereas under the compromise, not only the claims under the present decree but all other claims of the decree holder are to stand satisfied and also he had to pay Rs. 35,000/- apart from taking responsibility for discharging the liability of judgment debtor, if any, to the Estate Officer, Union Territory, Chandigarh. This adjustment cannot be said to be illegal because of the non-compliance with rules 84 and 85 of Order 21 CPC and the provisions of Section 23 of the Contract Act, therefore, would not be a bar against the enforcement of the said compromise or adjustment."

4. Despite rejection of earlier applications as also FAO No. 502 of 1979, Judgment Debtor filed yet another application on January 8, 1982 raising objections against the auction sale and sale certificate issued on September 11, 1979, u/s 47, 60(ccc) and Order 34 Rule 14 read with Section 151 C.P.C. Meanwhile the Decree Holder filed an application for restoration of the earlier execution proceedings. This application was allowed and execution application was revived, Yet another application was moved by the Decree Holder for issuance of warrant of possession which was actually issued by the Court on January 7, 1985. This order was resisted on the ground that there was no decree for possession in existence and, therefore, warrant of possession could not be issued under Order 21, Rule 35 C.P.C. The Judgment Debtor filed yet another

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application raising further objection. Whereas, application moved by the Decree Holder was allowed, one filed by the Judgment Debtor in resisting the decree was dismissed vide order dated October 5, 1987. Constrained, the Judgment Debtor filed execution First Appeal No. 421 of 1988 which was dismissed in limine by learned Single Judge of this Court on September 26, 1988. Still not satisfied, present LPA has been filed.

5. Before we may take into consideration the contention raised by learned counsel for the Judgment Debtor, it would be appropriate to briefly mention as to what were the precise objections that were raised culminating into order dated October 5, 1987 passed by the Executing Court and how the learned Executing Court dealt with the same.

6. The objections raised by the Judgment Debtor were that in the facts and circumstances, the Decree Holder ought to have pursued her earlier application under Order 21 Rule 97 CPC to its logical end and instead of doing the same, she set the clock back and filed a fresh application under Order 21, Rule 95 CPC and by misleading the court got a warrant of possession issued when previous application could not have been revived due to bar of limitation. It is also pleaded that there was no decree of possession against the Judgment Debtor and the present application under Order 21, Rule 97 CPC was not maintainable inasmuch as the property in question was exempt from the attachment and sale. It was further pleaded that the mandatory provisions of Order 21, Rule 85 CPC had not been complied with as also that order dated April 28, 1978 of the learned Senior Sub-Judge for transfer of the said petition in respect of decree passed by him was bad in law as also that orders dated April 29, 1978 and May 2, 1978 passed by Shri B.C. Rajput, learned Sub-Judge were void and further that as held by this Court in FAO No. 502 of 1979 it was not a case of court auction but of adjustment of the decree under Order 21, Rule 2 CPC. The decree dated October 25, 1976 had, thus, been fully satisfied/adjusted vide compromise dated June 16, 1979 and the question of its subsequent execution through the process of Court simply did not arise. All these objections were repudiated by the Decree Holder, thus, giving rise to the following 14 issues :-

"1. Whether the order dated 28.5.78 of the learned Senior Sub-Judge, Chandigarh, is without jurisdiction void ab-initio and contrary to the provisions of Section 24 CPC? OPO

2. Whether the order dated 29.4.1978 passed by the learned Transferor Court is illegal, void, without jurisdiction and contrary to the provisions of Section 73 CPC? PRO

3. Whether the order dated 29.4.1976 passed by the Transferor Court is illegal, without jurisdiction void and contrary to the provisions of Order 21 Rules 72 and 85 CPC? OPO

4. Whether the order dated 29.4.1978 is illegal, void and without jurisdiction? OPO

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5. Whether the order dated 2.5.1978 is illegal, void and without jurisdiction? OPO

6. Whether the orders dated 28.4.1978, 29.4.1978 and 2.5.1978 were passed after notice to the opposite party? If not, to what effect? OPDH

7. Whether the application under Order 21 Rule 97 of the CPC is maintainable in view of filing the similar application previously? OPDH

8. Whether the application under Order 21 Rule 95 CPC could be revived after filing application under Order 21 Rule 97 CPC?OPD

