
(1988) 09 GUJ CK 0001
In the Gujarat High Court

Mody Mansukhram Punjiram (Decd.) through his LRs. and
Heir and Another

APPELLANT

Vs

Shah Babulal Dahyabhai and Others

RESPONDENT

Date of Decision : 13-09-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : (1989) 1 GLR 476

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Judgement

M.B. Shah, J.—Being aggrieved and dissatisfied by the judgment and order dated 16th August, 1988 passed by the Extra Assistant Judge, Mehsana in Regular Civil Appeal No. 42 of 1988, the petitioner who is the heir of the deceased tenant has filed this revision application.

2. This proceeding arises out of the execution application filed by the opponent No. 1 original landlord for executing the decree dated 19th December, 1968 in Regular Civil Suit No. 226 of 1966. That decree is a consent decree wherein the tenant has agreed to hand over possession of the suit shop on or before 1-1-1983. He has also agreed to pay the mesne profits till 1-1-1983. It has been further decreed that up to 1-1-1983 the plaintiff landlord was not entitled to construct first floor on the suit premises. On 1-1-1983 when the tenant failed to hand over possession of the suit shop, opponent No. 1 landlord had filed Regular Darkhast No. 3 of 1983 before the Civil Judge (J.D.) Vijapur for executing the decree. The execution application was dismissed by the Civil Judge (J.D.) Vijapur by his judgment and order dated 22-2-1984 by holding that the consent decree was inexecutable so far as prayer for relief for possession of the property was concerned. Against that judgment and decree the petitioner preferred revision application before this Court. This Court directed that no revision application was maintainable but opponent No. 1 could file an appeal before the District Court. Thereafter opponent No. 1 preferred the aforesaid appeal before the District

Judge, Mehsana. The said appeal came up for hearing before the Extra Assistant Judge, Mehsana, who by his well reasoned judgment and order dated 16-8-1988 allowed the said appeal and set aside the judgment and order passed below Darkhast Petition Ex. 1. He had further directed the learned Judge to execute the decree in accordance with law.

3. At the time of hearing of this revision application the learned Advocate for the petitioner vehemently submitted as under:

(1) That the consent decree is nullity because there is no specific finding given by the learned Judge while passing the decree that greater hardship would not be caused to the petitioner-tenant if the decree for eviction was passed;

(2) That the decree was obtained by opponent No. 1 and his brother Gokaldas. Hence opponent No. 1 alone could not file execution application;

(3) That the decree was inexecutable because it was barred by the period of limitation; and

(4) That the executing Court ought to have considered the say of the petitioner that at present the landlord does not require the suit-shop for his personal requirement.

4. The contention that consent decree is nullity was considered by the learned Extra Assistant Judge and, in my view, he has rightly rejected it. For that purpose the learned Judge has considered the fact that in the suit filed by the present opponent No. 1, the tenant had filed written statement and thereafter the Court had framed the necessary issues on 9-1-1967. Both the parties produced the documentary evidence in the suit. The deposition of the landlord Gokaldas Dahyabhai was recorded on 17-12-1968 and the evidence of his witness Chimanlal Talakchand was also recorded on 18-12-1968. Thereafter on 19-12-1968 the deposition of the deceased tenant Mansukhram was also recorded. Subsequently both the parties filed compromise application Ex. 65 in that suit. As per the said compromise application the tenant was given time to vacate the premises till 1-1-1983. That means nearly 14 years' time was given for vacating the suit shop. In the plaint itself it is mentioned that prior to filing of the suit in 1966 Regular Civil Suit No. 1 of 1960 was filed by the landlord for recovering the possession on the ground of personal bona fide requirement. In that suit the District Court had arrived at the conclusion that the landlord's requirement was reasonable and bona fide one, but on the ground of greater hardship the suit was dismissed. It has been further stated in the plaint that thereafter in Mansa town number of vacant shops were available and that the landlord would himself see that the defendant gets one or other alternative shop on rent. On the basis of the averments in the plaint the evidence of the plaintiff and his witness was recorded and thereafter the tenant's evidence was recorded. Subsequently the Court has passed the consent decree. In this view of the matter, it cannot be said that the Court has not considered the legal requirement of Section 13(1)(g) and Section 13(2) before passing the decree under the Rent

Act.

