
(2011) 01 DEL CK 0461

In the Delhi High Court

Case No : Regular First Appeal No. 224 of 2000

Mehta Brothers and Others

APPELLANT

Vs

Bank of India

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0461

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sanjeev Anand, Dibya Nishant and Vikram Singh, for the Appellant;
Ashu Kansal, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of the present of first appeal u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned order dated 18.12.1999, by which, application of the Respondent/Plaintiff for restitution u/s 144 CPC has been allowed. Before proceeding further, I must note that in terms of Section 141 of CPC, the procedure provided in the Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction, meaning thereby, the issue with regard to restitution to be granted under a final judgment and decree will equally apply to the interim orders of a court.

2. The facts of the case are that the Respondent/Plaintiff filed a suit for recovery of Rs. 51,440.16 along with interest at the contractual rate of 21.5% per annum which the counsel for the Appellants states, was originally a simple money suit but was amended subsequently on an application of the Respondent/Plaintiff as one under Order 34 CPC i.e., the money suit became a suit on the basis of a mortgaged property. In this suit, an application was filed by the present Appellants/Defendants for return of the title deeds and certain F.D.Rs against deposit of the amount in the court and which at that stage, was calculated at Rs. 70,000/-. The trial court dismissed the application however, in revision against

that order, this Court, vide its order dated 31.8.1989 directed the Respondent/Plaintiff/bank to return the title deeds and the fixed deposit receipts on the Appellants/Defendants depositing an amount of Rs. 76,000/-. The order of this Court dated 31.8.1989 was challenged by the Respondent/Plaintiff in the Supreme Court and the Supreme Court vide its order dated 9.8.1995 allowed the appeal and set aside the order of this Court dated 31.8.1989 and directed status quo ante, meaning thereby, the title deeds and the fixed deposit receipts were to be returned to the Respondent/Plaintiff.

3. The Respondent/Plaintiff therefore moved the present application u/s 144 CPC for return of the title deeds and the fixed deposit receipts which it had given to the Appellants/Defendants pursuant to the orders of this Court dated 31.8.1989 and which was set aside by the Supreme Court by its order dated 9.8.1995. It is this application which was allowed by the impugned order dated 18.12.1999 and which is challenged in the present appeal.

4. Learned Counsel for the Appellants raised two main arguments. The first argument was that since the suit in the meanwhile has been decreed, this application for restitution is for an interim order and cannot be allowed. The second argument was that the order of restitution u/s 144 CPC could have been passed only by this Court which had passed the order dated 31.8.1989 and not the court of first instance/trial court before which the suit was filed and was decreed. Learned Counsel for the Appellant relies upon State Bank of Saurashtra Vs. Chitranjan Rangnath Raja and Another, and more particularly paras 20 and 21 which read as under:

20. By Section 144 of the Code of Civil Procedure, 1908, as it stood prior to its amendment by the CPC (Amendment) Act, 1976, the jurisdiction to grant restitution was conferred upon the "court of first instance". Since the amendment the expression "the court of first instance" has been substituted by "the court which passed the decree or order". An explanation has been added to Section 144 by the Amendment Act of 1976, the relevant portion of which reads as under:

Explanation.-For the purposes of Sub-section (1) the expression "court which passed the decree or order? shall be deemed to include-

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the court of first instance." In the instant case the Appellant was the Plaintiff and its suit was decreed by the trial court, i.e. the Court of Civil Judge, Senior Division, Gondal, on November 18, 1960. The present Appellant by its letter dated February 14, 1961, demanded from the surety a sum of Rs. 84,828.07 p. inclusive of costs and interest on the principal amount decreed. The surety Respondent 1 in this Court paid the Appellant Rs. 84,828.07 p. on April 3, 1961. In the appeal by the surety the High Court reversed the decree and dismissed the suit against the surety. Accordingly, the surety is entitled to restitution.

21. The limited question is whether this Court can grant restitution. Prior to Amendment Act, 1976, an application for restitution u/s 144 in all cases had to be made to the court of first instance. Even since the amendment the substituted expression "the court which passed the decree or order" would, as per Clause (a) of the explanation, mean the court of first instance because the expression "the court which passed the decree or order" has been deemed to include where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the court of first instance. The present one is the simplest case where the suit in favour of the Appellant and against the surety was decreed by the trial court, i.e. the court of first instance, and this decree has been reversed by the High Court in exercise of its appellate jurisdiction. In such a situation, Clause (a) of the explanation would be attracted and an application for restitution will have to be made to the court of first instance i.e. the Court of Civil Judge, Senior Division, Gondal. It is nowhere suggested that such a court does not exist. Therefore, it would not be proper for this Court to direct restitution. However, there will be no justification for the Appellant Bank to withhold the amount which was collected from the surety on a mere demand. Therefore, an application for restitution made by the surety would not lie to this Court and it would stand disposed of accordingly.

5. I am afraid, I am unable to agree with the submissions made by learned Counsel for the Appellants. Firstly, merely because the suit has been decreed does not mean that the order of the Supreme Court dated 9.8.1995 will lose its efficacy. The orders of the Supreme Court have to be complied with and merely because the suit has been decreed in the meanwhile, the Appellants cannot take undue advantage by not returning the title documents and the fixed deposit receipts which it had got pursuant to the order of this Court dated 31.8.1989 and which was set aside by the Supreme Court by its order dated 9.8.1995 under its appellate jurisdiction. Even the second argument as raised by the learned Counsel for the Appellants is misconceived and which is that it is only this Court which could have exercised powers u/s 144 CPC because allegedly this Court is the court of first instance qua the Supreme Court with reference to the order dated 9.8.1995 of the Supreme Court directing restitution of status quo ante. A reference to the provision of Section 144 and its Explanation (a) leaves no manner of doubt that when an order is being passed in exercise of appellate jurisdiction, it is court of first instance before which an application u/s 144 would lie. The court of first instance has to be the first court and not the court at a second stage which exercises its jurisdiction, either appellate or revisional. The court of first instance in the present case was the trial court before which the suit was being tried and before which the application was filed by the Appellant for return of the title documents and the fixed deposit receipts. In my opinion, the above quoted para 22 of the decision of the Supreme Court in the case of The State Bank of Saurashtra (supra) in fact applies, not in favour of the Appellant but in favour of the Respondent because it clearly lays down that which is otherwise said in the explanation (a) to Section 144 that the application for

restitution has to be filed before the court of first instance. The court of first instance in this case has to be the court which was hearing and deciding the suit and before which the application was originally filed, i.e., the trial court in this case.

6. In view of the above, I do not find any merit in the appeal which is dismissed leaving the parties to bear their own costs. Interim orders stand vacated.