9. Whether the application under Order 21 Rule 97, 98 CPC is time barred? OPD

10. Whether the notice under Order 21 Rule 66 CPC was served on the JD? If not, to what effect? OPO

11. Whether this Court has no jurisdiction to execute the decree passed the Senior Sub-Judge for the recovery of Rs. 15,211.05?OPO

12. Whether the decree under execution has been adjusted as alleged? If so, to what effect?OPO

13. Whether the provisions of Section 60(6) CPC Punjab Amendment have been violated? If so to what effect?OPO

14. Relief".

7. All the issues were taken together by the Executing Court. Learned Executing Court referred to order dated August 30, 1979 confirming sale while rejecting the contention of Judgment Debtor to the effect that the sale was illegal for want of non-compliance of provisions contained in Order 21 Rule 72 and 84 CPC. Learned Executing Court also referred to order dated September 25, 1984 whereby application filed by the Judgment Debtor under Sections 47 and 60 as also Order 34 Rule 14 CPC was dismissed after framing the following issues:-

"a (i) Whether the warrant of possession cannot be issued in this case? OPA. b (i) Whether the SCF No. 9, Section 27-D, was exempt from attachment and sale? OPA

(ii) Whether the present application is not maintainable as alleged in preliminary objection No. 1 of the reply? OPR

(iii) Whether the present application is barred by Sections 11 and 47 CPC? OPR
(iv) Whether the sale dated 17.4.78 and the sale certificate dated 11.9.79 are null and void and have no effect on the right of the applicant? OPR.

c (i) Whether this Court has no jurisdiction to order the delivery of possession? OPR

(ii) Whether the present application is barred by time? OPR

(iii) Whether the application is not maintainable? OPR

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(iv) Whether the execution application should be revived as prayed for by the petitioner? OPA

8. After examining orders dated August 30, 1979 and September 25, 1984, the Executing Court held that "contentions of the JD covered under Issues Nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13 have already been gone into and decided against the JD vide orders dated 30.8.1979 of Shri B.C. Rajput, learned Sub-Judge, 1st Class, and order dated 25.9.1984 of Shri Jagroop Singh, learned Sub-Judge, 1st Class, Chandigarh. Vide order dated 2.5.1978 Shri B.C. Rajput, learned Sub-Judge, 1st Class, had allowed application of Raj Kumari DH to deposit a sum of Rs. 2531.10 in the Court. In this application, the DH had averred that she being highest bidder in auction had purchased the property for Rs. 82,000/-, was entitled to set off a sum of Rs. 81,643.90 and was liable to deposit a sum of Rs. 2531.10 (Rs.356.10 Ps. as balance of price and Rs. 2175/- as costs of auction). It is true that this order was passed in the absence of Judgment Debtor and without notice to him. His grouse is that the said order is void and. the sale subsequently confirmed on the basis of deposits made pursuant to this order was bad in law. To my mind, this plea is covered by the Issue No. b (iv) framed on an earlier application of the Judgment debtor which was decided against him vide order dated 25.9.1984 of Shri Jagroop Singh, learned Sub-Judge, 1st Class Vide order dated 25.9.1984 learned Transferor Court had also rejected the contention that a fresh warrant of possession could not be issued in favour of the DH once the earlier warrant had been received back unexecuted because of resistance by the JD to the delivery of possession and the DH had failed to take steps for getting possession by removal of the resistance. The contention now raised by the JD under Issue No. 8, it would be seen, as has already been considered and decided altogether vide order dated 25.9.1984 that once warrant of possession was issued after order 25.9.1984 and it was received back unexecuted with report of resistance by the JD to the delivery of possession, the decree holder was well within her right to move application dated 22.1.1985 for removal of the resistance/obstruction to the delivery of possession". It was also held that "order was passed on 25.9.1984 for the issue of possession. Delivery of the possession was resisted/obstructed on 11.1.1985. Application was moved by the DH on 22.1.1985. Application was moved by the DH on 22.1.1985 for the removal of the resistance/obstructions. It cannot, therefore, be said that this application was moved after the expiry of 30 days from the date of the reported resistance/obstruction. Giving detailed reasons for his conclusion Shri Jagroop Singh, learned Sub-Judge 1st Class, had held in order dated 25.9.1984 that till actual possession of the property was delivered to the DH/auction purchaser, there was no adjustment/satisfaction of the decree. To my mind, this covers the contention of the JD that the money decree had been adjusted/satisfied under Order 21 Rule 2 CPC vide compromise dated 16.6.1979."