5. Apart from these facts, in my view, sufficient time is given to the tenant for vacating the premises. Even if there was any hardship, that hardship would be obviated after a period of 14 years. The Legislature does not provide that merely because premises are let out to the tenant, in no set of circumstances he can be evicted. If the tenant agrees that consent decree be passed and that he would vacate the premises after considering all pros and cons and the Court commits some mistake in not recording that in view of the evidence produced on record or in view of the admission made by the tenant the consent decree was passed, it cannot be said that decree becomes nullity or that the Court had no jurisdiction to pass a decree. In this type of cases there is no question of lack of inherent jurisdiction. It cannot be said that the decree would be nullity solely on the ground that the Court has not recorded its satisfaction in the decree.

6. In the case of K.K. Chari Vs. R.M. Seshadri, , while considering the similar question Alagiriswami, J. has observed that the law on this subject has got into a labyrinth and it was a proper time to take a hard look at it and lay down the correct position. After discussing number of judgments, it has been held as under:

I am of opinion that in this approach learned Judge relied more on the form than the substance of the matter. The true approach has been pointed out by our learned brother, Vaidialingam. J. He has pointed out that while the decision in Bahadur Singh and Another Vs. Muni Subrat Dass and Another, was an authority for the proposition that a Court ordering eviction has to satisfy itself that a statutory ground of eviction has been made by a landlord: how exactly that satisfaction was to be expressed by the Court or gathered from the materials, has not been laid down in that decision; that in Kaushalya Devi and Others Vs. Shri K.L. Bansal, also the manner in which the Court's satisfaction was to be expressed or gathered has not been dealt with; nor has the decision in Ferozi Lal Jain Vs. Man Mal and Another, given an indication as to how the satisfaction of a Court could be expressed or gathered in a particular case. He has pointed out that "if a stage had been reached in a particular proceeding for a Court to apply its mind regarding the existence of a statutory condition, it may be held that it was so satisfied about the plea of the landlord. Again, from other material on record it can be inferred that the Court was so satisfied". He has also pointed out how in the particular circumstances of the present case as the tenant had withdrawn his defence and submitted to a decree for eviction unconditionally, he had accepted the claim of the landlord that he required the premises bona fide for his own occupation; that he has accepted the position that the landlord has made out the statutory requirement entitling him to ask for possession of the premises; that by this unconditional withdrawal of the defence regarding the statutory condition pleaded by the landlord, and the compromise following it that was accepted by the Court, the tenant has accepted the plea of the landlord, and it is futile to hold that the Rent Control must again embark upon an enquiry

regarding the requirement of the landlord being bona fide and adjudicate upon the same. He has also pointed out that the true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact, viz. the existence of one or more of the conditions mentioned in Section 10 were shown to have existed when the Court made the order; that the satisfaction of the Court, which is no doubt a prerequisite for the order of eviction, need not be by the manifestation borne out by a judicial finding; and that if at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based. He has further pointed out that if the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the Court to act on that admission and make an order for possession in favour of the landlord without further enquiry.

