
(2009) 02 BOM CK 0112
In the Bombay High Court
Case No : Writ Petition No. 66 of 2009

M/s. GKP Builders

APPELLANT

Vs

Shri Jose Cordeiro and Others

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 21 Rule 97, 47

Citation : (2009) 02 BOM CK 0112

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : Jimi John, for the Appellant; Sudin M.S. Usgaonkar, for the Respondent

Judgement

C.L. Pangarkar, J.—These two writ petitions are filed by the third party objectors in execution proceedings No.7/2006 and 8/2006 before the Civil Judge, S. D., Mapusa whereby their objections were rejected. A few facts may be narrated as follows :

The respondent Nos.1 to 5 herein, filed a civil suit No.102/2001 and 104/2001 against the respondent Nos. 6 and 7. It was the contention of the respondent Nos. 1 to 5 that they are the owners of three rooms in the rear part of the house No.79 in Ward No.7 at Angod. It was the contention of the respondent Nos. 1 to 5 that the respondent Nos. 6 and 7, who are migrant labourers, were trying to usurp the possession of two rooms G and H on the back side. The respondent Nos. 1 to 5, therefore, prayed in that suit for an injunction restraining the respondent Nos. 6 and 7 from interfering with the possession of the plaintiffs. The suit was heard and decree came to be passed restraining the respondent Nos. 6 and 7 from interfering with the possession of the plaintiffs and the decree was passed on 28.06.2005. The respondent Nos. 6 and 7 preferred an appeal No.262/2005 before the High Court and filed an application for stay. The High Court passed the following order :

Heard. The question of grant of the stay of the impugned decree does not arise

in the facts and circumstances of the case and in view of the findings arrived at by the trial Court on assessment of the evidence before the trial Court. However, the parties shall maintain status quo during the pendency of the appeal. Application stands disposed of.

2. In the meanwhile, the petitioners filed a civil suit No.109/2001 for permanent injunction in which temporary injunction was granted by the Court against the respondent Nos. 1 to 5 restraining them from dispossessing the petitioners without following due process of law. It is alleged by the respondent Nos. 1 to 5 that the petitioners and the respondent Nos. 6 and 7 are still obstructing the possession of the respondent Nos. 1 to 5 despite existence of the decree in their favour. Since there was disturbance, the respondent Nos. 1 to 5, sought to execute the decree for injunction.

3. Upon notice, the present petitioners filed an application purporting to be an objection application in the Executing Court. They (objectors petitioners) contended that they are actually in possession of the suit property and they have valid enforceable right. It was also contended that there is an order of status-quo passed by the High Court and an injunction granted by the Trial Court, on account of which it was prayed that the execution be kept in abeyance till the decision of Special Suit No.109/2001. The Trial Court rejected this application. Hence, these two writ petitions.

4. I have heard the learned Counsel for the petitioners and the respondent Nos. 1 to 5. None appears for the respondent Nos. 6 and 7.

5. The learned Judge of the Trial Court has mainly rejected the application on the ground that since the claim of the objectors is subsequent to the passing of the decree, it cannot be considered. He has referred to a decision in S.A. No.73/2007 decided on 27.09.2007 by the Goa Bench. This decision, with respect, has no bearing on the case at hand. The material question that needs to be answered in these petitions, is whether the objection application is at all maintainable when a decree sought to be executed is one of injunction. To my mind, a third party objection is not contemplated where a decree is for injunction. Under Order XXI, Rule 97 of C.P.C. and onwards fall under the heading "resistance to delivery of possession to Decree Holder or purchaser". Therefore, this provision would apply when a decree for possession is sought to be executed and a third party who has not bound by the decree is sought to be dispossessed. Since the decree is for injunction simplicitor in this execution, there is no question of dispossession and, therefore, no application under Rule 97 or any rule thereafter is maintainable.

6. The application for objection cannot also be treated to be one u/s 47 of C.P.C. for the reason that the petitioners are not the Judgment Debtors or persons claiming through them or an auction purchaser u/s 47. Rights of the parties to the decree or auction purchaser, are alone required to be decided. The application cannot even fall under the provision of Order XXI Rule 58 of C.P.C. since there is no attachment of the suit property. In fact, therefore, there is no

provision in C.P.C. contemplating an objection by a third party to the execution of the decree for injunction. Such an application is not maintainable at all unless some property is attached in execution of decree for injunction. It was contended that due to the orders of the Court, the Executing Court cannot execute the decree. The High Court has, no doubt, passed an order of status-quo in Civil Application No.297/2005 in First Appeal No.262/2005. The important aspect is that the present petitioners are not party to the suit or to the above appeal. Hence, the present petitioners cannot take advantage of status-quo order passed in appeal to which they are not party. In that suit, the Trial Court as a fact, has found that the respondent No.1 i.e. plaintiff / Decree Holder is in possession of the suit property and holding so, has granted permanent injunction. The High Court passed an order of status-quo on the stay application. The status-quo is defined in Black's dictionary to mean "situation that currently exists". The Trial Court has held that the plaintiffs in that suit i.e. the respondent Nos. 1 to 5 are in possession and has passed order of injunction. That decree still holds the ground. The status-quo would necessarily, therefore, mean the status of the things as observed or found by the Trial Court which necessarily means that the respondent Nos. 1 to 5 are in possession and status-quo with regard to their possession, has to be maintained. Any attempt to disturb, that would give rise to its resistance which could be enforced by executing that decree. The Status-quo cannot mean to prevent the Decree Holder from executing the decree. This is so because of the fact that the High Court in very same order, observed that there is no question of granting stay to the decree. Therefore, the High Court has not granted stay to the execution of the decree. The status-quo order, to my mind, therefore, does not prevent the Decree Holders i.e. the respondent Nos. 1 to 5 from putting the decree for injunction to execution since it is alleged that their possession was being disturbed and status-quo was being, therefore, disturbed.

7. Next ground is about the order of injunction by civil Court in civil suit No.109/001. The civil Court has passed following temporary injunction order in the above suit.:

ORDER

Application for temporary injunction is partly allowed. Defendants are restrained from dispossessing plaintiffs and his carpenters and workers from suit premises without following due process of law.

No order as to cost.

Proceedings closed.

The respondent Nos. 1 to 5, who are the defendants in that suit, are restrained from dispossessing the petitioners without following due process of law. The order prevents the defendants from dispossessing the petitioners. It does not prevent the plaintiffs from executing the decree for injunction. Further the defendants i.e. the respondent Nos. 1 to 5 have in fact been held to be in possession on merits in civil Suit No.104/2001. That decree is not for possession

and the Decree Holder is not seeking dispossession under the decree. He is not prevented by any order from executing the decree in civil suit No.104/2001. As such the Decree Holders / respondents have every right to execute the decree for injunction. One decision of the Supreme Court reported in Sati Rani Sen (Smt) Vs. Indian Standard Casting Co. and Another, was cited to me. The facts of the reported case, are entirely different and have no bearing. The petitioners do not have an injunction in their favour restraining the execution of decree obtained by the respondent Nos. 1 to 5. It simply says they should not be dispossessed assuming themselves to be in possession. On the other hand, the Court has on merits, held that the respondent Nos. 1 to 5 are in possession of the property. The order that has been passed by the Civil Court on temporary injunction application, is in ignorance of the findings of the Court. I find that there is nothing which could prevent the Decree Holders from executing the decree for injunction.

The application was rightly rejected. There is no substance in the writ petitions, they are dismissed. No order as to costs.