9. Mr. Singla, learned counsel representing the appellant, conscious of the fact that the issues, that came to be framed in view of the objections raised by the

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Judgment Debtor, were covered by earlier orders dated August 30, 1979 and September 25, 1984 and the same, thus, could not be reopened, however, still assails determination of Issue No. 12 on the basis of observations made in FAO No. 502 of 1979 which, as referred to above, was dismissed by learned Single Judge vide orders dated March 31, 1981. These observations have since already been reproduced in the earlier part of the judgment. The emphasis of the learned counsel is on the observations made by learned Single Judge that "if the sale held by the Court was to be confirmed, the argument would have been unexceptionable. On the contrary, the sale has now been confirmed on the terms agreed to between the parties which certainly amounts to adjustment of the decree within the meaning of Rule 3 of Order 21 Civil Procedure Code". It is the contention of learned counsel that if the decree has been adjusted on the basis of compromise, the executing Court, on the basis of sale having been confirmed, could not order delivery of possession to the Decree Holder and, in the facts and circumstances of this case, only option left with the decree Holder was to file a fresh suit for possession.

10. This contention needs to be repelled on variety of grounds. It may be recalled that Shri Jagroop Singh, learned Sub-Judge 1st Class, vide his order dated September 25, 1984, on the precise objection, referred to above, has already held that till actual possession of the property was delivered to the Decree Holder, there was no adjustment/satisfaction of the decree. It is for that precise reason, it appears, that the executing Court held even Issue No. 12 having already been decided against the Judgment Debtor. It is significant to mention that insofar as order dated September 25, 1984 passed by Shri Jagroop Singh is concerned, same was not challenge in any proceedings. Further, the observations of learned Single Judge in FAO No. 502 of 1979, on which reliance has been placed, came to be made pre-supposing violation of provisions of Rules 84 and 85 of Order 21 CPC. In other words, law enunciated in the observations, referred to above that if the sale held by the Court was to be confirmed, the argument would have been unexceptionable, pre-supposes violation of Rules 84 and 85. This is not factually correct in this case. The objections pertaining to violation of Order 21 Rule 85 have since already been rejected, if that be so, the compromise could not be said to be hit by the provisions of Section 23 of the Contract Act which could not be enforced. Still further, the moment the Judgment Debtor was to plead invalidity of the compromise, thus, repudiating it, decree Holder could still take possession of the property that came to be sold in execution of decree, ignoring the compromise altogether. Insofar as terms of compromise are concerned, it is significant to note that the same clearly stipulate that in case possession of the property is not delivered, it shall not affect confirmation of the sale in any manner. Concededly, in this case, even though so agreed to between the parties, judgment Debtor did not deliver the possession. If that be so, there was no impediment in the way of Judgment Debtor in taking possession, pursuant to confirmation of sale in her favour. Further, we are of the view that learned Sub-Judge 1st Class correctly held in his order dated

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September 25, 1984 that till actual possession of the property was delivered to the Decree Holder, there was no adjustment/satisfaction of the decree.

11. Mr. Singla, for his aforestated contention, however, relies upon judgment of Supreme Court in Sultana Begum Vs. Prem Chand Jain, . We are, however, of the view that the law enunciated by the Supreme Court in the case aforesaid has no applicability to the facts of the present case. Brief facts of the case aforesaid reveal that Sultana Begum was the landlady of the premises known as Pink City Hotel, Mumtaz Bagh, Jaipur which was in occupation of Shri Prem Chand Jain as a tenant. Sultana Begum sought eviction of the tenant on various grounds but the matter ended in compromise on September 16, 1991, on the basis whereof a compromise decree was passed which provided that the tenant would vacate the premises and hand-over its possession to the landlady or to her attorney by February 10, 1992 and that he would pay, rent @ Rs. 3100/- per month from the date of the suit till the date of delivery of possession. Since the premises were not vacated by the tenant and its possession was not handed-over in terms of the compromise, she filed an application for execution which was resisted by the tenant on the plea that the possession of the premises in question was actually handed-over to attorney of landlady, who, however, allowed the tenant to remain in possession of the premises as a licensee on payment of the licence fee of Rs. 5000/- per month. It was further pleaded that since possession of the premises was handed over to attorney of landlady, the decree stood satisfied and as such could not be executed On the facts, as have been mentioned above, it was held by the Supreme Court that:-