The Court thereafter dealt with the provisions of Order 23 Rule 3 of the CPC and observed that the application of CPC is not excluded in proceedings before the Rent Controller and in any case there is no reason why the principle underlying Order 23, Rule 3 should not apply to those proceedings. The Court further held that it is not clear why a tenant should be treated as a minor or as an imbecile. The Court, therefore held that the time has come when a hard look must be taken on this point and it should be held that there is no objection to a compromise consenting to an order of eviction in rent control proceedings. The learned Judge ultimately held that all the decisions which were considered support the proposition that an eviction order passed on a compromise where the landlord has asked for possession on any one of the grounds on the basis of which he could ask for possession would be valid. In this decision the Court has laid down that it is true that the consent decree on the face of it does not show that the Court has expressed its satisfaction with the requirement. If the Court had expressed its satisfaction in the order itself, that will conclude the matter. That the Court was so satisfied can also be considered from the point of view whether a stage had been reached in the proceedings for the Court to apply its mind to the relevant question? Other materials on record can also be taken into account to find out if the Court was so satisfied. The Court further held that satisfaction of the Court which is no doubt a pre-requisite for the order of eviction need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based.

7. Thereafter in the case of Suleman Noormohamed and Others Vs. Umarbhai Janubhai, , the Court dealt with the similar question and held that the decree was not nullity. The Court relied upon the observations of the Supreme Court in the case of Roshan Lal and Another Vs. Madan Lal and Others, , which in turn

relied upon the decision in the case of Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, , which is as under:

4. In Roshan Lal and Another Vs. Madan Lal and Others, , one of (Untwalia, J.) following Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, reiterated the same view. At page 882 of SCR : (at page 2133 of AIR) delivering the judgment of this Court, it has been said:

The Court can pass a decree on the basis of the compromise. In such a situation the only thing to be seen is whether the compromise is in violation of the requirement of the law. In other words, parties cannot be permitted to have a tenant's eviction merely by agreement without anything more. The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord, in the circumstances, is entitled to have such a decree under the law.

With reference to the requirement of the law under Order XXIII Rule 3 of the Code, it has been observed further on the same page (at p. 2134 of AIR).

If the agreement or compromise for the eviction of the tenant is found on the facts of a particular case, to be in violation of particular Rent Restriction or Control Act, the Court would refuse to record the compromise as it will not be a lawful agreement. If on the other hand, the Court is satisfied on consideration of the terms of the compromise and if necessary, by considering them in the context of the pleadings and other materials in the case, that agreement is lawful, as in any other suit, so in an eviction suit, the Court is bound to record the compromise and pass a decree in accordance therewith. Passing a decree for eviction on adjudication of the requisite facts or on their admission in a compromise either express or implied, is not different.

In that case the Court further held that if a decree for possession would have been passed in invitum the tenant would not have got three years" time to vacate the premises. The tenant, therefore, agreed to suffer a decree by consent and gained three years" time under it.

8. In the present case it is apparent that necessary issues were framed the evidence of the plaintiff and his witness was recorded; the evidence of the defendant was also recorded and after taking into consideration the say of the tenant the Court has passed the decree. Therefore by no stretch of imagination it can be said that the decree is nullity. Further, if a decree would have been passed in invitum in no set of circumstances the Court would have given 14 years" time to vacate the premises. Apart from this period of 14 years because of the delay in execution, by this time the. tenant got 20 years" time for vacating the premises. In my view, the other contentions raised by the learned Advocate for the petitioner are absolutely baseless. The execution application is filed not by one decree-holder but by opponent No. 1 by himself and as an heir of his brother, therefore it cannot be said that one of the judgment-creditors has filed

the execution application.

9. With regard to the period of limitation, it would start only after 1-1-1983 because the decree itself specifically provides that the tenant shall vacate the premises on or before 1-1-1983. On the tenant's failure to vacate the premises, the landlord can file execution application. The last contention is that even in execution proceeding, the learned Judge should consider whether bona fide requirement still exists, deserves no consideration. The executing Court has no jurisdiction to go behind the decree. If the executing Court is permitted to go behind the decree and is required to find out whether the landlord still requires the premises or not, then in no set of circumstances any judgment or decree would become final, and there won't be an end to the litigation.

10. In the result, the Revision Application is rejected. The learned Advocate for the petitioner prays that the operation of the impugned order be stayed for some time so as to enable the petitioner to approach the Supreme Court. Taking into consideration the facts and circumstances of the case, the operation of the impugned order is stayed for a period of one month.