"the general power of deciding questions relating to execution, discharge or satisfaction of decree u/s 47 can thus be exercised subject to the restriction placed by Order XXI Rule 2 including Sub-rule (3) which contain special provisions regulating payment of money due under a decree outside the Court or in any other manner adjusting the decree. The general provision u/s 47 has, therefore, to yield to that extent to the special provisions contained in Order XXI Rule 2 which have been enacted to prevent a judgment debtor from setting up false, or cooked up pleas so as to prolong or delay the execution proceedings. Thus, though it is open to the parties to adjust or compromise their rights under the decree but if it amounts to adjustment of decree, it must be reported to the Court, whose duty it is to execute the decree so that the Court may record or certify the same. If it is not done, the Court, before whom the execution proceedings are initiated, will proceed to execute the decree".

12. Inasmuch as in the aforesaid case adjustment of decree was-not reported to the Court and naturally same was not certified by it, it was held that "executing Court erred in refusing to execute the decree for eviction of the tenant on the ground that possession having been delivered to the landlord''s attorney, the decree, to that extent, stood satisfied". The law laid down by Supreme Court in Sultana Begum''s case (supra), in our view, can not be said to support the contention of learned counsel, noted above. If, however, the endeavour of the

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counsel is to persuade this Court to take the view that in the present case compromise was reported to the Court which in turn had certified it also and, therefore, the decree stood adjusted by way of compromise and could not be executed, we would only like to reiterate that there could not be adjustment of decree till such time possession was delivered as that was concededly one of the terms of adjustment. There was no need at all in the circumstances aforesaid for the Decree Holder to have filed a fresh suit for possession on the basis of adjustment of decree. The contentions of learned counsel, as noted above, are, thus, repelled.

13. From the facts of the case, the detailed above we can not help but observe that the Judgment Debtor nodulated his defence, from time to time, in a most calculated manner to stall execution of the decree and if possible, to frustrate it. Impending immediate dispossession, he compromised the matter and in the bargain, enticed the Decree Holder in coughing up an extra amount of Rs. 35,000/- on the false promise of giving possession of the property in question, having already visualised in his mind that the moment compromise shall be recorded, he will plead adjustment and in consequence thereof, non-executability of decree. On the Decree Holder having deposited an extra amount, he did precisely what he had already planned and involved the Decree Holder in a marathon litigation, spanning over a period of quarter a century, during which time, not only Decree Holder died but he himself also breathed his last.

14. We were very seriously thinking of compensating the Decree Holder and for that purpose we thought over of various combinations, like, ordering the Executing Court to return the extra amount of Rs. 35,000/- deposited by her, as part of mesne profits, which may be adjusted ultimately in a suit that the Decree Holder may file for the said purpose as also to order the Judgment Debtor to pay special costs. Even by most conservative estimates, the rental value of the premises in question would not be less than Rs. 5000/-p.m. If so calculated, the mesne profits would far exceed ten lac rupees. The Decree Holder has so far neither been able to recover the decretal amount nor in lieu thereof, the property, where, admittedly, the Judgment Debtor is sitting tight, having obtained stay of dispossession. Even though the position is as mentioned above, we are not passing any orders to compensate the Decree Holder in these proceedings as that may go beyond the scope of present proceedings. We shall, however, hasten to observe that the present case is a classic illustration of proverbial saying that "travails of a successful litigant start after he obtains a decree".

15. So that there is no further delay in dispensation of justice, while dismissing this appeal, we order that the Executing Court would proceed in the matter from the stage of providing police help in delivering the possession of property to the Decree Holder as that was the stage when Judgment Debtor obtained, stay and continued in possession. A copy of this order shall be sent to the Executing Court forthwith with a clear direction that the execution application be finally disposed

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of within thirty days from the date a copy of this order is received by it.

16. This appeal, as mentioned above, is dismissed, and in peculiar facts and circumstances of this case, we further order that the same shall stand dismissed with costs throughout.

Sd/- Arun B. Saharya, C.J.

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